

**ANTIPAZ PRESCO Y PARAS, ANTONIO AMORES Y PARAS, AND
ANSELMA PARAS, PETITIONERS, VS. HON. COURT OF APPEALS, HON.
MARIANO UMALI, JUDGE OF THE REGIONAL TRIAL COURT OF
CAVITE, BRANC...**

G.R. No. 82215. December 10, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

Review on certiorari of the decision* rendered by the respondent Court of Appeals in CA-G.R. No. SP-11357, entitled: "Antipaz Presco y Paras, et al., petitioners, versus Hon. Mariano M. Umali, etc. et al., respondents," which dismissed for reasons therein stated, the petition for the annulment of (a) the Decision rendered by the Municipal Trial Court of General Trias, Cavite, in Civil Case No. 329, entitled: "Simplicio Sanchez, plaintiff, versus Antipaz Presco, defendant," and (b) the Order issued by the Regional Trial Court of Cavite, Branch 25, on 24 November 1986, dismissing the Amended Complaint filed in Civil Case No. TM-69, entitled: "Antipaz Presco, et al., plaintiffs, versus Modesto Paras, et al., defendants."

The facts which gave rise to this petition are as follows:

On 22 September 1982, herein private respondent Simplicio Sanchez, claiming to be the registered owner of a parcel of land with an area of 794 square meters situated in Tejero, General Trias, Cavite, under TCT No. T-112547 of the land records of the province of Cavite, filed a complaint with the Municipal Trial Court of General Trias, Cavite, docketed therein as Civil Case No. 329, to oust herein petitioner Antipaz Presco from the said land on the ground that he (Simplicio) needed the same for the use of his married son who had no place of his own. The defendant (Antipaz) denied the allegations of the complaint and claimed that the house occupied by her, as well as the lot on which it was constructed, belonged to her mother, which, the latter inherited from her deceased parents, Clemencia Tagle and Felipe Paras.

After trial, or on 24 September 1984, judgment was rendered by the municipal court, ordering the defendant (Antipaz) to immediately surrender possession of the disputed property to the plaintiff (Simplicio). The defendant was further ordered to pay the plaintiff the amount of P100.00 a month, beginning 7 May 1982, as compensation for the use of the land, and P200.00, for attorney's fees.

In rendering judgment in favor of the plaintiff, the municipal court found that the parcel of land in question was covered by a certificate of title duly issued in the name of the plaintiff, and the ownership and title of the plaintiff to the said property was confirmed by one Modesto Paras who testified that the said land was sold to him by his mother, Clemencia Tagle and he, in turn, sold a part thereof to the plaintiff, Simplicio Sanchez. The municipal court further found that the defendant had not presented any evidence to rebut and overcome the validity of the plaintiff's title to the said property.[1]

The defendant (Antipaz) did not appeal from the said municipal court judgment. Instead, on 31 October 1984, the

said Antipaz Presco, together with Antonio Amores y Paras and Anselma Paras, grandson and daughter, respectively, of the late spouses Clemencia Tagle and Felipe Paras, filed a complaint against Modesto Paras and Simplicio Sanchez with the Regional Trial Court of Cavite, docketed therein as Civil Case No. TM-69, for the annulment of the certificates of title covering the lot in question, which were allegedly issued fraudulently in the respective names of the said Modesto Paras and Simplicio Sanchez and for the reconveyance of the lot to them (plaintiffs in the case).[2]

Meanwhile, on 10 December 1984, the Municipal Trial Court of General Trias, Cavite issued a writ of execution in Civil Case No. 329.[3] Antipaz Presco, however, refused to vacate the land so that soon thereafter, Simplicio Sanchez (as plaintiff) filed a motion for the issuance of an order for the demolition of the house of Antipaz Presco (as defendant). In view thereof, the plaintiffs in Civil Case No. TM-69 before the RTC of Cavite amended their complaint to include the judge of the Municipal Trial Court of Gen. Trias, Cavite, as party defendant, claiming that the motion for the demolition of the house occupied by Antipaz Presco, if granted and enforced by said municipal court, would cause irreparable damage and injury to said co-plaintiff Antipaz Presco. Consequently, plaintiffs in Civil Case No. TM-69 prayed for the issuance of a writ of preliminary injunction to restrain the said municipal court from ordering the demolition of the house of Antipaz Presco.[4]

