

ROMEO CABELLAN, PETITIONER, VS. COURT OF APPEALS, HON. AMIR PD PUNDOGAR, BRANCH III OF REGIONAL TRIAL COURT, ILIGAN CITY; CITY SHERIFF OR DEPUTY SHERIFF REYNALDO NERI, ILIGAN CI...

G.R. No. 93090. March 03, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals, dated October 31, 1989, dismissing for lack of merit a special civil action of certiorari filed by petitioner to set aside a decision of the Regional Trial Court, Branch III, of Iligan City. Both courts affirmed the decision of the Municipal Trial Court, Branch II, of the same city ordering the ejectment of petitioner from a piece of land in Suarez, Iligan City.

The land, consisting of 50 square meters, is a portion of a larger parcel of land situated at Townsite, Suarez, Iligan City. Private respondent Nathaniel Dinoro acquired the rights to the land in question by purchase from Marcelino Saycon. Petitioner Romeo Cabellan had been in possession of the subject land since 1968 through tolerance. After acquiring the land on May 27, 1986, private respondent asked petitioner to vacate the occupied portion, but the latter refused. Private respondent brought the matter to the barangay authorities of Suarez, Iligan City for conciliation, but no amicable settlement was reached by the parties. Consequently, the case was certified for trial by the courts.

Private respondent filed a complaint for unlawful detainer against petitioner in the Municipal Trial Court, Branch II, of Iligan City which rendered a decision on December 22, 1987 ordering petitioner to vacate the land and pay private respondent attorney's fees in the amount of P3,000.00, plus P500.00 as litigation expenses, and monthly rental at the rate of P100.00 a month from the date of filing of the case until petitioner had fully vacated the premises.

On appeal, the Regional Trial Court, Branch III, of Iligan City, at first reversed but, on motion of private respondent, reconsidered its decision and dismissed petitioner's appeal for being untenable, frivolous, and dilatory.

On March 8, 1989, private respondent filed a motion for execution which the MTC granted on the ground that its judgment had become final and executory.[1] Thereafter, the deputy sheriff issued a notice of ejectment, for which reason petitioner filed, on April 27, 1989, a petition for certiorari in the Court of Appeals.

On October 31, 1989, the appellate court dismissed the petition on the following grounds:[2]

Pursuant to the provisions of Sec. 22 of Batas Pambansa Blg. 129, the Judiciary Reorganization Law and in accordance with the Revised Internal Rules of the Court of Appeals, Civil Case No. III-1059, being an illegal detainer case originating from the City Court of Iligan City, the decision rendered by the respondent court (Regional Trial Court, Branch III of Iligan City) may be contested before this Court by filing a verified petition

for review, "within the period to appeal x x x. A petition filed after the period shall be denied due course outright. x x." (Sec. 3, Rule 6, Revised Internal rules of the Court of Appeals)....

The petition for certiorari is not the proper remedy. Even if We treat the present petition as one for review, the same must still fail for the following reasons:

First, the petition does not allege the material dates which shows that it was filed on time. On the contrary, Annex "1" of the respondents' comment clearly show that as early as March 8, 1989, an order of execution was granted by the trial court on the ground that the decision "had become final and executory", whereas the docketing and other fees of the petition was received in this Court only on June 13, 1989;

Second, the respondent Court acted within the scope of its appellate jurisdiction in rendering the questioned decision/order. There was no grave abuse of discretion whatsoever.

For lack of merit, the petition is dismissed and/or denied due course.

Hence, this petition for review based on the following assignment of error:

THAT [THE] QUESTIONED ORDER, DATED SEPTEMBER 6, 1988 OF Respondent PUNDOGAR [OF THE RTC, BRANCH III OF ILIGAN, CITY] AMOUNTS TO LACK OF JURISDICTION AND GRAVE ABUSE OF DISCRETION, AND COMPOUNDED NOW [BY] THE DECISION OF RESPONDENT COURT OF APPEALS [WHICH] IS ILLEGAL AND VOID, AND COULD NOT BE SUBJECT TO IMPLEMENTATION.

First. Petitioner contends that the land in question is owned by the government and, hence, the MTC and RTC have no jurisdiction to order his ejectment.

The petition for certiorari and prohibition filed by petitioner in the Court of Appeals is based on a certification of the District Land Officer of Iligan City to the effect that the land occupied by petitioner Romeo Cabellan is "within a proposed road" and that "there is no person [who has] filed any public land application" with respect to the same. The public ownership of the land was raised in the MTC by petitioner, but the court held that "it could be presumed as shown by the Sketch Plan of the land of plaintiff [respondent Nathaniel Dinoro] that said road where defendant's [petitioner Romeo Cabellan] house is, is a part of the plaintiff's [Nathaniel Dinoro] land." When the case was appealed to it, the RTC at first found the land to be owned by the government on the basis of the aforesaid certification of the District Land Officer and, hence, reversed the decision of the MTC. However, on motion of private respondent, the RTC reconsidered its decision and held that even "granting that [the land in question] is a part of the proposed road right of way or of the public domain, [petitioner] had not shown, not even by a scintilla of evidence, that he possesses the same area in [the] concept of an owner by making or introducing some kind of improvements; [There is] not even an indicia of possession like a tax declaration, tax payments, or any semblance of authority from the government to possess and occupy the same area in question." On the other hand, it found private respondent to have a better right of possession as shown by the deed of sale, a tax declaration, a transfer tax receipt, and a real estate tax receipt. Consequently, the RTC reconsidered its decision and dismissed petitioner's appeal. Thus, the public character of the land was considered irrelevant by both courts in the ejectment case.

