

VICTORINO E. DAY, PETITIONER, VS. THE REGIONAL TRIAL COURT OF ZAMBOANGA CITY, BRANCH XIII, PRESIDED BY HON. JUDGE CARLITO A. EISMA, AND GO CHU, RESPONDENTS.

G.R. No. 79119, November 22, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition to review the decision of the Regional Trial Court of Zamboanga City, Branch XIII dated July 8, 1986 setting aside the decision of the Municipal Trial Court of Zamboanga City, Branch II in Civil Case No. 3717 (169-11).

The following, in brief, are the facts of the case:

Herein petitioner Victorino Day is the registered owner of a parcel of land covered by Original Certificate of Title No. P-2667 and situated at Tomas Claudio St., Zamboanga City. Private respondent Go Chu is the owner of a building constructed on the said lot occupying an area of 101 square meters.

Private respondent was asked by petitioner to peacefully vacate and remove that portion of the former's building standing on the latter's lot. Due to private respondent's refusal to vacate the premises, on April 17, 1982, petitioner instituted a formal complaint against respondent with the Office of the Barangay Chairman, Zone I, Zamboanga City. As no amicable settlement could be reached in the case, the Barangay Chairman, on April 20, 1982, issued a certification that conciliation of the dispute at the barangay level had failed. (MTC Decision, Annex "A", Petition, pp. 1-2; Rollo, p. 25).

The dispute was continuously discussed by the parties through 1982, 1983, and 1984. On October 16, 1984, petitioner agreed to accept P1,000.00 from private respondent as rental for the use of his lot from 1979 to December 1984. As petitioner had received the P1,000.00 as compensation for respondent's use of his land, respondent claimed the existence of a lease contract between them. Respondent Go Chu, however, failed to prove the existence of a formal or even verbal contract of lease.

On January 15, 1985, petitioner again made another demand on private respondent to remove the building. Because of private respondent's adamant and continued refusal to vacate the disputed lot, petitioner filed on March 25, 1985 an action for unlawful detainer with application for a writ of preliminary mandatory injunction. Apparently, petitioner Day did not use the former Barangay Certification in commencing the said suit against private respondent. On April 15, 1986, the trial court rendered a decision in favor of petitioner Day, the dispositive portion reading as follows:

"WHEREFORE, in view of the foregoing findings of facts judgment is hereby rendered in favor of the plaintiff and against the defendant to remove that portion of his building which stands on the 101 square meters over plaintiff's property; to pay plaintiff the amount of P950.00 monthly compensation from January 1986 until defendant vacates the premises; to pay attorney's fees in the sum of P5,000.00 and to pay the costs of the

action. Defendant's compulsory counterclaims are hereby ordered dismissed." (Rollo, p. 27)

On April 23, 1986, without having first filed a motion for reconsideration, private respondent Go Chu filed an original action for certiorari with respondent court, against Judge Cabato and petitioner Victorino Day. Pending hearing of the application for preliminary injunction, respondent court issued a temporary restraining order in the case.

On May 12, 1986, petitioner filed his Answer and Opposition to the Petition, to which private respondent filed a reply.

At the hearing of the application for preliminary injunction, the parties waived further oral arguments and submitted the case based on their pleadings and documents.

On May 27, 1986, respondent court issued an order resolving all the matters and issues in the petition in favor of herein petitioner Day, that the petition on its main is "lacking in merit except that there are still certain matters which the respondent court would like to resolve after hearing thereon." (Rollo, p. 3). The application for preliminary injunction was likewise denied and the hearing of the main petition was set on June 24, 1986. At the said hearing, respondent court gave the parties opportunity to adduce additional arguments on the merits of the case. They, however, submitted the case for decision without further arguments, relying therefore on the pleadings and documents on record.

On July 8, 1986, however, respondent court issued another order granting the petition for certiorari and setting aside the decision of Judge Cabato of the Municipal Trial Court. In connection therewith, the parties were directed to submit their dispute before the Lupong Tagapayapa pursuant to the requirements of PD 1508. Petitioner's motion for reconsideration was denied on June 25, 1987.

Hence, this petition.

