

**ENRICO SY, PETITIONER, VS. HON. ARTURO A. ROMERO, AS  
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, CALOOCAN  
CITY, BRANCH 120, AND DR. SALUSTIANO L. CASTILLO,  
RESPONDENTS.**

*G.R. No. 83580. September 23, 1992*

Ponente: DAVIDE, JR., J.

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**DAVIDE, JR., J.:**

Petitioner seeks to annul an order of demolition, issued long after the finality of the decision of the Regional Trial Court (RTC) affirming the ruling of the Metropolitan Trial Court (MTC) in an ejectment case solely on the ground that the said case was incipiently and fatally flawed as it was not brought against the real party in interest.

In the Resolution of 27 June 1987, this Court ordered the respondents to comment on the petition and issued a temporary restraining order enjoining respondent Judge from enforcing the order of demolition which he issued on 27 February 1987 in Civil Case No. C-10086.

After the private respondent filed his Comment and the petitioner submitted his reply thereto, this Court gave due course to the petition and required the parties to submit their respective Memoranda which they subsequently did.

The pleadings disclose the following facts:

Private respondent is the owner of a parcel of land located in Maypajo, Kalookan City otherwise known as the Doña Leoncia Subdivision. One of the lessees therein is Antonia Lumbang.

On 29 May 1979, private respondent filed a complaint for ejectment against Antonia Lumbang with the City Court of Kalookan which was docketed as Civil Case No. 13199 and raffled off to Branch II thereof. On 22 March 1982, said court handed down a decision<sup>[1]</sup> against Lumbang, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered for the plaintiff, ordering the defendant or anyone claiming right under her, to:

1. Vacate the premises in question subject of this litigation and surrender possession thereof to the plaintiff;
2. Pay the sum of P500.00 as attorney's fees; and
3. Pay the costs of the suit.

Counterclaim interposed by the defendant is hereby dismissed for lack of merit."

The decision reveals that herein petitioner testified in said case; such testimony is summarized by the court in this manner:

"Enrico Sy declared that he is presently residing at 106 Pateros St., Maypajo, Kalookan City, the same house which is the subject matter of this instant case; that he was not yet born when said house was built thereon; that

he is (sic) living in said house since January 30, 1948, and presently (sic) staying thereat together with his wife, mother, brothers and sisters; that he has no knowledge in (sic) the assessment of properties but his house would now cost about P70,000.00 based on the costs of materials used." [2] (Emphasis supplied)

Petitioner does not deny the allegation in paragraph 7 of the Comment filed with this Court that he is the son of Antonia Lumbang. [3]

Antonia Lumbang appealed the aforementioned decision to the then Court of First Instance of Kalookan City. The case was docketed as Civil Case No. C-10086 and was raffled off to Branch 12 thereof. On 29 October 1982, said court handed down a decision [4] affirming in toto the appealed decision. Consequently, the decision of the Court of First Instance became final. Private respondent then filed a motion for execution which the court granted. Pursuant thereto, the sheriff issued a Notice of Ejectment which he served on petitioner Enrico Sy on 24 December 1986. The latter then filed on 23 January 1987 in Civil Case No. C-10086 (now before Branch 120 of the Regional Trial Court) a Motion to Intervene and to Annul Decision and/or Judgment with Prayer for a Restraining Order and/or Preliminary Injunction, [5] alleging therein that he has been the actual, legal and duly registered owner of the house since 10 February 1976 when he bought the same from Antonia Lumbang. In support of such statement, he attached a copy of the Deed of Absolute Sale and tax receipts evidencing his payments of the real estate taxes due on said house. He further alleges that since he was not made a party in the ejectment case, the decision therein was fatally defective since it was directed against a person who had ceased to be a real party in interest; Antonia Lumbang died on 24 February 1984. Moreover, he posits that the City Court acquired no jurisdiction over the case because the lot where the house stands is "within the jurisdiction of the National Housing Authority." Acting on this motion, respondent Judge Arturo A. Romero, in an order dated 9 February 1987, granted the petitioner ten (10) days to file his complaint in intervention. On this same date, private respondent filed a manifestation praying that the order allowing a complaint in intervention be recalled and an order of demolition be issued.

On 27 February 1987, Judge Romero issued an order setting aside the Order of 9 February 1987; denying the Motion To Annul Decision and/or Judgment with Prayer for Restraining Order and/or Preliminary Injunction; and granting the motion for demolition. [6]

Instead of filing a motion to reconsider the said order or appealing therefrom, petitioner filed on 15 May 1987 with the RTC of Kalookan City a petition for prohibition with a prayer for a restraining order and/or preliminary injunction to prevent the enforcement of the abovementioned 27 February 1987 Order and to annul the decision in Civil Case No. C-10086. This new case was docketed as Civil Case No. C-99 and was assigned to Branch 121 of said court. Although no copy of that petition was attached to the instant petition, the petitioner does not deny the private respondent's allegation in his Comment that the former merely reiterated in the new petition the grounds already raised in the motion to intervene and annul the decision in Civil Case No. C-10086. [7]

