

**MUNICIPALITY OF BIÑAN, LAGUNA, REPRESENTED BY HON. BAYANI M. ALONTE, MUNICIPAL MAYOR OF BIÑAN, LAGUNA, PETITIONER,
VS. HON. COURT OF APPEALS AND JESUS M. GARCIA, RESPONDENTS.**

G.R. No. 94733, February 17, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

This is an appeal via certiorari from the judgment of respondent Court of Appeals promulgated on May 31, 1990 in CA-G.R. SP No. 19582[1] wherein it set aside the order granting a writ of execution pending appeal issued on December 14, 1989 by Branch 24 of the Regional Trial Court at Biñan, Laguna in Civil Case No. B-3201 thereof; and further annulled the judgment rendered by the Municipal Trial Court of Biñan, Laguna in an ejectment case, docketed as Civil Case No. 2473, and which case is pending on appeal in the aforesaid Civil Case No. B-3201. Respondent court having denied reconsideration in its resolution of August 9, 1990,[2] petitioners have taken this recourse to us against the backdrop of the antecedents hereunder chronologically detailed.

On September 27, 1989, petitioner filed Civil Case No. 2473 for unlawful detainer, with a prayer for a writ of preliminary mandatory injunction, against private respondent in the Municipal Trial Court of Biñan, Laguna alleging that it was no longer amenable to the renewal of its 25-year lease contract with private respondent over the premises involved because of its pressing need to use the same for national and provincial offices therein.

On October 5, 1989, private respondent filed his answer to the complaint contending that the contract of lease for the original period of 25 years had not yet expired and, assuming it had expired, he has exercised his option to stay in the premises for another 25 years as expressly provided in the said contract. On October 9, 1989, petitioner filed its reply to private respondent's answer.

On October 16, 1989, private respondent filed this time a "Motion for Preliminary Hearing as if a Motion to Dismiss Has Been Filed" on the ground that the complaint states no cause of action, reiterating its argument that the original term of 25 years stipulated in the contract of lease had not yet expired and that, at any rate, under said contract he has the exclusive option to renew the same for another 25 years.

After some further exchanges consisting of petitioner's opposition to private respondent's aforesaid motion for preliminary hearing, the latter's reply thereto, and the parties' respective position papers, the municipal trial court rendered judgment on October 26, 1989 ordering private respondent to vacate the premises subject of the ejectment case.[3]

On November 8, 1989, private respondent filed a "Manifestation/Motion" before said trial court praying that the issues raised in the motion for preliminary hearing, apparently because it was in the nature of a motion to dismiss, be first resolved instead of rendering judgment on the pleadings. Thereafter, on November 10, 1989, private respondent received a copy of the decision of the trial court, hence he filed a notice of appeal to the Regional Trial Court of Laguna on November 20, 1989, which was assigned to Branch 24 thereof at Biñan, Laguna.

On December 5, 1989, petitioner filed before said court a motion for execution pending appeal and on December 14, 1989, Hon. Jose Mar. Garcia, presiding judge of said branch of the regional trial court granted petitioner's aforesaid motion for discretionary execution.[4] The following day, December 15, 1989, a writ of execution was issued directing the deputy sheriff or his duly authorized representative to enforce the terms of the judgment of the court a quo.[5]

On December 29, 1989, private respondent filed with the Court of Appeals a petition for certiorari, with a prayer for the issuance of a writ of preliminary injunction, assailing the aforesaid order of execution pending appeal on the ground that petitioner failed to furnish private respondent with a copy of the motion therefor filed by it in the aforementioned Civil Case No. B-3201, contrary to Section 6, Rule 15 of the Rules of Court, hence the invalidity of the lower court's order of December 14, 1989 which granted the writ of execution. Petitioner seasonably filed its comment and/or opposition to said petition.

Resolving this issue posed by the pleadings, respondent court rendered judgment on May 31, 1990 setting aside the questioned order for being violative of the requirement in Section 6, Rule 15 of the Rules of Court which provides that no motion shall be acted upon by the court without proof of prior notice thereof to the adverse party. Aside from annulling the controversial order, however, respondent court likewise annulled the judgment of the court a quo in Civil Case No. 2473, which judgment is pending on appeal in Civil Case No. B-3201 of the aforesaid regional trial court. Respondent court granted the second additional relief on the ground that the decision is contrary to the agreement of the parties which should be considered the law between them.[6]

The assailed judgment and ratiocinations of respondent court are best reproduced for convenient reference:

"FIRSTLY, the respondent Municipality filed a Motion For Execution pending appeal. Petitioner contends that said motion did not comply with Section 4, Rule 15 and the ruling of Azajar vs. Court of Appeals (145 SCRA 333). Under Section 6, Rule 15 of the Rules of Court, no motion shall be acted upon by the Court without proof of such motion. The respondent Court by doing so acted with serious abuse of discretion which is tantamount to lack of or in excess of jurisdiction to issue a writ of execution pending appeal.

