

**SPS. CIPRIANO B. PACUBAS, AND MARCELA E. PACUBAS,
PETITIONERS-APPELLANTS, VS. HON. COURT OF APPEALS, HON.
ARTEMON D. LUNA, AS PRESIDING JUDGE OF RTC, MANILA, BRANCH
32; AND ZOSI...**

G.R. No. 84523. August 02, 1990

Ponente: PARAS, J.

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PARAS, J.:

The instant petition is one for the review, by way of appeal by certiorari, of the decision* rendered by the Court of Appeals dismissing the Petition for Prohibition, and denying petitioners' motion for reconsideration dated August 4, 1988.

Briefly, as found by respondent Court of Appeals, herein petitioners had filed before the Regional Trial Court of Quezon City dated May 27, 1986 a complaint for a sum of money against International Commodity Company, registered under the names of Spouses Choa Bunchit alias Charlie Choa and Priscilla Codilla, and Marvin Choa. In said case, a preliminary attachment of the properties of the defendants was issued. One of the properties attached is a Toyota Corona 2-door sedan found in the possession and control of Choa Bunchit and Priscilla Codilla. Private respondent Zosimo Arriesgado filed an affidavit of third party claim in said case. Said private respondent, likewise, filed before the respondent Regional Trial Court of Manila, Branch 32, a complaint dated July 15, 1986 docketed as Civil Case No. 86--36718 for Replevin with Damages against petitioners and the Deputy Sheriff of the Regional Trial Court of Quezon City.

Thereupon, on August 8, 1986, the replevin suit was heard and required the parties to submit their respective memoranda. On August 20, 1986, a decision was rendered by the Manila Regional Trial Court dismissing the replevin suit on the ground of duplicity of suits. A Motion for Reconsideration was also denied. Not satisfied, private respondent elevated the matter to the Honorable Court of Appeals through a petition for certiorari and mandamus - a) seeking the annulment of the decision dated August 20, 1986 and the Order of September 12, 1986 denying the Motion for Reconsideration; and, b) to direct the respondent court to perform its ministerial duty to order the issuance of the writ of replevin, docketed as CA-G.R. No. SP-10224 entitled "Zosimo Arriesgado v. Hon. Artemon D. Luna, etc., et al." (Annex "J"). After deliberation, a decision was rendered on May 18, 1987 in the said case (CA-G.R. No. SP-10224), the dispositive portion of which reads as follows:

"PREMISES CONSIDERED, the Order dated August 8, 1986, the decision dated August 20, 1986 and the Order dated September 12, 1986, are hereby ANNULLED and SET ASIDE, and the respondent court is directed to reinstate, try, and decide Civil Case No. 86-36718 of said court.

"The petition for mandamus is denied, for the matter of issuance of a writ of replevin should be directed to and resolved by the respondent in the first instance." (p. 41, Rollo)

On August 28, 1987, the Manila Regional Trial Court issued an order with the following tenor, to wit:

"ACCORDINGLY, the deputy sheriff of this court is hereby ordered to take possession of the car in question and deliver the same to the plaintiff pursuant to the rules." (p. 42, Rollo)

On September 4, 1987, petitioners filed a motion to dismiss the complaint of Replevin with Damages on the ground of improper venue and *litis pendentia*.

In the order of the respondent Regional Trial Court of Manila, dated September 17, 1987, it deferred its action on the motion to dismiss until the trial of the case. Petitioners then filed a petition for Prohibition before the respondent Court of Appeals, docketed as CA-G.R. SP No. 13040. For lack of merit, petitioners' petition was dismissed. The Court of Appeals ruled:

"At the outset it must be stated that the petition has a formal infirmity: it is not accompanied with copies of all pleadings and documents relevant and pertinent thereto as required by Section 2 of Rule 65 of the Rules of Court.

"The importance of the missing pleadings is obvious. This court cannot make an intelligent discussion of the subject matter of the petition without the pleadings, especially when it impugns on venue. In *Nawasa v. Municipality of Libmanan* (20 SCRA 337), our Supreme Court held that a petition for certiorari and mandamus should be dismissed where the petitioner fails to attach to his petition important documents. The same rule should be applied in this petition for prohibition, the requirements in filing a petition for prohibition being the same as that of a petition for certiorari. In fact the second paragraph of both Sections 1 and 2, Rule 65 of the Rules of Court are exactly the same.

