

**RAYMUNDO DE LA PAZ, PLACIDO DE LA PAZ, JOSE DE LA PAZ JR.,  
ILOINA DE LA PAZ, NORITA DE LA PAZ, LEONORA DE LA PAZ, AND  
VICTORIA DE LA PAZ, PETITIONERS, VS. HON. DOMINGO D. PANIS,...**

*G.R. No. 57023. June 22, 1995*

Ponente: ROMERO, J.

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**ROMERO, J.:**

This petition for certiorari and mandamus began in 1972 as a complaint for recovery of possession filed by the petitioners in the then Court of First Instance of Zambales, Branch III, Olongapo City. Docketed as Civil Case No. 1133-0, it involves a dispute over a 7,531-square meter parcel of land in Subic, Zambales, being claimed by the petitioners as communal owners on the strength of their Transfer Certificate of Title No. T-14807 of the Registry of Deeds of Zambales, and by the private respondents as actual possessors.

The petitioners alleged in their complaint that sometime in 1970 or 1971 the private respondents illegally entered portions of the said property, established possession thereof, and introduced illegal improvements. In their answer, the private respondents admitted that they indeed entered into the said property, but averred that they did so in the honest belief that it was part of the public domain; that they introduced the improvements without objection from any party; and that they have been in peaceful, open, and uninterrupted material possession thereof for more than ten years.

During the pre-trial conference, some of the private respondents represented by Atty. Jose S. Sarte did not deny petitioners' title to the subject property, in effect admitting such fact. The parties then limited the questions to be resolved during the trial to the following issues: (a) the identity and extent of the land claimed by the petitioners; (b) whether or not the area respectively occupied by defendants are within the limits of the said land; and (c) whether or not the parties are entitled to damages.[1]

Atty. Sarte was later substituted by Atty. Nicolas C. Adolfo who attempted during the trial to ask questions which delved into his predecessor's pre-trial admission. When this line of questioning was blocked by the respondent judge, private respondents filed a petition for certiorari and prohibition with preliminary injunction with this Court, which was assigned G.R. No. L-38773.

On November 15, 1974, the Court resolved the said petition by declaring that the only issue between the parties is whether or not the land occupied by the private respondents is included in TCT No. 14807 of the petitioners, and approved a compromise agreement dated October 18, 1974, whereby the parties agreed, among others, to have a relocation survey made upon the property in question, the result of which shall be respected by them.

The Court also ordered "the parties, including the respondent judge or whomsoever is acting in his place," to comply with the said compromise agreement. In other words, the issue of petitioners' title to the land was made to depend upon the results of the relocation survey.

On June 3, 1977, the court-appointed geodetic engineer, Serafin J. Garcia, submitted his report which confirmed

in part the allegation of the petitioners that the private respondents were occupying certain portions of their titled land.

This report notwithstanding, a decision was reached in Civil Case No. 1133-0 on January 19, 1981 (received by the petitioners on January 30, 1981), disposing of the case in this wise:

"WHEREFORE, judgment is hereby rendered dismissing the plaintiffs' (petitioners herein) complaint against all the defendants (private respondents herein). The counterclaims of defendants (1) Jose Ramirez, (2) Eugenio Laao, (3) Gomercindo Bolante, (4) Carlos Batungbakal, (5) Jacobo Isip, (6) Bayani Ramirez, (7) Alfredo Quilaquil, (8) Agustin del Rosario, (9) Roman de Vera, Jr., (10) Miguel Alfonso, are hereby likewise dismissed.

On the counterclaim of defendants (1) Gregorio Fellorin, (2) Rodito Marabe, (3) Alfredo Panugao, (4) Alfredo Coronel, Jr., (5) Domingo Bartolo, (6) Adriano Valdez, Jr., and (7) Alfredo de Guzman, judgment is hereby rendered ordering plaintiffs to jointly and severally pay each of the said defendants the sum of One Thousand Pesos (P1,000.00) as and by way of attorney's fees and expenses of litigation.

SO ORDERED."

Judge Panis observed that while the complaint was one for recovery of possession, it was "in reality one for ejectment or illegal detainer."

On February 5, 1981, petitioners filed a motion for reconsideration maintaining that their action was for recovery of possession and was not an ejectment case.

This was denied by the respondent judge in an order dated March 5, 1981, received by the petitioners on April 10, 1981.