The following issues are presented for the court's determination:

- 1) Whether or not the respondent court may modify or reverse its own order (of May 27, 1986) after the lapse of 15 days from its issuance;
- 2) Whether or not B.P. 129 allows the plaintiff in an unlawful detainer case to apply for a writ of preliminary injunction;
- 3) Whether or not prior conciliation proceedings pursuant to P. D. 1508 is applicable to petitioner's suit in the Municipal Trial Court;
- 4) Whether or not respondent court may entertain the petition for review on certiorari when the proper remedy is ordinary appeal;
- 5) Whether or not respondent court, in a petition for certiorari, may entertain procedural questions or questions of facts or substance already decided by the lower court; and
- 6) Whether or not respondent court may grant a Writ of Certiorari on grounds other than those specified under Section 1, Rule 65 of the Rules of Court.

On the first issue, petitioner maintains that the respondent court had no jurisdiction to reverse its own order after the lapse of 15 days from its issuance because the May 27, 1986 order was a final order, all issues in the main petition having been resolved therein. Said controversial order reads as follows:

"Although the primary objective of this order is the determination of whether or not to issue a writ of preliminary injunction in the instant case, yet in the consideration thereof, the Court finds the main petition for

certiorari as it appears on the pleadings to be LACKING IN MERIT. Hence, it follows that where the petitioner is not entitled to the primary relief demanded, he cannot likewise be entitled to the ancillary remedy of injunction, because injunction is not to protect contingent or future right or enforce an abstract right (EMILIA VS. RADO, 23 SCRA 1983) or to protect a right not in esse. (DIZON VS. YATCO, 13 SCRA 167). However, there are STILL CERTAIN MATTERS in the main petition that can only be completely resolved after a hearing thereon." (underlining ours) And the Petition was set for hearing on June 24, 1986." (Rollo, p. 4-A)

According to petitioner, since the respondent court resolved no new or other matter in its July 8, 1986 order, the May 27, 1986 order should be considered as already a final one insofar as the issues resolved therein are concerned. To quote the petitioner, "this phrase 'certain matters' referred to by the respondent court did not touch or dwell on 'certain matters' not yet passed upon by it, but reversed itself on the same matters already resolved by it earlier after the lapse of the 15-day period without any motion for reconsideration ever asked by herein private respondent Go Chu." (Petition, p. 4)

Private respondent, on the other hand, argues that the order of May 27, 1986, was merely an interlocutory order that did not finally dispose of the action and that the dispositive portion thereof dealt only with the preliminary injunction incident; that the denial of the issuance of the writ of preliminary injunction and the setting of further hearing on the main petition was the highlight of the said order and that since the order was interlocutory in nature, nothing precluded respondent judge from further hearing the case after the issuance of the May 27, 1986 order and deciding it on its merits on July 8, 1986.

We find the contention of the petitioner meritorious. In the case of *de Ocampo v. Republic*, L-19533, Oct. 13, 1963, 9 SCRA 440, this Court said. "The test to ascertain whether an order is interlocutory or final is: does it leave something to be done in the court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." In the instant case, it is evident that the respondent court resolved no new or other matter in the order of July 8, 1986. Such being the case, it necessarily follows that the order of May 27, 1986 should be deemed as a final order in so far as the issues resolved therein are concerned. An order which decides an issue or issues in a complaint is final and appealable, although the other issue or issues have not been resolved, if the latter issues are distinct and separate from the others. Thus, the respondent court was without jurisdiction to modify or reverse the earlier order after the expiration of fifteen (15) days from and after receipt thereof by the parties, considering that there was no motion for reconsideration filed by then private respondent Go Chu.

