

**SPOUSES DANILO GONZALEZ, JR., AND VERONICA R. GONZALEZ,
AND EDGARDO LORIA, PETITIONERS, VS. INTERMEDIATE
APPELLATE COURT, HON. EDUARDO C. TUTAAN, IN HIS CAPACITY
AS JUDGE OF THE...**

G.R. No. 63614. August 28, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners seek to annul the decision dated February 15, 1983 of the Intermediate Appellate Court dismissing their petition for certiorari and prohibition with preliminary injunction and/or restraining order which questioned the orders dated August 18, 1982 and August 23, 1982 of the Court of First Instance of Rizal in Civil Case No. Q-33944 and the February 25, 1983 resolution denying their motion for reconsideration.

On January 18, 1981, spouses Danilo Gonzalez, Jr. and Veronica Gonzalez filed an unlawful detainer case against Petronila Lazatin, mother of Francis Lazatin, the private respondent herein before the City Court of Quezon City. The case was docketed as Civil Case No. 39579.

On November 6, 1981, the city court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the defendant and all persons claiming right and title under her to vacate the premises of the house and lot located at No. 19 Kalinga Street, La Vista, Quezon City, Metro Manila and to surrender possession thereof to plaintiffs; ordering the defendant to pay plaintiffs the amount of P5,000.00 per month as damages representing reasonable use and occupancy of the pre-mises commencing January 1981 and the same sum monthly thereafter until defendant shall have vacated the premises; P2,000.00 as and for attorney's fees, plus costs."

On January 4, 1982, after the decision became final and executory, a writ of execution was issued to enforce it.

In the meantime, on December 3, 1981, respondent Francis Lazatin, filed a civil action for annulment of sale and/or reformation of instrument before the Court of First Instance of Rizal, Quezon City. The case was docketed as Civil Case No. Q-33944 and its subject matter was the same house and lot involved in Civil Case No. 39579. Moreover, before the writ of execution in Civil Case No. 39579 could be enforced, Francis Lazatin filed a motion for intervention but the motion was denied for lack of merit resulting in Lazatin's filing with us on January 13, 1982 a petition, docketed as G.R. No. 59325 for certiorari, prohibition and mandamus with preliminary injunction.

In connection with G.R. No. 59325, we issued: 1) a temporary restraining order enjoining the respondents from executing the decision in Civil Case No. 39579; and 2) a preliminary mandatory order to restore Francis Lazatin in possession of the subject premises considering that on January 20, 1982, when we issued the temporary restraining order the decision in Civil Case No. 39579 as to delivery of possession was already accomplished. Consequently, the Gonzalez spouses delivered possession of the disputed premises to Francis Lazatin.

On August 11, 1982, we resolved G.R. No. 59325 as follows:

xxx xxx xxx

"It having been established by the pleadings and at the oral argument that petitioner Francis X. Lazatin was not a resident nor occupant of the property in question located at 17 Kalinga Street, La Vista, Quezon City at the time of the filing of the ejectment case against his mother as the actual occupant thereof nor at the time of the rendition of the judgment for ejectment dated November 6, 1981 (Civil Case No. 39579 of the City Court of Quezon City, now pending resolution of the appeal in the Quezon City Court of First Instance) and that petitioner, therefore, has no justifiable ground for his belated motion to intervene; and that petitioner had filed a separate action for annulment of sale and/or reformation of instrument (Civil Case Q-33944) in the Court of First Instance of Rizal at Quezon City, wherein he secured a restraining order dated January 15, 1982 against the implementation of the judgment in the ejectment case and which is pending trial and wherein the issue raised by petitioner against the validity of the sale of the subject property executed by him in favor of respondents spouses may be properly tried and determined, the Court Resolved to DISMISS the petition. The temporary restraining order of January 20, 1982 and the preliminary mandatory order of January 27, 1982 are hereby ordered LIFTED effective immediately."

After receipt of the afore-mentioned resolution respondent deputy sheriff Loria restored possession of the subject premises to the Gonzalez spouses. This prompted Francis Lazatin to immediately file in Civil Case No. Q-33944 (annulment case) an urgent ex-parte motion for contempt and for a status quo order. On the same day, August 18, 1982, respondent Judge Eduardo Tutaan ordered deputy sheriff Edgardo Loria, "x x x to restore the plaintiff (Francis Lazatin) in possession of the premises in question within twenty-four (24) hours from notice hereof and to show cause within said period why he should not be punished for contempt of court for having violated the restraining order issued by this Court under date of January 15, 1982". The deputy sheriff filed an "urgent motion to set aside and reconsider the order of August 18, 1982."