"SECONDLY, petitioner assails the decision of the lower court on the ground that it failed to consider that the judgment proceeded from an inferior court which was improvidently and irregularly rendered when it failed to resolve first the issue raised in the motion to dismiss. This refers to a situation where the lease contract shall be for twenty five (25) years, renewable for another twenty five (25) years at the option of the lessee or his heirs.
x x x

"WHEREFORE, in view of the foregoing and considering the evidence and the highest consideration of law and applicable jurisprudence, the petition for certiorari is hereby granted. The order dated December 14, 1989 in Civil Case No. B-3201, issued without notice to petitioner together with the writ of execution pending appeal, being null and void, is therefore ordered set aside, being contrary to Section 6, Rule 15 of the Rules of Court. The judgment of the inferior court in Civil Case No. 2475 (sic, 2473) is likewise ordered annulled, being contrary to the agreement of the parties which is considered the law between them."[7]

Petitioner duly filed a motion for reconsideration of said judgment on the ground that the Court of Appeals should have confined itself to the questioned order of the respondent regional trial court dated December 14, 1989 and subject of private respondent's petition for certiorari with preliminary injunction in CA-G.R. SP No. 19582.

As earlier stated, respondent court denied said motion, hence the instant petition wherein petitioner contends that the Court of Appeals overstepped the bounds of its authority in annulling the decision of the municipal trial court even if said decision was not an issue raised by private respondent in CA-G.R. SP No. 19582 and which decision is in fact pending on appeal with the regional trial court.[8]

In his comment, private respondent refutes petitioner's contention and claims that the issue of the merits of the judgment of the municipal trial court was sufficiently raised and controverted, hence respondent court was not in error when it passed judgment on the same. Moreover, private respondent makes the riposte that it is a cherished rule in procedural law that a controversy should be settled in one single proceeding in order to avoid multiplicity of suits.

We are favorably impressed with the merits of the instant petition.

Respondent Court of Appeals has no jurisdiction in a certiorari proceeding involving an incident in a case to rule on the merits of the main case itself which was not on appeal before it. The validity of the order of the regional trial court, dated December 14, 1989, authorizing the issuance of a writ of execution during the pendency of the appeal therein was the sole issue raised in the petition for certiorari filed in respondent Court of Appeals.[9] The allegation that the decision of the municipal trial court was improvidently and irregularly issued was raised by private respondent only as an additional or alternative argument to buttress his theory that the issuance of a discretionary writ of execution was not in order, as can be gleaned from the text of said petition itself, to wit:

"V. ERRORS/ISSUES

x x x

"Besides, when the respondent Judge issued the writ, it (sic) failed to consider that the judgment rendered by the inferior court was improvidently and irregularly issued, when said court failed to resolve first the pending Motion To Dismiss, a procedural process before any judgment on the merit(s) may be had." [10]

Further, even assuming that the said issue was squarely raised and sufficiently controverted, the same cannot be considered a proper subject of a special civil action for certiorari under Rule 65 which is limited only to challenges against errors of jurisdiction. The jurisdiction of the municipal trial court over the ejectment case filed by petitioner against private respondent is not disputed. Thus, assuming that the said lower court committed a mistake on the merits of the case, it was nonetheless in the due exercise of its jurisdiction. The error, if any was committed by the trial court, was at most one of judgment or procedure correctible by ordinary appeal.

Neither can it be said that the lower court committed a grave abuse of discretion or exceeded its jurisdiction when it failed to conduct a preliminary hearing, as prayed for in private respondent's "Motion for Preliminary Hearing as if a Motion to Dismiss Has Been filed," before summarily rendering judgment on the merits of the case. The said motion of private respondent is anchored on the ground that the complaint allegedly states no cause of action since the original term of 25 years stipulated in the contract of lease had not yet expired and assuming that it had expired, private respondent had made known to petitioner his exclusive option to renew it for another 25 years.[11]

Section 5, Rule 16 of the Rules of Court pertinently provides:

"Sec. 5. Pleading grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this Rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

The aforequoted provision allows the grounds for a motion to dismiss to be set up as affirmative defenses in the answer if no motion to dismiss has been filed.