Earlier, on 29 April 1987, Deputy Sheriff Cesar L. Cruz, pursuant to the order of respondent Judge dated 27 February 1987 in Civil Case No. C-10086, issued a Notice of Demolition addressed to "Mrs. Antonia Lumbang or any person claiming right under her." [8]

On 2 March 1988, Branch 121 of the RTC issued an order [9] in Civil Case No. C-99 denying the application for a writ of preliminary injunction and dismissing said case on the ground that it has no authority to interfere with the judgment of a court of coordinate or concurrent jurisdiction. [10]

Instead of moving for a reconsideration of, appealing from or filing a special civil action for certiorari to nullify this order, petitioner filed on 14 June 1988 the instant petition against the respondent Judge and Sheriff. He reiterates in this petition the grounds upon which he anchored his motion to intervene and to annul the decision in

both Civil Cases Nos. C-10086 and C-99; he then prays that a temporary restraining order be issued directing the respondents to desist from further proceeding against him in Civil Case No. C-10086.

On 27 June 1988, this Court (Second Division) issued a resolution requiring respondents to comment on the petition and directing the issuance of a temporary restraining order enjoining the latter from enforcing the 27 February 1987 demolition order issued by the respondent Judge in Civil Case No. C-10086.[11]

After the private respondent filed his Comment[12] and the petitioner submitted his reply thereto, this Court gave due course to the petition and required the parties to submit their respective Memoranda,[13] which they subsequently did.

The petition is bereft of merit.

Petitioner took this recourse to revive his grievances in Civil Case No. C-10086 after he allowed (a) the Order of 27 February 1987 denying his motion to intervene and to annul the decision in said civil case and (b) the order of Branch 121 of the RTC in Civil Case No. C-99 dismissing the same, to separately lapse into finality. This petition, a special civil action for certiorari under Rule 65 of the Rules of Court, may then be considered as a substitute for the remedy of appeal, a right which the petitioner lost through his or his counsel's fault. It is settled that the said special civil action will not lie as a substitute for the lost remedy of appeal.[14] The exception to this rule is when such right to appeal was lost through no fault of the party entitled thereto.[15]

Even granting for the sake of argument that said special civil action may be availed of, the fact remains that the instant petition was filed nearly one (1) year and four (4) months after the assailed order was rendered by the respondent Judge. An unreasonable length of time had thus passed before the petitioner acted. This Court will not place a premium on apathy or sloth. As the maxim goes, *Vigilantibus et non dormientibus jura subveniunt* -- The laws aid those who are vigilant, not those who sleep on their rights.

In *Allied Leasing & Finance Corp. vs. Court of Appeals*,[16] this Court, speaking through Mr. Justice Hugo E. Gutierrez, Jr., held:

"Rule 65 of the Rules of Court does not specify any period for the filing of the petition for certiorari and mandamus. (*Contreras vs. Villaraza*, 99 SCRA 329 [1980]. We have consistently ruled that a pleading filed under Rule 65 should be within a reasonable period of time. Thus, we stated that 'the yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the duration of time that had expired from the commission of the acts complained of up to the institution of the proceedings to annul the same' (*San Juan vs. Cuento*, 160 SCRA 277 [1988], citing *Cortez v. CFI of Cadiz*, 52 Phil. 214 [1928]; *Centenera v. Yatco*, 106 Phil. 1064 [1960]; *Province of Misamis Occidental v. Catolico*, 23 SCRA 1295 [1968]; *Toledo v. Pardo*, 118 SCRA 566 [1982])."

Moreover, even if We disregard the foregoing exposition, the fact remains that it is not actually the 27 February 1987 Order of the respondent Judge that lies at the bottom of the instant petition, but rather, it is the 29 October 1982 decision in Civil Case No. C-10086 affirming the 22 March 1982 decision of the City Court of Kalookan City in Civil Case No. 13199 -- which City Court decision petitioner claims to be null and void for having been directed against a defendant who was no longer the real party in interest as the house in question was earlier sold to the petitioner -- which serves as basis for the same. This theory is not worthy of any consideration for, in the first place, if indeed the petitioner had purchased the house from his mother Antonia Lumbang -- a fact he deliberately suppressed in his pleadings -- long before the filing of the ejectment case, he should have intervened in the said case to assert his ownership of the house. As it happened, he merely testified for his mother and failed to unequivocally assert his ownership over the house. The so-called deed of sale in his favor was not even offered in evidence in the said case. On the contrary, his mother remained headstrong in her claim that she paid the rentals

for the premises until the private respondent refused to accept payments upon the filing of the ejectment case; thereafter, she averred that she just deposited the rentals in a bank.