On August 23, 1982, the respondent trial court issued an order denying the deputy sheriff's motion for lack of merit. In the same order the court ordered the sheriff "For the last time x x x to restore the plaintiff in possession of the premises in question under pain of being punished for contempt of court if he fails to do so within twenty-four (24) hours from notice hereof." This order set aside an earlier order by the trial court issued on the same day directing among other things, the deputy sheriff "x x x to show cause within twenty-four (24) hours from notice hereof why he should not be punished for contempt of court and be ordered confined in the City Jail of Quezon City until he complied with the same." Furthermore, the order set for hearing on August 26, 1982, the plaintiff's motion for a status quo order.

On August 24, 1982, the respondent deputy sheriff filed an explanation with motion. On the same day, the petitioners filed a motion for reconsideration before the trial court. Without awaiting the resolution of their motion for reconsideration, the petitioners also filed a petition for certiorari and prohibition with preliminary injunction and/or restraining order questioning before the Intermediate Appellate Court the trial court's orders dated August 18, 1982 and August 23, 1982.

On February 15, 1983, the appellate court rendered a decision dismissing the petition on the following grounds: 1) the petitioners should have awaited the trial court's resolution on their motion for reconsideration; 2) the impugned orders are interlocutory and not correctible by certiorari and 3) the error committed, if any, is an error of judgment which is not correctible by certiorari.

We are constrained to disagree. The general principles applied by the appellate court are subject to some exceptions.

We stated in *PALEA v. PAL* (111 SCRA 215) that:

"As a general rule, Certiorari will not lie unless an inferior Court has, through a Motion for Reconsideration, a chance to correct the errors imputed to him. This, however, admits of exceptions, namely: (1) when the issue raised is one purely of law; (2) where public interest is involved; and (3) in case of urgency. (Central Bank v. Cloribel, 44 SCRA 307 [1972])."

In *Akut v. Court of Appeals* (116 SCRA 218) we explained the exception to the general rule as follows:

"The Court accordingly has departed on many occasions from the general rule and entertained or considered as petitions for certiorari where the appeal was found not to be the adequate remedy because the order which was sought to be reviewed was merely of interlocutory or peremptory character, and the appeal therefrom could be interposed only after final judgment and would therefore be of no avail. (*Rocha v. Crossfield*, 6 Phil 355; *Leung Ben v. O'Brien*, 38 Phil. 182; *Pineda and Ampil Manufacturing Co. v. Bartolome, et al.*, 95 Phil. 930) Certiorari is an extraordinary writ to be employed in the absence of other remedy to correct instances in which the judge against whom the remedy is sought has acted without jurisdiction. (*Regala v. CFI of Bataan*, 77 Phil. 684; *Ong Sit v. Piccio*, 78 Phil. 785; *Icutanim v. Hernandez*, 81 Phil. 161; *Verliomal v. Ta*, 88 Phil. 389; *Matute v. Macadaeg*, 99 Phil. 340) It is a convenient mode of exercising a whole-some control over inferior tribunals.

"As early as 1902, this Court, speaking through Chief Justice Cayetano Arellano in the case of *Luis R. Yangco v. Wm. J. Rhode*, (1 Phil. 404) ruled that '(I)t is true that an interlocutory order such as that rendered by the respondent judge in the present case is not appealable during the course of the trial, but only after a final judgment has been rendered therein; but it is nonetheless true that it can not be the intention of the law, when prohibiting an appeal against interlocutory orders, to give executory force to all kinds of interlocutory orders which the judge may see fit to make in the course of a trial, and still less when the effect would be to cause irreparable damage, such as that alleged by the petitioner in the present case, by reason of the insolvency of the person in whose favor the granting of alimony has been ordered, and which allegation has not been objected to or denied by the respondent. It is indeed a wise rule of procedure which refuses to permit the interruption of a trial by means of incidental appeals; but, if the judge incidentally in the course of trial proceeds without or in excess of his jurisdiction, this rule which prohibits an appeal does not leave the party aggrieved without remedy.'"

A motion for reconsideration of the August 18, 1982 order filed by the deputy sheriff was denied by the trial court. In its August 23, 1982 order, the trial court reiterated the earlier order for the sheriff to restore possession of the subject premises to the private respondent. The August 23, 1982 order was peremptory with a tone of finality. The trial court ordered the deputy sheriff "For the last time x x x to restore the plaintiff in possession of the premises in question under pain of being punished for contempt of court if he fails to do so within twenty-four (24) hours from notice hereof." A motion for reconsideration of this August 23, 1982 order was no longer necessary before a petition for certiorari questioning it may be filed.

Pursuant to the questioned orders, the petitioners, in a very short period of time, were about to be compelled to yield the possession of the subject premises which by virtue of Civil Case No. 39579 for ejectment had been adjudged to them. Immediate action was urgently needed to forestall the imminent adverse effects of the order required to be implemented within twenty-four (24) hours under pain of contempt. It is quite plain that a petition for certiorari is proper despite its being directed against interlocutory orders.