However, contrary to the claim of private respondent, the preliminary hearing permitted under the said provision is not mandatory even when the same is prayed for. It rests largely on the sound discretion of the trial court. The use of the word "may" in said provision shows that such a hearing is not a matter of right demandable from the trial court. Where the provision reads "may," this word shows that it is not mandatory but discretionary. It is an

auxiliary verb indicating liberty, opportunity, permission and possibility.[12]

Moreover, a preliminary hearing on an affirmative defense for failure to state a cause of action is not necessary. As we have ruled in *Heirs of Juliana Clavano vs. Genato, et al.*:[13]

"x x respondent Judge committed an error in conducting a preliminary hearing on the private respondent's affirmative defenses. It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint? Stated otherwise, the sufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground. No extraneous matter may be considered nor facts not alleged, which would require evidence and therefore, must be raised as defenses and await the trial. In other words, to determine sufficiency of the cause of action, only the facts alleged in the complaint, and no other should be considered.

"The respondent Judge departed from this rule in conducting a hearing and in receiving evidence in support of private respondent's affirmative defense, that is, lack of cause of action."

It is a familiar doctrine in this jurisdiction that certiorari will issue only to correct errors of jurisdiction and that no error or mistake committed by a court will be corrected by certiorari unless said court had acted in the premises without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction. It is available only for these purposes and not to correct errors of procedure or mistakes in the judge's findings or conclusions.[14]

If a judgment of a municipal trial court is sought to be reviewed, the remedy is an appeal to the regional trial court, not the filing of a special civil action of certiorari. Appeal, whether from an inferior court or a regional trial court, is antithetical to a special civil action of certiorari.[15] When the remedy of appeal is available, the extraordinary remedy of certiorari cannot be resorted to because the availability of appeal proscribes recourse to the special civil action of certiorari.[16]

Indeed, the respondent Court of Appeals went beyond the realm of its authority and its pronouncements on the judgment rendered by the municipal trial court on the ejectment case were *ultra jurisdiction*. That judgment was on appeal before the regional trial court. Respondent court's authority was, therefore, limited to ruling upon the issue of whether or not the regional trial court committed grave abuse of discretion in issuing the order directing the issuance of a discretionary writ of execution against private respondent. Whether or not the municipal trial court committed a mistake in arriving at its decision is an issue that is beyond the authority of respondent court to decide. It is lodged in another and appropriate forum with appellate powers the exercise of which should not be usurped or preempted by respondent Court of Appeals.

WHEREFORE, the petition at bar is GRANTED. The decision of respondent Court of Appeals dated May 31, 1990, insofar as it annulled the decision of the Municipal Trial Court of Biñan, Laguna in Civil Case No. 2473, and its resolution of August 9, 1990 are hereby REVERSED and SET ASIDE. Let this case be REMANDED to the Regional Trial Court of Biñan, Laguna for further appropriate proceedings.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

[1] Justice Jainal D. Rasul, ponente; Justices Manuel C. Herrera and Eduardo R. Bengzon, concurring; Rollo,

24-29.

[2] Rollo, 30.

[3] Ibid., 36-38.

[4] Ibid., 44-45.

[5] Ibid., 46.

[6] Ibid., 24-29.

[7] Rollo, 28.

[8] Ibid., 30-31.

[9] Annex I, Petition, 1-3; Rollo, 48-50.

[10] Id., 12; *ibid.*, 59.

[11] Original Record, 67-68.

[12] *Caltex (Phils.), Inc. vs. Court of Appeals, et al.*, G.R. No. 97753, August 10, 1992.

[13] 80 SCRA 217 (1977).

[14] *Regala vs. Court of First Instance of Bataan*, 77 Phil. 684 (1946); *Lansang, Jr., et al. vs. Court of Appeals, et al.*, 184 SCRA 230 (1990); *Day vs. Regional Trial Court of Zamboanga City, Br. XIII, et al.*, 191 SCRA 610, (1990).

[15] *Banco de Oro Savings and Mortgage Bank vs. Court of Appeals, et al.*, 182 SCRA 464 (1990).

[16] *Philippine Banking Corporation vs. Intermediate Appellate Court, et al.*, 187 SCRA 257 (1990).

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