In this petition for certiorari, the petitioners pray for an order nullifying the decision dated January 19, 1981, and compelling the respondent judge to issue a writ of execution enforcing the compromise agreement approved by the Court in G.R. No. L-38773.

Private respondents argue in their comment and memorandum that since the petitioners "had not yet entered the land in question (at the time of filing of the complaint), they had not lost any possession, and the civil case they filed for recovery of possession was wrong as no possession had been lost by them."

This argument is untenable. It amounts to a recognition by the private respondents of petitioners' equal, if not greater, right to possess the land in question. It even confirms the absence of any past or present tenancy relationship between the parties, which in turn proves the propriety of the course of action taken by the petitioners.

Private respondents further aver that G.R. No. L-38773 "cannot be enforced as all proceedings of Civil Case No. 1133-0 of the Court of First Instance of Zambales, Branch III, Olongapo City, were null and void as the hearing was done by a judge without jurisdiction to try it."

This contention is likewise unacceptable. Judge Panis dismissed the action on the assumption that it is one for ejectment cognizable by the municipal court. Such supposition is erroneous.

Ejectment may be effected only through an action for forcible entry or unlawful detainer. Forcible entry is a summary action to recover material or physical possession of real property when the person who originally held it was deprived of possession by "force, intimidation, threat, strategy, or stealth." An action for unlawful detainer, on the other hand, may be filed when possession by "a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold

possession, by virtue of any contract, express or implied." [2] Both actions may be filed with the municipal courts within one year after the unlawful deprivation or withholding of possession. Their main difference lies in the time when possession became unlawful - in forcible entry, it is from the time of entry, while in unlawful detainer, possession which is at first lawful later becomes illegal, as when the lease contract has expired and the lessee refuses to vacate the premises despite demand.

We must rule out forcible entry; there is no allegation in the complaint that petitioners were denied possession of the land in question through any of the methods stated in Section 1, Rule 70 of the Rules of Court, although private respondents' prior possession was clearly alleged. Neither is the action one for unlawful detainer; it was noted earlier that there is no lease contract between the parties, and the demand to vacate made upon the private respondents did not make them tenants of the petitioners.

In order to gain possession of the land occupied by the private respondents, the proper remedy adopted by the petitioners was the plenary action of recovery of possession before the then Court of First Instance. Respondent judge, therefore, had jurisdiction over the case and should not have dismissed it on the ground of lack thereof.

Respondent judge should have stuck to the issues defined by the parties during pre-trial, namely, the identity and extent of the land claimed by the petitioners; whether or not the area occupied by the private respondents is within the limits of the said land; and whether or not the parties are entitled to damages. Trial of the case should have been limited to these three issues. As we held in the early case of *Permanent Concrete Products, Inc. v. Teodoro*: [3]

"One of the objectives of pre-trial procedure is to take trial of cases out of the realm of surprise and maneuvering. Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a cause are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privilege or impeaching matter."

The determination of the first two issues were delegated to the geodetic engineer appointed by the court to conduct the relocation survey sought and accepted by the parties in their compromise agreement.

Ignoring the result of the survey, Judge Panis instead concluded that petitioners' action is actually one for ejectment. This conclusion is totally without basis, for the private respondents never alleged in their answers that the complaint should be dismissed on the ground of lack of jurisdiction, the action being cognizable by the municipal court. The only reference made in the separate answers regarding the jurisdiction - or the lack of it - of the respondent judge alleges that the lands occupied by the private respondents are portions of the alienable and disposable lands of the public domain, an allegation neither proved nor pursued at the trial.

Finally, the private respondents claim that the petition was filed out of time and that the lower court's decision has gained finality.

Petitioners received a copy of the decision on January 30, 1981, and filed their motion for reconsideration on February 5, 1981. The running of the reglementary period to appeal was suspended upon such filing and resumed only when the petitioners received on April 10, 1981, the trial court's resolution denying their motion. The old Rules of Court, allowing an appeal from an adverse judgment of the then Court of First Instance to the Court of Appeals to be taken within 30 days from notice, applies in this case considering that *Batas Pambansa Blg. 129*, [4] which uniformly shortened the reglementary period to fifteen [15] days, took effect only on August 10, 1981. Under this set of facts, the petitioners had 24 more days from April 10, 1981, or until May 4, 1981, within which to appeal the adverse decision to the Court of Appeals.

Instead of appealing, petitioners filed, on May 29, 1981, the instant petition for certiorari and mandamus.

