

HILARIO GAMIAO, LORENZO GAMIAO, EMILIANO UCOL, SICAT DE GUZMAN, JOSE TAGANAS, JOSE BAUTISTA, ISIDRO SAGAYSAY, TOMAS YLARDE, REYNALDO LACAMBRA, ESPERANZA GONZALES VDA. DE DEL ROS...*G.R. No. 57102. June 29, 1982*

Ponente: ABAD SANTOS, J.

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Certiorari to review an order of the Court of First Instance of Isabela, Branch II, at Cauayan, which dismissed the complaint of the petitioners. Procedurally, counsel for the petitioners invoke Sec. 2, Rule 42 of the Rules of Court. Said rule governs ordinary appeals from Courts of First Instance to the Supreme Court. The correct vehicle is R.A. No. 5440 which was approved on September 9, 1968 but which, according to Mr. Justice Ramon C. Aquino, is not well-known to lawyers, especially provincial practitioners. Accordingly, as part of the continuing legal education of some members of the bar, quoted hereunder is the pertinent provision of the aforesaid Act, to wit:

"SEC. 3. The Supreme Court shall provide by rule for the procedure governing petitions for writs of certiorari to review judgments mentioned in Section seventeen of Republic Act Numbered Two hundred ninety-six, as amended by this Act and the effect of the filing thereof on the judgment or decree sought to be reviewed. Until the Supreme Court provides otherwise, said petitions shall be filed within the period fixed in the rules of court for appeals in criminal or civil cases or special civil actions or special proceedings, depending upon the nature of the case in which the judgment or decree sought to be reviewed, was rendered; the filing of said petition shall stay the execution of the judgments sought to be reviewed; and the aforesaid petitions shall be filed and served in the form required for petitions for review by certiorari of decisions of the Court of Appeals."

The facts recited in the petition have not been controverted in the comment which was submitted by the respondents. They are the following:

On September 22, 1979, the petitioners filed a complaint with the respondent trial court which was denominated as an action for reconveyance, annulment of deeds of sale and damages. With prior leave, the complaint was amended on November 21, 1979. The amendment consisted merely in the addition of three (3) more plaintiffs.

After issues had been joined, the petition recites that "respondent judge issued the dismissal order *motu proprio* without conducting a pre-trial conference of the parties on June 22, 1981, the date set for pre-trial purposes, and for which this petition likewise seeks from this Honorable [Court] to declare as void the questioned dismissal order." As aforesaid, this factual statement remains uncontradicted in the comment of the respondent.

The order which We are asked to set aside was given in open court on June 2, 1981 and reads as follows:

"The land according to both parties was originally a public land and that this land had been disposed by the Bureau of Lands and culminated into a certificate of title in the name of Santiago Cadelinia against the protest of the plaintiffs which was dismissed by the Bureau of Lands. The law on the matter is that the Director of Lands has control over the disposition of Public Lands.

"WHEREFORE, the complaint is dismissed without costs.

"Since there is a counterclaim, the court sets the hearing of the same to July 6, 1981 at 8:30 a.m.

"Parties are notified in open court."

The respondents, in their comment, pray for the dismissal of the petition for the following reasons:

"(1) For being filed prematurely and/or unseasonably, contrary to the provisions of Rule 65, Section 1, of the Rules of Court; and

"(2) The error allegedly committed by the respondent Judge is an error of judgment, which can be reviewed by means of an appeal, and not by certiorari."

The petition is impressed with merit.

The reasons adduced by the respondents for the dismissal of the petition are not well-taken for they assume that the instant petition was filed as a special civil action pursuant to Rule 65 of the Rules of Court. Substantially, however, counsel for the petitioners has filed a petition pursuant to R.A. No. 5440 albeit he did so unknowingly. It is to be noted that the petition was filed within the reglementary period of thirty (30) days for civil cases.

Going to the merits of the petition, We have to grant relief for the following reasons:

1. The respondent judge dismissed the complaint without conducting a pre-trial thus violating Sec. 1, Rule 20 of the Rules of Court which stipulates that a pre-trial is mandatory:
2. The petitioners are not questioning the issuance of the certificate of title to Santiago Cadelinia although they could have done so. The relief which they seek is that the certificate of title notwithstanding, Cadelinia and his co-defendants have a legal duty to convey the land to the plaintiffs and pay damages in addition. Thus the ratio of the dismissal order to the effect that, "The laws on the matter is that the Director of Lands has control over the disposition of Public Lands." is irrelevant to the claim of the plaintiffs.

WHEREFORE, the petition is granted; the order of the respondent judge dated June 2, 1981 is hereby set aside; he is directed to conduct a pre-trial as mandated by the Rules of Court and there-after to proceed accordingly. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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