

**ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS,[]  
PACIFICO P. DE DIOS AND LEONORA DOMINGUEZ, RESPONDENTS.**

*G.R. No. 95133. August 21, 1991*

Ponente: REGALADO, J.

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**REGALADO, J.:**

This petition impugns the decision of respondent Court of Appeals in CA-G.R. SP No. 18145, dated April 18, 1990,[1] which dismissed the petition for review on certiorari, initially filed by petitioner with this Court but thereafter referred to respondent court, on the ground that petitioner should have resorted to the ordinary mode of appeal, that is, by filing a notice of appeal from the decision of the court a quo instead of said petition for review on certiorari.

The records show that herein private respondents instituted a complaint for annulment of mortgage and foreclosure sale with preliminary injunction before the Regional Trial Court of Pasig, docketed therein as Civil Case No. 25528.[2]

After trial, judgment was rendered by the trial court dated February 28, 1989, the dispositive portion whereof reads:

"Accordingly, and in the light of the fore-going considerations, judgment is hereby rendered as follows:

1. Declaring the real estate mortgage executed by Pacifico de Dios in favor of defendant Atlas, valid as far as the one-half (1/2) share of Pacifico de Dios over the land in question is concerned, and null and void as far as the one-half (1/2) share belonging to Leonora Dominguez is concerned;
2. Declaring the foreclosure sale and the eventual sale of the property in question valid to the extent of one-half (1/2) share belonging to Pacifico de Dios and null and void as far as the one-half (1/2) share of Leonora Dominguez is concerned;
3. Ordering defendant Atlas Consolidated Mining and Development Corporation to convey to plaintiff Leonora Dominguez the one-half of said property after an ideal division of the same is effected and if conveyance is impossible, to pay Leonora Dominguez an amount equivalent to the value of her one-half (1/2) share to be determined by a government assessor;
4. Dismissing the claim for moral, exemplary damages, attorney's fees and litigation expenses for insufficiency of evidence;
5. Dismissing the counterclaim of Atlas.

No costs.

SO ORDERED.”[3]

Petitioner and private respondent Pacifico P. de Dios both moved for the reconsideration of this decision. On May 23, 1989, the trial court issued an Order, the decretal portion of which provides:

"In view of the foregoing, the dispositive portion of the decision of this Court dated February 29, 1989, is hereby modified. Thus —

1. Declaring the real estate mortgage executed by Pacifico de Dios in favor of defendant Atlas Consolidated Mining and Development Corporation null and void in its entirety;
2. Declaring the foreclosure sale and eventual sale of the property in question null and void ab initio;
3. Ordering defendant Atlas Consolidated Mining and Development Corporation to convey to plaintiffs Pacifico de Dios and Leonora Dominguez the subject land covered by Transfer Certificate of Title No. T-7145 OR to pay plaintiffs an amount equivalent to the duly appraised and assessed value of said land as determined by the provincial assessor or his duly authorized deputy, if conveyance is not possible;
4. Dismissing the claim for moral, exemplary damages, attorney's fees and litigation expenses for insufficiency of evidence; and
5. Dismissing the counterclaim of Atlas Consolidated Mining and Development Corporation.

No costs.

SO ORDERED."[4]

From the aforesaid decision and order of the trial court, petitioner, pursuant to Section 25 of the Interim Rules and Guidelines implementing Batas Pambansa Blg. 129, filed with this Court a petition for review on certiorari on what it submitted as pure questions of law, to wit:

1. The Regional Trial Court committed an error of law in limiting the meaning of the term 'any party' as written in the special power of attorney, to refer only to development banks in Manila, Pampanga and/or Bataan provinces; and declaring the real estate mortgage executed by Pacifico P. de Dios in favor of Atlas Consolidated Mining and Development Corporation, as well as the foreclosure sale and eventual sale of the property in question, as null and void in its entirety, on the ground of lack of consent by the wife Leonora Dominguez.
2. The Regional Trial Court committed an error of law in ordering petitioner to convey to private respondents the subject land or to pay the assessed value thereof if conveyance is not possible as this is contrary to law and equity.
3. The Regional Trial Court committed an error of law in finding that there was no lawful supervening act which rendered the enforcement or execution of judgment in this case legally impossible.[5]