As regards the second issue, We agree with petitioner that Section 33 of B.P. 129 allows the plaintiff in an unlawful detainer action to apply for a writ of preliminary injunction. With the advent of B.P.129, Art. 539 of the New Civil Code, Sec. 88 of the Judiciary Act of 1948, and Sec. 3, Rule 70 of the Rules of Court have been substantially modified. B.P. 129 provides: "provided the main action is within its jurisdiction, an inferior court can appoint a receiver and it has jurisdiction to issue a writ of preliminary injunction in either forcible entry or unlawful detainer cases." (Regalado, Remedial Law Compendium, Second Revised Edition, p. 33). "Under the present law, an inferior court has jurisdiction to grant provisional remedies in proper cases. These proper cases would be:

- 1) Preliminary attachment under Rule 57, provided the principal action is within its jurisdiction such as an action for recovery of personal property valued at not more than P20,000.00; an action for recovery of a sum of money not exceeding P20,000.00; an action of forcible entry and unlawful detainer.
- 2) Preliminary injunction under Rule 58 in both forcible entry and unlawful detainer also in cases mentioned in the preceding paragraph." (Dean Jose Y. Feria, Phil. Legal Studies, Series No. 1, the Judiciary Reorganization Act of 1980, 1981 edition, pp. 43-44).

The third issue centers on the applicability of prior conciliation proceedings pursuant to P.D. 1508, section 6 of which reads as follows:

"Sec. 6. Conciliation, pre-condition to filing of complaint. - No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Sec. 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. However, the parties may go directly to court in the following cases:

- (1) where the accused is under detention;
- (2) where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;
- (3) actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and
- (4) where the action may otherwise be barred by the Statute of Limitations.

It is clear from the foregoing that prior conciliation proceedings as mandated by P.D. 1508 were inapplicable to the petitioner's suit before the Municipal Trial Court of Zamboanga City, the action being for ejectment with application for a writ of preliminary mandatory injunction. P.D. 1508 provides that an action "coupled with provisional remedies such as preliminary injunction," etc. does not require conciliation proceedings as a pre-condition for filing an action in court. The case of petitioner being an exception to the requirement of prior conciliation by P.D. 1508, it was not necessary for petitioner to first secure the necessary certification to file action from the proper barangay court. Even assuming that petitioner's complaint for ejectment in the Municipal Trial Court did not fall within the exceptions enumerated in Sec. 6 of P.D. 1508, the lower court in its decision ruled that the April 1982 certification to file action issued by the proper Barangay Court was sufficient compliance with P.D. 1508.

As to the fourth issue, private respondent is of the firm belief that the action he filed before the respondent Regional Trial Court was both an original action for certiorari and a petition for certiorari as a mode of appeal. We disagree. Applying Sec. 22 of B.P. 129 (governing law in the matter of appeals from the inferior courts to the Regional Trial Courts), decisions of inferior courts may be elevated to the Regional Trial Court only by ordinary appeal, that is, by filing a Notice of Appeal with the inferior court. The said proviso does not admit of any other mode of elevating decisions of inferior courts to the Regional Trial Court presumably to carry out the purpose of B.P. 129 which is to simplify judicial procedure to effect a speedy administration of justice.

Anent the fifth issue, We hold that respondent court has no jurisdiction in a certiorari case to entertain procedural questions or questions of facts or substance already passed upon by the lower court. The barangay certificate of 1982 was admitted and found to be sufficient by the Municipal Trial Court, Branch II, Zamboanga City, after considering the circumstances surrounding its issuance. This is a procedural question or a question of fact which cannot be raised or corrected in a certiorari case, but should be assigned as error and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case. (*Lamagan v. de la Cruz*, 40 SCRA 101). It should be remembered that except for the lower court's admission in evidence of the Barangay Certification of 1982 and the said court's appreciation of the said Certification as sufficient compliance with P.D. 1508, the respondent court's order (RTC), which is herein sought to be nullified, resolved all the matters raised by private respondent in his petition, against the latter. Admissibility of evidence is a matter that is addressed to the sound discretion of the trial court (the lower court in this case). Such being the case, no potent reason existed to justify respondent court's substitution of the lower court's judgment with its own judgment.

"Errors in the appreciation of evidence may not be reviewed by certiorari because they do not involve any jurisdictional question." (Mujer v. CFI of Laguna, 35 O.G. 1384; Abig v. Constantino, L-12460, May 31, 1961).