The defendants in Civil Case No. TM-69 (herein private respondents) filed their Answer to the Amended Complaint, claiming as special and affirmative defenses that: (a) plaintiffs' cause of action, if any, was barred by res judicata, estoppel and/or laches, and the statute of limitations; and (b) the plaintiffs' cause of action involved a dispute over real property and, pursuant to the provisions of PD 1508, it should have been brought first before the Barangay Council of Tejero, General Trias, Cavite, for conciliation or mediation before filing the same with the court, hence, the RTC of Cavite acquired no jurisdiction over the case (Civil Case No. TM-69).[5]

Upon motion of the defendants in Civil Case No. TM-69 (who are herein private respondents), a preliminary hearing was conducted on their affirmative defenses and on 24 November 1986, the trial court dismissed the complaint on the grounds that: (1) the complaint was filed without a previous confrontation before the Lupon of Barangay Tejero, General Trias, Cavite, in accordance with Section 2, P.D. 1508; and (2) it appeared that the plaintiffs Antipaz Presco and Antonio Amores y Paras were the children of sisters of the defendant Modesto Paras, while the other plaintiff Anselma Paras was the sister of the said defendant Modesto Paras, and yet, no earnest efforts had been exerted by the plaintiffs towards a compromise agreement with the defendants, in accordance with the provisions of Article 222 of the Civil Code.[6]

The plaintiffs (herein petitioners) filed a motion for reconsideration of the RTC order dismissing their complaint, but their motion was denied on 16 February 1987.[7]

Whereupon, the petitioners, as plaintiffs in Civil Case No. TM-69 filed a petition for certiorari with writ of preliminary injunction with the Court of Appeals, docketed therein as CA-G.R. No. SP-11357, wherein they prayed that upon the filing of their said petition, a restraining order be issued to maintain the status quo among the parties pending hearing and resolution of the issues by said appellate court and that, after hearing, (a) a writ of preliminary injunction be issued to be valid until the final disposition of the said petition; (b) the decision or judgment rendered by the Municipal Trial Court in Civil Case No. 329 and the writ of execution it had issued be declared null and void; (c) the decision or order of dismissal rendered by the Regional Trial Court in Civil Case No. TM-69 be declared null and void for being contrary to law; (d) Ordering the private respondents to pay the costs of suit; and for other reliefs, just and reasonable in the premises.[8]

On 17 November 1987, however, the respondent appellate court dismissed the petition for the reason that the remedy of the petitioners was appeal and not certiorari.[9] The petitioners filed a motion for reconsideration of the

CA decision, and when their motion was denied on 24 February 1988,[10] they filed the present petition before this Court. The petition was given due course and parties were required to submit their respective memoranda.[11]

The principal issue for resolution is whether or not the respondent Court of Appeals committed a reversible error in ruling that the remedy of the petitioners was appeal (not certiorari) from the decision rendered in Civil Case No. 329 of the Municipal Trial Court of General Trias, Cavite, and the order of dismissal in Civil Case No. TM-69 of the Regional Trial Court of Cavite.