The petition which was filed on June 16, 1989 was docketed as G.R. No. 88534. In a resolution dated June 28, 1989, the Third Division of this Court ordered the referral of the case to the Court of Appeals[6] where it was docketed as CA-G.R. SP No. 18145.

On April 18, 1990, respondent Court of Appeals rendered judgment dismissing the aforesaid petition for review on certiorari, holding that:

"Petitioner anchors its petition upon the provisions of Sec. 25 of the Interim Rules and Guidelines promulgated by this Court on January 11, 1983, to implement B.P. No. 129 in relation to Sec. 1, Rule 45, Rules of court, which provides:

'A party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for

reconsideration filed in due time, and paying at the same time, to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of service of a copy thereof to the Court of Appeals.'

"This Rule does not apply to petitioner, as there is no judgment as yet of the Court of Appeals which may be appealed by way of certiorari to the Supreme Court.

"Certiorari presupposes either lack or excess of jurisdiction or grave abuse of discretion (*Dearing v. Fredwilson & Co., Inc.*, L-25884, July 25, 1980; 98 SCRA 758). In the case at bar, it is evident that the trial court has jurisdiction. It follows that its judgment of February 28, 1989, and May 23, 1989, may not be corrected much less annulled, in the instant proceeding. If the court had jurisdiction of the subject matter and of the person, the orders and rulings upon all questions pertaining to the cause are orders and rulings within its jurisdiction and cannot be corrected by certiorari (*Paramount Insurance Corporation v. Luna*, L-61404, March 16, 1987; 148 SCRA 564).

"Except for the 'errors of law' allegedly committed by the court a quo, petitioner does not allege or show that respondent Judge exhibited a capricious, arbitrary and whimsical exercise of power; neither did it elect to file this petition because an appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effect of the judgment complained of, or to avoid future litigations. Certiorari, therefore, cannot lie (*Mercado v. Court of Appeals*, L-44001, June 10, 1988; 162 SCRA 75; *Young v. Sulit, Jr.*, L-57839, June 27, 1988; 162 SCRA 659).

"Where the error is not one of jurisdiction but an error of law or fact which is a mistake of judgment, appeal is the remedy (*Matute v. Macadaeg*, L-9325, May 30, 1956; *De Galasison v. Maddela*, L--24584, October 30, 1975; *Dearing v. Fredwilson & Co., Inc.*, L-25884, July 25, 1980).

"Accordingly, petitioner should have resorted to ordinary appeal.

"WHEREFORE, the instant petition is DISMISSED. Costs against petitioner.

### **"SO ORDERED." [7]**

Since, perceptibly, there appeared to have been some misapprehension by respondent court on whether what was involved and required resolution was a petition for review on certiorari under Rule 45 or a petition for certiorari under Rule 65, on May 10, 1990 petitioner filed a motion for reconsideration which was, however, denied by respondent court in its resolution of September 8, 1990. Hence this petition premised on the following grounds:

1. The Court of Appeals erred in holding that petitioner did not avail of the correct procedure in elevating this case to the appellate courts; and
2. The Court of Appeals erred in dismissing petitioner's appeal solely on procedural grounds, considering that petitioner has a meritorious appeal.[8]

We find for petitioner.

Section 9 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, vests in the Intermediate Appellate Court (now the Court of Appeals) exclusive appellate jurisdiction over all final decisions and orders of the regional trial courts, except those falling within the appellate jurisdiction of the Supreme Court in accordance with, among others, the Constitution and Republic Act No. 296, the Judiciary Act of 1948.