The RTC, we think, acted correctly. As this Court held in *Molina v. De Bacud*,^[3] the public character of the land in dispute does not exclude courts from their jurisdiction over possessory actions. Indeed, in *Molina*, this Court upheld the right of a party, who had been in open, continuous, exclusive, and notorious possession of a parcel of public land, against another who had already acquired a sales patent from the government over the same. Clearly, the only issue in ejectment cases is possession, regardless of the claim of ownership of a party. As the judgment in ejectment cases is binding only with respect to the issue of possession,^[4] the government cannot possibly be prejudiced by the ruling that private respondent is entitled to the possession of the subject land.

There was thus no jurisdictional issue justifying resort to the special civil action of certiorari. The resort to this remedy appears to have been due to the fact that the decision of the RTC, affirming the judgment of the MTC, had already become final and executory rather than to the existence of any jurisdictional question.

Indeed, petitioner failed to appeal from the decision of the RTC. Clearly, the petition for certiorari, which was filed more than seven months after the decision of the RTC had become final, was being used as a substitute for a lost appeal.

Second. Even if a petition for certiorari were the appropriate remedy, it should nevertheless be dismissed for having been filed after an unreasonable period of time. The petition was filed on April 27, 1989, more than seven (7) months after the RTC had affirmed the decision of the MTC ordering the ejectment of petitioner from the subject land on September 8, 1988. A period of seven (7) months is certainly more than the period considered reasonable for filing such a petition.[5]

Third. On the other hand, even if the petition for certiorari filed by petitioner were treated as a petition for review, the same should also be dismissed, as the Court of Appeals pointed out, for late filing of the petition and payment of docket fees, and for lack of statement of material dates specifically showing the timely filing of the petition as required by Rule 6, §3(a), (c), and (d) in relation to §1(b) of the Revised Internal Rules of the Court of Appeals.[6] Rule 6, §3 of the said Internal Rules provides that a petition for review filed after the 15-day period to appeal or after the 15-day additional period granted by the Court of Appeals shall be dismissed. A petition which is not sufficient in form and substance should, likewise, be dismissed.

Well-settled is the rule that the right to appeal is a mere privilege and, therefore, should be exercised only in the manner prescribed by law.[7] The perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and noncompliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[8]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Memorandum for Respondent, Annex "2"; Rollo, p. 203.

[2] Per Justice Asaali S. Isnani and concurred in by Justices Luis A. Javellana and Jaime M. Lantin.

[3] 126 Phil. 166 (1967).

[4] Cagayan de Oro City Landless Residents Association, Inc. v. Court of Appeals, 254 SCRA 220 (1996).

[5] See *People v. Castañeda*, 165 SCRA 327 (1988); *San Juan v. Cuento*, 160 SCRA 277 (1988); *Reas v. Bonife*, 190 SCRA 493 (1990).

[6] The pertinent provisions of the RIRCA read:

SEC. 3. Petitions for Review. $\frac{3}{4}$ Within the period to appeal, the petitioner shall file a verified petition in four (4) copies with enough copies for each of the respondents. Upon proper motion presented before the expiration of the original reglementary period, the Court may grant a non-extendible additional period of fifteen (15) days save in exceptionally meritorious cases within which to file the petition for review; Provided, however, that should there be no petition filed within the extended period, the case shall be dismissed. A petition filed after the period shall be denied due course outright.

a. Contents. - The petition [for review] shall: (1) state the material dates - showing that it is filed on time, and (2) set forth concisely the matters involved and the grounds for the petition specifying the errors of facts or law, or both, allegedly committed by the Regional Trial Court. . . .

c. Processing of Petition. - The provisions of Section 1(b) of this rule shall apply to petitions for review.

d. Judicial Action. - The Court may dismiss the petition, or require the private respondent to comment on the petition, or give it due course.

(1) If the petition is not prima facie sufficient in form and substance, the Court may dismiss it outright stating the reasons therefor. . . .

§1(b). Processing of Petition. -- Upon the filing of the petition, the Special Cases Section shall:

(1) Charge the petitioner the corresponding docketing and other legal fees, unless the petitioner is exempt therefrom. Provided, That if the docketing and other legal fees are not remitted upon the filing of the petition, the petitioner may be granted an unextendible period of five (5) days from notice within which to pay or remit them; (Emphasis added)

[7]Calucag v. COMELEC, 274 SCRA 405 (1997).

[8] Laza v. Court of Appeals, 269 SCRA 654 (1997).

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