

GUILLERMO RIZO, SILVINO DIAZ, SPOUSES JOSE AND LINA GUANZON, MAGDALENA BON, ALFONSO ISARENA, SALVADOR MENESES AND ANITA NATIVIDAD (DECEASED), REPRESENTED HEREIN BY ERLINDA NATIV...

G.R. No. 63975. May 31, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari and prohibition with prayer for the issuance of a preliminary injunction and/or restraining order seeking reversal of the decision of the Regional Trial Court of Quezon City, Branch LXXXVI dated March 15, 1983 which ordered petitioners, inter alia, to vacate the questioned property; and its order dated April 27, 1983 which denied the motion to set aside said decision.

The antecedent facts are as follows:

Private respondents spouses Virgilio delos Santos and Cordella Llamas delos Santos are the registered owners of a parcel of land, located at No. 95 20th Avenue, Cubao, Quezon City evidenced by Transfer Certificate of Title No. 126396 (p. 72, Rollo). They purchased this property on January 17, 1968 from its previous owner, Silvestre Gallarde. The sale was contested by Andrea and Agapito Natividad in Civil Case No. Q-11775 before the Court of First Instance of Quezon City. The complaint was subsequently amended by including private respondents as defendants. On December 18, 1969, the trial court dismissed the complaint (p. 74, Rollo). The case reached the Court of Appeals which upheld the validity of private respondents' title to the questioned property in its decision dated April 1, 1976 (pp. 74-80, Rollo).

On June 19, 1978, written demands were delivered to petitioners Guillermo Rizo, Silvino Diaz, spouses Jose and Lina Guanzon, Magdalena Bon, Alfonso Isarena, Salvador Meneses and Anita Natividad to vacate the questioned property within fifteen (15) days from receipt thereof (p. 23, Rollo). Despite receipt of said demands, petitioners refused to vacate the premises.

On February 21, 1980, an accion publiciana to recover possession of the questioned property was then filed by private respondents against petitioners docketed as Civil Case No. Q-29366 before the Regional Trial Court of Quezon City, Branch LXXXVI (pp. 17-22, Rollo). On June 9, 1980, petitioners filed their answer with counterclaim (pp. 25-29, Rollo). On July 23, 1980, the case was dismissed for failure of private respondents to prosecute (p. 30, Rollo). Upon motion for reconsideration filed by private respondents, the trial court set aside its previous order of dismissal (p. 31, Rollo). On October 25, 1982, private respondents rested their case. The reception of petitioners' evidence was set for December 15, 1982. On this date, the counsel of petitioners manifested that they (petitioners) are willing to negotiate for an amicable settlement with private respondents. The hearing was reset to February 7, 1983.

According to the trial court, on February 7, 1983, neither petitioners nor their counsel appeared without any valid

reason. Upon motion of private respondents through counsel, petitioners were deemed to have waived their right to present evidence and the proceedings were declared terminated. The case was ordered submitted for decision (p. 32, Rollo).

On March 15, 1983, the trial court rendered its decision, the dispositive portion of which, reads (p. 16, Rollo):

“WHEREFORE, judgment is hereby rendered ordering:

"a)

defendants and all persons claiming rights and interest through them, to vacate the premises at No. 95 20th Avenue, Cubao, Quezon City, and to restore peaceful possession thereof to plaintiffs;

"b)

defendants to pay plaintiffs, jointly and severally, the sum of P5,000.00 as and for attorney's fees; plus costs of the suit.

"SO ORDERED."

Petitioners filed a motion to set aside this decision conformably with Section 1 (a), Rule 37 of the Rules of Court[1] (p. 89, Rollo) on April 11, 1983 (p. 6, Rollo). The motion was denied in the trial court's order dated April 27, 1983 (p. 44, Rollo). Hence, the present petition.

On May 23, 1983, We issued a temporary restraining order enjoining further proceedings in Civil Case No. Q-29366 (pp. 46-47, Rollo).

In resolving the present controversy, We can limit Our discussion to the basic issue as to whether or not these special civil actions of certiorari and prohibition are the proper remedies to assail the proceedings in Civil Case No. Q-29366. Private respondents allege that certiorari and prohibition are available only where there is no appeal, nor any other plain, speedy and adequate remedy in the ordinary course of law (pp. 99-100, Rollo). This allegation is disputed by petitioners who contend that appeal is not the plain, speedy and adequate remedy in the ordinary course of law (p. 124, Rollo).