As a rule, errors of judgment or of procedure, not relating to the court's jurisdiction nor involving grave abuse of discretion, are not reviewable by certiorari. The Court has repeatedly held that certiorari is not the remedy when appeal is available. However, there are exceptions to the rule. For instance, certiorari is justified where the trial judge capriciously and whimsically exercises his judgment,[12] or where an appeal is not adequate to protect one's rights or where there may be danger of failure of justice,[13] and in order to prevent irreparable damage and injury to a party.[14] Certiorari may be availed of where an appeal would be slow, inadequate, insufficient, and will not promptly relieve a party from the injurious effects of the judgment complained of, or in order to avoid further litigation.[15]

In the case at bar, while an appeal from the decision in Civil Case No. 329 of the Municipal Trial Court of General Trias, Cavite was available to the petitioner Antipaz Presco, such remedy was not adequate in the light of her answer that the house and land occupied by her and from where she was sought to be ejected, belonged to her deceased mother. In actions of forcible entry and detainer, the main issue is possession de facto, independently of any claim of ownership or possession de jure that either party may set forth in his pleadings;[16] and an appeal does not operate to change the nature of the original action. On appeal, in an ejectment case, it is within the discretion of the court to look into the evidence supporting the assigned errors relating to the alleged ownership of appellant insofar as said evidence would indicate or determine the nature of appellant's possession of the controverted premises. Said court should not however resolve the issues raised by such assigned errors. The resolution of said issues would effect an adjudication on ownership which is not sanctioned in the summary action for unlawful detainer.[17]

Thus, an appeal by petitioner Antipaz Presco from the judgment of the municipal court in the ejectment proceedings (Civil Case No. 329) would have affected only the material possession of the land disputed by the parties, but would not resolve the issue of ownership put forth by petitioner Antipaz Presco. Hence, the filing of an action for reconveyance to resolve the issue of ownership was proper, and this was done by her in Civil Case No. TM-69 before the RTC of Cavite.

Appeal from the dismissal order of the Regional Trial Court of Cavite in Civil Case No. TM-69, while also available to the herein petitioners, since the dismissal of their amended complaint was a final order, was nonetheless inadequate. It appears that the private respondent Simplicio Sanchez had, in the meantime, asked the Municipal Trial Court of General Trias, Cavite to issue an order for the demolition of the house of Antipaz Presco which, if granted by the said court, would have caused irreparable damage and injury to Antipaz Presco.

The rule is that an order of demolition is not appealable[18] unless there is an allegation that it has substantially varied the terms of the judgment or where the terms of the judgment are not very clear and there is room for interpretation.[19] However, a proper recourse could be through a special civil action of certiorari or prohibition.[20] This is in consonance with the principle that 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.[21] The reason for execution is even stronger when the judgment has long become final and executory.[22] Even the pendency of an action for nullification of sale and title is not a bar in the execution of

judgment in an ejectment case.[23]

An appeal, then, from the Regional Trial Court's order dismissing petitioners' amended complaint in Civil Case No. TM-69, could not immediately relieve Antipaz Presco from the injurious effects of an order of demolition issued in Civil Case No. 329 by the municipal court. There was a danger of a failure of justice if her home should be demolished pending resolution of a slow and tedious process of appeal from the order of dismissal in said Civil Case No. TM-69.

Besides, the reasons for the dismissal of the amended complaint in Civil Case No. TM-69 were patently erroneous as to amount to grave abuse of discretion. In dismissing the amended complaint, the trial court ruled that: (1) the complaint was filed without a confrontation between the parties before the Lupon Chairman of Barangay Tejero in accordance with PD 1508, which requirement is jurisdictional and its non-compliance a ground for dismissal of the complaint; and (2) no earnest efforts had been exerted by the plaintiffs (petitioners herein) towards a compromise settlement with the defendants (private respondents herein) pursuant to the provisions of Article 222 of the Civil Code, given the fact that co-plaintiff (herein petitioner) Anselma Paras was the sister of the defendant (herein private respondent) Modesto Paras, while the co-plaintiffs (also herein petitioners) Antipaz Presco and Antonio Amores y Paras were children of Flora Paras and Adriana Paras, sisters of said defendant (herein private respondent) Modesto Paras.