"Neither did petitioners allege with certainty the facts upon which the claim for the writ of prohibition are based. While alleging grave abuse of discretion amounting to lack of jurisdiction, however, petitioners did not advance any argument as to why the questioned order was issued as bluntly alleged.

"Moreover, we note that the issue of *litis pendentia* has been resolved in the special case for certiorari filed with this court by private respondent against petitioner and respondent judge and docketed as Special Case No. 10224, the decision of which having been promulgated on May 18, 1987. In said case this Court stated that by filing the case for Replevin, private respondent (petitioner in said case), is deemed to have abandoned his third-party claim in Civil Case No. Q-47961 of the Regional Trial Court of Quezon City. No *litis pendentia* therefore exists as between the parties." (p. 8, Rollo)

Petitioners moved for a reconsideration of the aforesaid decision on February 10, 1988, attaching thereto all of the pleadings and documents believed to be relevant to the petition and necessary for a clear determination of the legal question raised therein. The Court of Appeals ruled:

"Petitioners' motion for reconsideration has confined itself only to correcting the infirmity of the petition. However, the petition's infirmity was not the only ground upon which the dismissal of the petition was based. Even if we positively consider the documents attached to petitioners' motion for reconsideration, our factual findings and conclusions of law will not thereby be altered.

"WHEREFORE, there being no merit therein, petitioners' motion for reconsideration is hereby DENIED." (p. 10, Rollo)

Hence, this petition.

The main issue raised by petitioners is whether or not respondent Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction:

"a) When it dismissed petitioners' petition for prohibition with preliminary injunction on the ground of mere technicality, i.e. due to alleged formal infirmity of the petition which was however rectified, at the expense of substantial justice;

"b) In not finding that there are sufficient bases in support of petitioners' petition and yet the same was dismissed for lack of merit." (p. 138, Rollo)

We see no reversible error committed by respondent Court in rendering the questioned decision.

When the Court of Appeals in CA-G.R. No. 10224-SP directed the Regional Trial Court of Manila to reinstate, try, and decide Civil Case No. 86-36718, and such decision became final and executory on June 7, 1987, petitioner could not now resuscitate a settled issue.

Hence, when the Manila Regional Trial Court deferred its action on the motion to dismiss until after the trial of the case, it did not commit a grave abuse of discretion amounting to lack or excess of jurisdiction. Moreover, the deferment is in consonance with the provision of Section 3, Rule 16 of the Rules of Court, since the grounds raised appear not to be indubitable for the respondent trial court.

Besides, the only participation of private respondent in the collection suit in the Regional Trial Court of Quezon City is that of a third-party claimant. Thus, when the Court of Appeals in CA-G.R. No. 10224-SP ruled that by filing the case for replevin, private respondent (petitioner in said case) is deemed to have abandoned his third-party claim in the civil case filed in the Regional Trial Court of Quezon City, respondent Court (in CA-G.R. No. 13040) was correct in affirming that no *litis pendencia* exists as between the parties.

Respondent Court of Appeals did not only dismiss the petition on technicalities but also on the merits. Said respondent Court:

"x x x the petition's infirmity was not the only ground upon which the dismissal of the petition was based. Even if we positively consider the documents attached to petitioners' motion for reconsideration, our factual findings and conclusions of law will not thereby be altered." (p. 10, Rollo)

Under Rule 45 of the Revised Rules of Court, only questions of law may be raised in a petition for review. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of facts being conclusive. (*Andres v. Manufacturers Hanover and Trust Corporation*, G.R. No. 82670, September 15, 1989). The re-examination of the attached documents in the case at bar is a factual issue which may not be disturbed by Us in a petition for review under the aforesaid rule.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

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

* Penned by Justice Emeterio C. Cui concurred in by Justices Luis A. Javellana and Jesus M. Elbinias

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