Indeed, the antecedent facts leading to the filing of the instant petition warrant the use of certiorari proceedings to question the orders dated August 18, 1982 and August 23, 1982. An ordinary appeal would not have been an effective measure to forestall the adverse effects on the petitioners.

The procedural points having been disposed of, there remains another basic issue - whether or not the final judgment in the ejectment case (Civil Case Case No. 39579) rendered by the City Court of Quezon City should be

fully executed even before the final termination of the action for annulment of sale and/or reformation of instrument (Civil Case No. Q-33944) pending before the Court of First Instance of Rizal.

In this regard, there is likewise merit in the instant petition.

The rule requiring speedy executions in ejectment cases was explained recently in *Salinas v. Navarro* (126 SCRA 167). We stated:

"The rule is explicit. In ejectment cases, the judgment must be executed immediately when it is in favor of the plaintiff in order to prevent further damages to him arising from the loss of possession. However, the defendant may stay execution (a) by perfecting an appeal and filing a supersedeas bond and (b) by paying from time to time either to the plaintiff or to the Court of First Instance the reasonable value of the use and occupation of the property as may be fixed by the justice of the peace court in its judgment (*Base v. Leviste*, 99 SCRA 575). Thus, in an eviction case where the defendant did not file a supersedeas bond and did not make any monthly deposit of the rentals, we ruled that the lessor is entitled as a matter of right to the immediate execution of the municipal or city court's judgment for the restoration of possession and the payment of the accrued rentals, or compensation for the use and occupation of the premises. In such a case, the duty of the court to order immediate execution is ministerial and imperative (*Philippine Holding Corporation v. Valenzuela*, 104 SCRA 401).

"It is true that in *Vda. de Legaspi v. Avedaño* (79 SCRA 135, 144-145) this Court ruled:

"Now, coming to the basic procedural issue before Us in the instant case, which is, whether or not the final judgment in the ejectment case, Civil Case No. 953 of the San Pedro court, should be fully executed before the final termination of the action for quieting of title, Civil Case No. 929 in the Court of First Instance of Laguna, it is Our considered opinion that it is at least a matter of equity that petitioner's physical possession of the premises in controversy should not be disturbed in the meanwhile. Actions of forcible entry and unlawful detainer are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In other words, the special civil action under Rule 70 has been designed to summarily restore possession of land or building to one who has been forcibly deprived thereof, without prejudice to the settlement of the opposing claims of the parties to legal possession in the corresponding appropriate proceeding. Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. x x x"

but the exception to the rule in this case of *Vda. de Legaspi* is based on strong reasons of equity not found in the present petition. The right of the petitioners is not so seriously placed in issue in the annulment case as to warrant a deviation, on equitable grounds, from the imperative nature of the rule. In the *Vda. de Legaspi* case, execution of the decision in the ejectment case would also have meant demolition of the premises, a factor not pre-sent in this petition."

The case for immediate execution is stronger in the instant petition. Unlike in *Salinas v. Navarro* where the case was still pending appeal, the judgment in Civil Case No. 39579 has long been final and executory. The writ of execution to enforce it was issued on January 4, 1982. The equitable considerations favor the petitioners. In G.R. No. 59325, this Court found as "x x x established by the pleadings and at the oral argument that petitioner Francis X. Lazatin was not a resident nor occupant of the property in question located at 17 Kalinga Street, La Vista, Quezon City at the time of the filing of the ejectment case against his mother as the actual occupant thereof nor at

the time of the rendition of the judgment for ejectment dated November 6, 1981 (Civil Case No. 39579 of the City Court of Quezon City, now pending resolution of the appeal in the Quezon City Court of First Instance) x x x". True, a separate action for annulment of sale and/or reformation of instrument had been filed by respondent Lazatin about one month after the decision in the ejectment case was promulgated but there is, at least, a prima facie finding by this Court favoring possession by the Gonzalez spouses pending final resolution of the annulment and/or reformation of instrument case. The action of the deputy sheriff which placed the spouses Gonzalez in possession of the disputed property was pursuant to a writ of execution issued in Civil Case No. 39579 and a result of our resolution in G.R. No. 59325 dismissing the Lazatin petition and lifting a restraining order which enjoined restoration of possession to herein petitioners.

Considering the foregoing; there is no merit in the motion to cite the petitioners and their counsel for contempt of court.

WHEREFORE, the petition for certiorari is hereby GRANTED. The decision of the Intermediate Appellate Court dated February 15, 1983 in AC. G.R. No. SP-14735 and the resolution dated March 14, 1983 are SET ASIDE. The orders dated August 18, 1982 and August 23, 1982 in Civil Case No. Q-33944 before the respondent Regional Trial Court are SET ASIDE.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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