Under Section 5, subparagraph (2)(e), Article VIII of the 1987 Constitution, the Supreme Court is vested with the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases in which only an error or question of law is

involved. A similar provision is contained in Section 17, fourth paragraph, subparagraph (4) of the Judiciary Act of 1948, as amended by Republic Act No. 5440. And, in such cases where only questions of law are involved, Section 25 of the Interim Rules and Guidelines implementing Batas Pambansa Blg. 129, in conjunction with Section 3 of Republic Act No. 5440, provides that the appeal to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court.

The rule, therefore, is that direct appeals to this Court from the trial court on questions of law have to be through the filing of a petition for review on certiorari.[9] It has been held that:

"x x x when a CFI (RTC) adjudicates a case in the exercise of its original jurisdiction, the correct mode of elevating the judgment to the Court of Appeals is by ordinary appeal, or appeal by writ of error, involving merely the filing of a notice of appeal - except only if the appeal is taken in special proceedings and other cases wherein multiple appeals are allowed under the law, in which event the filing of a record on appeal is additionally required. Of course, when the appeal would involve purely questions of law or any of the other cases (except criminal cases as stated hereunder) specified in Section 5 (2), Article X of the Constitution, it should be taken to the Supreme Court by petition for review on certiorari in accordance with Rules 42 and 45 of the Rules of Court." [10]

By way of implementation of the aforestated provisions of law, this Court issued on March 9, 1990 Circular No. 2-90,[11] paragraph 2 of which provides:

"2. Appeals from Regional Trial Courts to the Supreme Court. — Except in criminal cases where the penalty imposed is life imprisonment or reclusion perpetua, judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on certiorari in accordance with Rule 45 of the Rules of Court in relation to Section 17 of the Judiciary Act of 1948, as amended, this being the clear intendment of the provision of the Interim Rules that '(a)ppeals to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court.'"

Under the foregoing considerations, therefore, the inescapable conclusion is that herein petitioner adopted the correct mode of appeal in G.R. No. 88534 by filing with this Court a petition to review on certiorari the decision of the Regional Trial Court of Pasig in Civil Case No. 25528 and raising therein purely questions of law.

Now, by way of contextual backdrop, it may be recalled that before the adoption of Circular No. 2-90, where an appealed case was erroneously brought to the Court of Appeals, it shall not dismiss the appeal, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor.[12] Cases erroneously brought to either the Supreme Court or the Court of Appeals shall be sent to the proper court which shall hear the same as if it had been properly brought before it.[13]

The propriety of the referral by the Supreme Court of the petition in G.R. No. 88534 to the Court of Appeals now comes to fore. While it is true that Circular No. 2-90 now prohibits the transfer of appeals erroneously taken to the Supreme Court or to the Court of Appeals to whichever of these tribunals has appropriate appellate jurisdiction,[14] as earlier discussed, the instant petition does not involve an erroneous mode of appeal. Paragraph 4(b) of said circular should accordingly apply. Hence, where, as in the present case, this Court believes that there are factual issues which must be resolved, it may, in the exercise of its sound discretion and considering the attendant circumstances, either itself take cognizance of and decide such issues or refer them to the Court of Appeals for determination.

Although G.R. No. 88534 was filed with this Court before Circular 2-90 took effect, the foregoing procedure may validly be resorted to. We have ruled that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent.[15] They do not, however, apply to the extent that in the opinion of the court their

application would not be feasible or would work injustice in which event the former procedure shall apply.[16] We see no reason why the foregoing doctrines should not apply to the rules and circulars issued by this court which also regulate court procedures.

Under either the new or the former procedure, therefore, referral of the petition in G.R. No. 88534 to the Court of Appeals was a valid procedural expedient. Obviously, we had opted to avail of the latter remedy by remanding said petition to respondent court considering that petitioner therein also alleged factual issues which we believed should properly be resolved by the Court of Appeals, namely, that the trial court erred in finding that the wife never consented to the alienation of the conjugal property, and that there was no supervening fact which rendered the enforcement or execution of judgment in this case impossible.