We uphold the allegation of private respondents. The reversal of an order of a court denying a motion for new trial may be secured only by appeal (*Sawit, et. al. v. Rodas, etc., et al.*, 73 Phil. 310 cited in *The Revised Rules of Court in the Philippines* by Vicente J. Francisco, Volume II, p. 530). The rationale behind this rule is that after the denial of petitioners' motion to set aside the decision, nothing was left to be done by the trial court with respect to the merits thereof; and it is thus in this sense, a final order subject to appeal pursuant to Section 2, Rule 41 of the Rules of Court[2] and not the special civil actions of certiorari and prohibition under Rule 65 of the Rules of Court. Appeal - whether by writ of error (where issues of fact and law are intended to be raised) or by certiorari (where only questions of law will be set up) - is antithetical to the special civil actions of certiorari and prohibition. The antithetic character of these remedies is expressed in Sections 1 and 2 of Rule 65 of the Rules of Court. The provisions explicitly lay down the rule that the special civil actions of certiorari and prohibition are proper only if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. And this rule has been consistently applied in numerous cases, namely, *People, et al. v. Villanueva, et al.*, G. R. No. 56443, December 19, 1981, 110 SCRA 465; *Lobete v. Sundiam, et al.*, G.R. No. L-38278, June 28, 1983, 123 SCRA 95; *Guanzon v. Montesclaros, etc., et al.*, G.R. No. 59330, June 28, 1983, 123 SCRA 185; *de la Cruz v. Intermediate Appellate Court*, G.R. No. 63612, January 31, 1985, 134 SCRA 417; *Continental Leaf Tobacco (Phil.), Inc. v. Intermediate Appellate Court, et al.*, G.R. No. 69243, November 22, 1985, 140 SCRA 269. The

Court has been cited to no reason to depart from the foregoing established principle and sanction the choice by petitioners of the present remedies (see *Pan Realty Corporation v. Hon. Court of Appeals, et al.*, G. R. No. L-47726, November 23, 1988, 167 SCRA 564).

Was the remedy of appeal still available then? Petitioners received a copy of the trial court's decision dated March 15, 1983 on March 28, 1983 (p. 6, Rollo). On April 11, 1983, they filed a motion to set aside this decision. On May 3, 1983, they received a copy of the trial court's order dated April 27, 1983 denying said motion (p. 7, Rollo). Thus, petitioners still had until May 5, 1983 within which to appeal from the trial court's order (*Ramirez de la Cavada, et al. v. Butte*, 100 Phil. 635; *de Las Alas, et al. v. Court of Appeals, et al.*, G.R. No. L-38006, May 16, 1978, 83 SCRA 200; *Lloren, etc. v. de Veyra, etc., et al.*, G.R. No. L-13929, March 28, 1962, 4 SCRA 637). Instead, they filed the present petition on May 13, 1983 (p. 3, Rollo). The trial court's order dated April 27, 1983 not having been appealed within the time and in the manner prescribed by Rule 41 of the Rules of Court, said order has become final and executory. In fact, the trial court has issued a subsequent order dated May 16, 1983, directing the issuance of the writ of execution (p. 81, Rollo). The case is now beyond the scope of the power of review of any court (*Pan Realty Corporation v. Hon. Court of Appeals, et al.*, *supra*).

ACCORDINGLY, the petition is hereby DISMISSED. The decision of the Regional Trial Court of Quezon City, Branch LXXXVI dated March 15, 1983 and its order dated April 27, 1983 are AFFIRMED. The temporary restraining order issued by this Court on May 23, 1983 is LIFTED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.
Griño-Aquino, J., on leave.

[1] Section 1 (a), Rule 37 of the Rules of Court provides:

"SECTION 1. Grounds of and period for filing motion for new trial. -- Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

"(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;. . ."

[2] Section 2, Rule 41 of the Rules of Court provides:

"SEC. 2. Judgments or orders subject to appeal. -- Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

"A judgment, denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

"A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."

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