

**SERAFIN DELA CRUZ, ELADIO MACENAS AND RODRIGO DIAZ,
PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, HON.
ANTONIO P. SOLANO, EDEN GUEVARA DE BARADI AND JOSE
BARADI, RESPONDENTS.**

G.R. No. 63612. January 31, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioners seek to set aside the orders, dated October 20, 1982, of respondent judge dismissing their complaint, as well as the order, dated January 14, 1983, denying the motion for reconsideration, and the decision of respondent Intermediate Appellate Court, dated February 22, 1983, denying this petition for certiorari for lack of merit; and, pray that We order respondent judge to hear Civil Case No. Q-34657, for annulment of titles with damages.

Respondent appellate court rendered its decision on the basis of the following statement of facts:

"(a) That sometime on March 11, 1982 the herein petitioners filed a complaint for 'Annulment and cancellation of T.C.T. Nos. 274534, 274535, 274537 and 274539 with damages' in the Court of First Instance of Rizal, Quezon City, Branch XVI. Said case was docketed as Civil Case No. Q-34657 and was assigned to the respondent Judge, Hon. Antonio P. Solano;

"(b) That after summons was served, private respondents herein immediately filed their Motion to Dismiss on the sole ground of 'lack of jurisdiction' of the court below to take cognizance of the said case;

"(c) That herein petitioners in due time filed their 'Opposition to Motion to Dismiss,' Annex B, invoking in support thereof paragraph [b] of Section 44 of the Judiciary Act of 1948 as amended;

"(d) That on July 26, 1982, respondent Judge issued an 'Order' denying the private respondents' motion to dismiss for lack of merit; (Annex C, Petition)

"(e) That on August 13, 1982, the private respondents filed their 'Motion for Reconsideration' contending among other things that the respondent Court has no jurisdiction over the case;

"(f) That herein petitioner filed their pleading in 'Opposition' thereto;

"(g) That on October 20, 1982, the Honorable respondent Judge, issued the challenged 'Order' in favor of the private respondents in this case and therein granted the Motion for Reconsideration (Annex E, Petition) thereby revoking his previous order dated July 26, 1982 (Annex D, Petition).

As a consequence, petitioners' complaint was dismissed.

"(h) That on November 24, 1982 petitioners filed their own 'Motion for Reconsideration' wherein they submitted and insisted that the respondent Court has the exclusive and original jurisdiction to pass upon the issues raised in petitioners' complaint;

"(i) that the private respondents in due time filed their opposition;

"(j) That on January 14, 1983, the Honorable Respondent Judge, issued an 'Order' denying the petitioners' Motion for Reconsideration which order was received by petitioners' counsel on January 31, 1983." (pp. 88--89, Rollo)

Petitioners filed with respondent Intermediate Appellate Court a petition for certiorari, prohibition and mandamus instead of appealing from the order dismissing the complaint for annulment of titles. The appellate court, on February 22, 1983, promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, finding the petition for certiorari, prohibition and mandamus to be without merit, the same is hereby DENIED any further due course and DISMISSED." (p. 93, Rollo)

This petition for certiorari filed before Us rests on the allegation that the respondent judge had abused his discretion in issuing the order of October 20, 1982, and the subsequent order of January 14, 1983; and that respondent appellate court did abuse its discretion amounting to lack of jurisdiction when it dismissed the petition "without even a comment from the respondents." (p. 22, Rollo)

Required to comment on this petition respondents averred that "petitioners' remedy was an appeal from the Order of dismissal of the Hon. Judge Antonio P. Solano and not a petition for certiorari, prohibition and mandamus, (and) it would be an empty gesture to require the private respondents to comment on the petition. The Intermediate Appellate Court could validly render a decision, as it did, and avoid delay in the administration of justice." (p. 116, Rollo)

Indeed, We consider instant petition to be without merit. Time and again We have dismissed petitions for certiorari to annul decisions or orders which could have, but have not, been appealed. Where the Court has jurisdiction over the subject matter, as respondent judge has in this case, the orders or decision upon all questions pertaining to the cause are orders or decision within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari. This special civil action does not lie where the remedy by appeal has been lost because said remedy cannot take the place of an appeal.

ACCORDINGLY, this petition must be denied, as it is hereby denied.

SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.
Teehankee, Acting C.J., (Chairman) and Alampay, J., no part.

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