The rule is that a remand of the case to respondent court for decision on the merits limits said appellate court's decision only to the merits of the case. As held in *Conde, et al. vs. Intermediate Appellate Court, et al.*:[17]

"We need not emphasize the rule that this Court decides appeals which only involved questions of law and that 'it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to receiving errors of law that might have been committed by the lower court.' (*Baniqued v. Court of Appeals*, 127 SCRA 596, 601; citing *Tiongco v. de la Merced*, 58 SCRA 89). It was, thus, totally pointless for the Intermediate Appellate Court to delve into the question of whether or not it has jurisdiction to pass upon the merits of the petition which then alleged the perpetration of fraud by one of the parties in the original case, and which thereby called for a review of the factual findings of the court. Furthermore, the fact that this Court already remanded the case to the appellate Court for decision on the merits should have prompted the latter to limit its decision only to the merits of the case."

Respondent court was, therefore, not justified in refusing to decide the case on the merits. It will not be amiss to once again remind the appellate court of its duty to this Court which was further explained in the aforesaid case in this wise:

"There are instances when this Court desires a further review of facts or a detailed analysis and systematic presentation of issues which the appellate court is in a more favored position to accomplish. Standing between the trial courts and the Supreme Court, the appellate court was precisely created to take over much of the work that used to be previously done by this Court. It has been of great help to the Supreme Court in synthesizing facts, issues, and rulings in an orderly and intelligible manner and in identifying errors which ordinarily might have escaped detection. Statistics will show that the great majority of petitions to review the decisions of the appellate court have been denied due course for lack of merit in minute resolutions. The appellate court has, therefore, freed this Court to better discharge its constitutional duties and perform its most important work which, in the words of Dean Vicente G. Sinco, 'is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights.' (*Philippine Political Law*, 10[th] Edition, p. 323). It is, therefore, difficult to understand why a Division of the Intermediate Appellate Court should hesitate to help the Supreme Court and to act on an action which it was specifically ordered to hear and decide."

ACCORDINGLY, the assailed decision and resolution are hereby REVERSED and SET ASIDE and respondent Court of Appeals is hereby DIRECTED to decide the appealed case, CA-G.R. SP No. 18145, on its merits.

### **SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.  
Sarmiento, J., on leave.

[\*] Deemed impleaded as the public respondent.

[1] Penned by Associate Justice Josue N. Bellosillo, with Associate Justices Alfredo M. Marigomen and Filemon H. Mendoza concurring; Annex A, Petition; Rollo, 33.

[2] Rollo, 45.

[3] Decided by Judge Efren D. Villanueva; Rollo, 75.

[4] Rollo, 88.

[5] Rollo, CA-G.R. SP No. 18145, 6-7.

[6] Ibid., id., 86.

[7] Ibid., id., 114-115.

[8] Rollo, 7.

[9] Santos, Jr., et al. vs. Court of Appeals, et al., 152 SCRA 378 (1987).

[10] Ong vs. Tating, et al., 149 SCRA 265 (1987).

[11] Based on the Resolution of the Court En Banc in UDK-9748 (Anacleto Murillo vs. Rodolfo Consul), March 1, 1990.

[12] Section 3, Rule 50, Rules of Court.

[13] Section 31, Republic Act No. 296.

[14] Paragraph 4(d).

[15] People vs. Sumilang, 77 Phil. 764 (1946); Alday, et al., vs. Camilon, et al., 120 SCRA 521 (1983); Liam Law vs. Olympic Sawmill Co., et al., 129 SCRA 439 (1984).

[16] Laguio, Jr., etc., et al. vs. Gamet, et al., 171 SCRA 392 (1989).

**[17] 144 SCRA 144 (1986).**

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