The Revised Rules of Court, under Section 1 of Rule 65, states that the special civil action of certiorari will lie only when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." Hence, we reiterate here the rule that the civil action of certiorari (or mandamus, for that matter) cannot be allowed when a party to a case fails to appeal a judgment to the proper forum despite the availability of that remedy. In other words, certiorari may not be used as a substitute for a lost appeal.[5]

This procedural rule cannot, however, be strictly enforced when to do so would result in a miscarriage of justice, especially when, as in this case, the petition is really meritorious and the trial judge indeed committed a grave abuse of discretion.

In the case at bar, respondent judge's grave abuse of discretion was manifested in three ways: (a) by utterly disregarding the compromise agreement of the parties approved by this Court; (b) by holding himself without jurisdiction over the case when in fact he did; and (c) by ignoring the survey report of the geodetic engineer whom he himself had appointed.

It must be understood that this petition for certiorari and mandamus seeks not a review of the lower court's decision but its nullification for having been rendered in excess of jurisdiction. It is not concerned with the wisdom or legal soundness of the decision, but insists that jurisdiction is properly laid in the CFI (now RTC), and is asking said court to exercise it in this case. It must be noted that the complaint of petitioners was dismissed on the ground that it was the MTC which had jurisdiction over the case.

To correct the situation, petitioner rightly filed the instant petition, a special civil action under Rule 65 of the Rules of Court, which may be filed within a reasonable period from the time the petitioners received notice of the denial of their motion for reconsideration. Inasmuch as a period of three (3) months is considered reasonable,[6] the filing of the petition after 45 days from notice is definitely within the allowable period. The petition must perforce be given due course.

The issue of damages was, however, correctly disposed of by respondent judge who found "no basis for the award of any form of damages" in favor of the private respondents who were actually occupying portions of the petitioners' land, according to the relocation survey result. This, as well as the finding that the respondents who were found not to be occupying the said land should be entitled to attorney's fees in the amount of P1,000.00 each, should not be disturbed.

WHEREFORE, in view of the foregoing, the decision dated January 19, 1981 in Civil Case No. 1133-0 is hereby nullified and set aside, except the portions dismissing the private respondents' counterclaim and granting the aforementioned attorney's fees, which are affirmed. Respondent judge, or whoever is acting in his stead or behalf, is hereby directed to issue the writ of execution prayed for by the petitioners in connection with the Court's Resolution in G.R. No. L-38773 dated November 15, 1974, and in keeping with the relocation survey report submitted by Engineer Serafin J. Garcia on June 3, 1977.

### **SO ORDERED.**

Feliciano, (Chairman), Vitug, and Francisco, JJ., concur.  
Melo, J., see dissenting opinion.

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[1] Pre-trial Order; Rollo, p. 64.

[2] Section 1, Rule 70, Rules of Court.

[3] L-29766, November 29, 1968, 26 SCRA 332.

[4] Otherwise known as the "Judiciary Reorganization Act of 1980."

[5] Felizardo v. Court of Appeals, G.R. No. 112050, June 15, 1994, 233 SCRA 220.

[6] Caramol v. National Labor Relations Commission, G.R. No. 102973, August 24, 1993, 225 SCRA 582, citing Philec Workers' Union v. Young, G.R. No. 101734, January 22, 1992.

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### **DISSENTING OPINION**

#### **MELO, J.:**

The adjective norm that certiorari is not a substitute for a lost appeal must have eluded the considered view of the majority in the case at bench. Instead of interposing a timely appeal from the judgment of dismissal, petitioners filed the petition before this Court after forty-five days from notice of the denial of their motion for reconsideration (p. 6, Decision), without the least explanation on the face of the revised ponencia of Justice Romero, why appeal was not seasonably pursued. To my mind, the remedial measure resorted to by petitioners constitutes an irreversible faux fax inasmuch as it involves a subtle experiment to resuscitate an appeal which had been previously extinguished by sheer lapse of the reglementary period thereof on account of petitioners' indifference thereto (*Aqualyn Corporation vs. Court of Appeals*, 214 SCRA 307; 312 [1992]). Judge Panis' perception anent the dismissal of the complaint (p. 5, Decision) was an error of judgment that should have been rectified by appeal, and not by certiorari. To my mind, the majority opinion is even a reversal of established jurisprudence of the Court, which could be effected only by the Court En Banc.

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