This Court has already ruled in several decisions that while the referral of a case to the Lupon Tagapayapa is a condition precedent for the filing of a complaint in court, however, the conciliation process under PD 1508 is not a jurisdictional requirement so that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant.[24]

And be that as it may, it would appear that the amended complaint filed by the petitioners before the RTC in Civil Case No. TM-69 was coupled with the provisional remedy of a preliminary injunction, so that the petitioners could go directly to court.[25]

As to Article 222 of the Civil Code, it finds no application in this case for, while the defendant-private respondent Modesto Paras may have been closely related to the plaintiffs-petitioners, his co-defendant-private respondent Simplicio Sanchez is a complete stranger to the plaintiffs-petitioners.

WHEREFORE, certiorari prayed for is GRANTED and the Decision rendered by the Court of Appeals in case CA-G.R. SP-11357 and the resolution denying the motion for reconsideration dated 24 February 1988, as well as the order issued by the Regional Trial Court of Cavite on 24 November 1986 dismissing the Amended Complaint in Civil Case No. TM-69, are ANNULLED and SET ASIDE. The Regional Trial Court of Cavite is ordered to proceed with the trial of said Civil Case No. TM-69 on its merits. Without pronouncement as to costs.

SO ORDERED.

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

* Penned by Justice Nathanael P. de Pano, Jr. and concurred in by Justices Hector C. Fule and Cecilio L. Pe.

[1] Rollo, p. 43

[2] Id., p. 51

[3] Id., p. 47

[4] Id., p. 54

- [5] Id., pp. 61-66
- [6] Id., pp. 67-69
- [7] Id., p. 73, par. i
- [8] Id., p. 70
- [9] Id., p. 10
- [10] Id., p. 23
- [11] Id., p. 89
- [12] Butuan Bay Wood Export Corp. vs. CA, G.R. No. L-45473, April 28, 1980, 97 SCRA 297
- [13] Jaca vs. Davao Lumber, G.R. No. L-25771, March 29, 1982, 113, SCRA 10
- [14] Marcelo vs. De Guzman, G.R. No. L-29077, June 29, 1982, 114 SCRA 657
- [15] De la Cruz vs. IAC, G.R. No. 63612, January 31, 1985, 134 SCRA 417; Balagtas Realty Corp. vs. Romillo, G.R. Nos. L-48376-85, July 16, 1984, 130 SCRA 415; Lobete vs. Sundiam, G.R. No. L-38278, June 28, 1983, 123 SCRA 95; Velasco vs. Segundo, G.R.No. 58187, September 30, 1982, 117 SCRA 573
- [16] Alvir v. Hon. Vera, et al., G.R. No. L-39338, July 16, 1984, 130 SCRA 357
- [17] Dela Santa v. C.A., G.R. No. L-30560, November 18, 1985, 140 SCRA 44
- [18] Cua v. Lecaros, G.R. No. 71909, May 24, 1988, 161 SCRA 480
- [19] Corpus v. Alikpala, G.R. No. L-23707, January 17, 1968, 22 SCRA 104; Uytiepo v. Aggabao, G.R. No. L-28671, September 30, 1970, 35 SCRA 186
- [20] David v. Ejercito, G.R. No. L-41334, June 18, 1976, 71 SCRA 484
- [21] Salinas v. Navarro, G.R. No. 50259, November 29, 1983, 126 SCRA 167
- [22] Gonzales, Jr. v. IAC, G.R. No. 63614, August 28, 1984, 131 SCRA 468
- [23] Ramirez v. Bleza, G.R. No. L-45640, July 30, 1981, 106 SCRA 187
- [24] Gonzales vs. CA, G.R. Nos. 59495-97, June 26, 1987, 151 SCRA 289, Millare vs. Hernando, G.R. No. 55480, 151 SCRA 484; Fernandez vs. Militante, G.R. No. 59801, May 31, 1988, 161 SCRA 695; Blardony vs. Coscolluela, G.R. No. 70261, February 28, 1990
- [25] See Sec. 6, PD 1508

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