Further, in an original action for certiorari, questions of fact cannot be raised much less passed upon by the respondent court. Thus, it has been ruled that:

"Questions of fact cannot be raised in an original action for certiorari. Only established or admitted facts can be considered." (Rubio vs. Reyes, et al., L-24581, May 27, 1968)

It is therefore clear that respondent court erred in reversing the lower court's findings regarding the sufficiency of the Barangay Certificate of 1982. It was an error for the respondent court to rule upon a question of fact or procedural question already decided by the lower court.

Finally, the question on whether or not the respondent court can grant a writ of certiorari on grounds other than those specified under Sec. 1, Rule 65 of the Rules of Court. Our answer is in the negative.

In an original action for certiorari under Sec. 1, Rule 65 of the Rules of Court, the grounds for the issuance of the Writ of Certiorari are as follows, to wit:

- (a) Lack of jurisdiction;
- (b) Grave abuse of discretion; and
- (c) When the court acts without or in excess of jurisdiction.

We have consistently adhered to the principle that only errors of jurisdiction are correctible by certiorari. As early as in the case of Herrera vs. Barreto, 25 Phil 245, 271, the Supreme court ruled: "The office of the Writ of Certiorari has been reduced to the correction of defects of jurisdiction solely and cannot legally be used for any other purpose."

Clearly, the only grounds which may serve as the basis for the respondent court to raise the writ of certiorari are lack of jurisdiction or grave abuse of discretion by the inferior court or that the said inferior court acted without or in excess of jurisdiction in its appreciation of the barangay certification as constituting sufficient compliance with P.D. 1508.

In the ejectment suit filed by petitioner against private respondent, the lower court undoubtedly acquired jurisdiction over the subject matter and over the person of then defendant (now private respondent) by the filing of the complaint and service of summons upon then defendant (now private respondent) and the filing by the latter of his answer. Thus, it cannot be said that the lower court had no jurisdiction to render the decision set aside by respondent court. Assuming that the lower court committed a mistake on the merits of the case, it was in the exercise of such jurisdiction. The error, if at all, is at most one of judgment and not of jurisdiction, which cannot be the object of a petition for certiorari. The proper remedy in such case was appeal. Errors in the application of the law and the appreciation of evidence committed by a court after it has acquired jurisdiction over a case, are correctible only by appeal (So Chu vs. Nepomuceno, 29 Phil. 208; Valencia vs. Victoriano, 50 O.G. 5815, Dec. 1954 (CA) citing Herrera v. Barreto, et al., 26 Phil. 245).

Neither can it be said that the lower court committed a grave abuse of discretion or exceeded its jurisdiction when it appreciated the barangay certification as sufficient compliance with P.D. 1508. In the petition for certiorari filed by private respondent before the respondent court, he did not allege that the lower court's decision was outside or in excess of its jurisdiction, or was issued in grave abuse of discretion. Private respondent merely alleged that the lower court "erroneously": appreciated facts and evidence, issued interlocutory orders, and appreciated the issues.

He also challenged the soundness of the decision. These do not constitute excess of jurisdiction or grave abuse of discretion. It must be remembered that there is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. (Soriano vs. del Rosario, 55 Phil. 924). There is "grave abuse of discretion" when there is a capricious and whimsical exercise of judgment amounting to lack of jurisdiction or where the power is exercised in an arbitrary and despotic manner by reasons of passion or personal hostility, and it is so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (Tavera-Luna, Inc. vs. Nable, 67 Phil. 341). We find no such grave abuse of discretion committed by the lower court in appreciating the barangay certification to be sufficient compliance with P. D. 1508. In fact, the respondent court categorically ruled that there was no grave abuse of discretion or excess of jurisdiction on the part of the lower court when it held that:

"The foregoing recital and discussions of each particular questioned act of the respondent judge would plainly show that no grave abuse of discretion has been committed by him. If any, they could have been assigned as errors in an ordinary appeal, which to the mind of the Court should have been the remedy resorted to by the herein petitioner." (Paragraph 2, Page 5 of the Order of the Respondent Court dated May 27, 1986.) (Rollo, p. 142)

WHEREFORE, finding merit in the appeal of petitioner, the assailed order of the respondent court is hereby SET ASIDE and the order of the Municipal Trial Court of Zamboanga City, Branch II in Civil Case No. 3717 (169-11) is hereby REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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