The pertinent portion of her testimony as summarized by the City Court is as follows:

"x x x that she has been paying rentals to the owner of the lot at the rate of P14.90 a month, and knows Ramon Cabañero since his childhood; x x x that she could not remember her last rental payment and has not been paying the same since the filing of this case because plaintiff refused to accept it; so she deposited her rental in a bank; x x x"[17]

Petitioner's failure to intervene in Civil Case No. 13199 or even produce the so-called deed of sale in his favor at the time he testified therein, coupled with the foregoing testimony of his mother, cast serious doubt on the so-called deed of sale which surfaced for the first time when he filed on 23 January 1987 a motion to intervene and annul the judgment in Civil Case No. C-10086.[18] His claim then cannot disturb the settled rule that a judgment in an ejectment case binds not only the defendant but also those who have claims against the former; this is because no one may assert a right superior to the rights of a defendant in an ejectment suit. In the instant case, the petitioner's rights are limited to those which may be exercised by a mere sublessee or assignee; and even if he were not impleaded as a co-defendant, he is bound by the judgment against his mother Antonia Lumbang.[19]

However, although the decision in the ejectment case binds the petitioner, the execution thereof, or the issuance of a demolition order, falls within the jurisdiction of the City Court, now Metropolitan Trial Court, of Kalookan City which rendered the decision in Civil Case No. 13199. In an ejectment case, the appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception to that is when said appellate court grants an execution pending appeal.

In the case of *City of Manila vs. Court of Appeals*,[20] this Court ruled:

"The rule is that if the judgment of the metropolitan trial court is appealed to the regional trial court and the decision of the latter is itself elevated to the Court of Appeals, whose decision thereafter became final, the case should be remanded through the regional trial court to the metropolitan trial court for execution.[21] The only exception is the execution pending appeal, which can be issued by the regional trial court under Sec. 8 of Rule 70 or the Court of Appeals or the Supreme Court under Sec. 10 of the same Rule."

What Branch 120 of the Regional Trial Court of Kalookan should have done was to make an entry of judgment in Civil Case No. C-10086 after the decision of 29 October 1982 became final; such procedure is outlined in Section 2, Rule 36 of the Rules of Court. Thereafter, the RTC should have remanded the case, together with the records of Civil Case No. 13199 which were forwarded to it as a consequence of the appeal interposed therefrom,[22] to the court of origin -- the City Court (now Metropolitan Trial Court) of Kalookan City. The motion for execution should then be filed with the latter court.

Accordingly, respondent Judge should not have acted on the motion for the execution of the 29 October 1982 decision in Civil Case No. C-10086 or granted the motion for the issuance of an order of demolition. Accordingly, that portion of his Order of 27 February 1987 granting the said motion is void.

WHEREFORE, the instant petition is DENIED for lack of merit. However, in the light of the above observations, that portion of the Order of respondent Judge of 27 February 1987 in Civil Case No. C-10086 granting the motion for an order of demolition is set aside without prejudice to its refiling in the Metropolitan Trial Court, unless it is already barred by Section 6, Rule 39 of the Rules of Court.

Costs against the petitioner.

**SO ORDERED.**

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

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[1] Annex "F" of Petition; Rollo, 17-21.

[2] Rollo, 19-20.

[3] Id., 44.

[4] Annex "I" of Comment; Id., 51-53.

[5] Annex "G" of Petition; Id., 22-27.

[6] Annex "D" of Petition; Rollo, 15.

[7] Rollo, 45.

[8] Annex "E" of Petition; Id., 16.

[9] Annex "A", Id.; Id., 8-10. Per Judge Adoracion G. Angeles.

[10] Citing, among others, National Power Corp. vs. De Veyra, 3 SCRA 646 [1961]; Hachang vs. Leyte Autobus Co., Inc., 8 SCRA 103 [1963]; Regalado vs. Provincial Commander, 3 SCRA 503 [1961].

[11] Rollo, 36.

[12] Id., 42-50.

[13] Id., 61.

[14] People vs. Court of Appeals, 199 SCRA 539 [1991], citing, inter alia, Abogaa vs. Go Sam, 87 Phil. 761 [1950]; Equio vs. CFI of Negros Oriental, 92 Phil. 1083 [1953]; Fernando vs. Vasquez, 31 SCRA 288 [1970]; Vda. de Caldito vs. Segundo, 117 SCRA 573 [1982]; Landicho vs. Tensuan, 151 SCRA 410 [1987].

[15] United States vs. Judge of CFI of Pampanga, 49 Phil. 495 [1926].

**[16] 197 SCRA 71 [1991].**

[17] Annex "F" of Petition, 39; Rollo, 19.

[18] Annex "G", Id.; Id., 22-27.

[19] See Sipin vs. CFI of Manila, 74 Phil. 649 [1944]; Philippine Consolidated Freight Lines, Inc. vs. Ajon, 103 Phil. 318 [1958]; and Guevara Realty, Inc. vs. Court of Appeals, 160 SCRA 478 [1988].

**[20] 204 SCRA 362, 369 [1991].**

[21] Citing REGALADO, Remedial Law Compendium, Vol. I, 276.

[22] Section 5, Rule 40, Rules of Court; Section 21(b) and (c), Interim Rules Relative to the Implementation of Batas Pambansa Blg. 129.

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