

LEOPOLDO SY, PETITIONER, VS. COURT OF APPEALS, ROLANDO JAVIER, DEPUTY SHERIFF, BR. XIX, METROPOLITAN TRIAL COURT, MANILA, AND SPOUSES EMETERIO M. CALUGAY AND LINA SAMERA, RESPON...*G.R. No. 95818. August 02, 1991*

Ponente: REGALADO, J.

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In this special civil action for certiorari and prohibition, petitioner prays that we declare null and void the resolution[1] of the Court of Appeals, dated October 31, 1990, in CA-G.R. SP No. 22521 for having been issued with grave abuse of discretion amounting to lack of jurisdiction.

The records show that on November 8, 1988, petitioner filed an unlawful detainer case against private respondent Emeterio M. Calugay "and/or all persons claiming under him" with the Metropolitan Trial Court of Manila, Branch XIX, and docketed therein as Civil Case No. 127019-CV.[2] On December 29, 1988, herein private respondents filed an Answer with Motion to Dismiss or in the Alternative to Suspend Proceedings[3] on the ground that there was pending before the Regional Trial Court of Manila, Branch XXXVI, an action for annulment of sale and reconveyance docketed as Civil Case No. 88-47264, entitled "Spouses Emeterio M. Calugay and Lina B. Samera vs. Prudential Bank, Irene T. Martinez and Leopoldo Sy," involving private respondents' right to repurchase the subject property which had been acquired by therein defendant bank and ultimately sold to herein petitioner.

At the preliminary conference, the trial judge informed the parties that their case falls under the Rule on Summary Procedure and accordingly ordered them to submit their respective position papers and affidavits of witnesses. Subsequently, private respondents filed an Urgent Motion to Hold the Case in Abeyance[4] because of the alleged existence of a prejudicial question involving ownership of the subject property in the aforementioned Civil Case No. 88-47264. The trial court denied the motion to hold in abeyance, as well as the subsequent motion for reconsideration filed by private respondents.[5]

On November 27, 1989, the trial court rendered judgment[6] against therein defendant, "ordering the latter and all persons claiming rights under him to vacate the premises described in the complaint as No. 2040 Leveriza Street, Malate, Manila, and to surrender the peaceful possession to the plaintiff; to pay the plaintiff the amount of P10,000.00, representing the rental arrearages for two (2) months, plus the sum of P5,000.00 monthly from December 1988 up to the time the defendant shall (have) finally vacated the premises; the sum of P3,000.00 as and for attorney's fees; and the costs of suit."

On December 7, 1989, private respondents received a copy of said decision. On December 8, 1989, a motion for reconsideration was filed by private respondents which was, however, denied by the trial court in its order dated February 6, 1990, on the ground that a motion for reconsideration is a prohibited pleading under the Rule on Summary Procedure.

On February 19, 1990, private respondents filed a notice of appeal[7] which was denied due course in an order dated March 2, 1990,[8] for the reason that since the filing of the motion for reconsideration, which is a prohibited pleading under the Rule on Summary Procedure, did not stop the running of the prescriptive period to appeal, then the notice of appeal is considered to have been filed out of time. In the same order, the trial court directed that a writ of execution be issued immediately to satisfy the judgment. Consequently, a writ of "Ejectment Execution"[9] was issued on March 12, 1990 commanding the Sheriff of the Metropolitan Trial Court, Branch XIX, Manila, to cause the herein private respondent Emeterio M. Calugay, and all persons claiming under him, to vacate the premises and petitioner herein to have restitution of the same; to collect the rents due and, upon failure of private respondents, to levy upon their goods and chattels for the payment of the said back rentals; and to collect the rent due from them at the rate of P5,000.00 a month from December, 1988 until they shall have vacated the premises.

On March 16, 1990, a notice of levy was served on private respondents and the sale of their properties was scheduled for March 21, 1990.[10].

After having filed on September 8, 1989 an original petition, private respondents filed on April 30, 1990 an amended petition for certiorari and prohibition with prayer for the issuance of preliminary injunction and/or restraining order[11] with the Regional Trial Court of Manila, Branch XI, docketed as Civil Case No. 89-50315, which seeks to annul and set aside the following dispositions of the metropolitan trial court in Civil Case No. 127019-CV, to wit: (1) Order dated June 16, 1989 (denying petitioners' motion to hold in abeyance); (2) Order dated August 28, 1989 (denying petitioners' motion for reconsideration); (3) Decision dated November 27, 1989 (ordering the ejectment of private respondents); (4) Order dated February 6, 1990 (denying private respondents' urgent motion for reconsideration of the decision); (5) Order dated March 2, 1990 (denying due course to private respondents' appeal); (6) Writ of Ejectment Execution issued on March 12, 1990; and (7) Notice of Levy dated March 21, 1990.

Private respondents, as petitioners therein, alleged that the lower court committed a grave abuse of discretion in applying the Rule on Summary Procedure, despite the fact that the issue of ownership is being litigated in a pending suit between the same parties involving the right of private respondents to repurchase the property from petitioner, and in denying the former's appeal. Private respondents accordingly prayed the regional trial court to declare all the questioned orders and decision null and void, and to direct the trial judge of the metropolitan trial court to give due course to their appeal.

In an order[12] dated June 18, 1990, Judge Manuel E. Yuzon of said regional trial court ordered the issuance of a writ of preliminary injunction, upon the filing by herein private respondents of a bond in the amount of P150,000.00, prohibiting and enjoining herein petitioner from ejecting private respondents from the subject premises, and enjoining Deputy Sheriff Rolando Javier from further proceeding with the auction sale of the levied personal properties.

Disputing the aforesaid order, herein petitioner filed an Urgent Motion for Reconsideration with Motion to Dismiss Petition[13] on the ground that the petition is in violation of Section 1, Rule 58 of the Rules of Court and Section 15 of the Rule on Summary Procedure, and denied that there was a grave abuse of discretion on the part of the trial judge of the lower court.

Before the actual issuance of the writ, however, Judge Gerardo M.S. Pepito, who took over the case due to the retirement of Judge Yuzon, issued an order,[14] dated August 6, 1990, dismissing the amended petition for certiorari on the following considerations:

1. The copies of the questioned orders of respondent Judge Brillantes of the metropolitan trial court, attached

to and accompanying the petition, were not certified true copies.

2. Petitioners had a plain remedy of appeal, but they filed their notice of appeal out of time.

3. Petitioners themselves did not characterize the abuse of discretion allegedly committed by respondent Judge Brillantes as "grave."

4. The face of the petition did not sufficiently show that respondent Judge Brillantes acted without or in excess of jurisdiction, or with grave abuse of discretion, in denying petitioners' motion to suspend the proceedings in the unlawful detainer case.

5. Petitioners were not legitimate tenants falling within the coverage of the Urban Land Reform Law, one of the grounds invoked by petitioners in their motion to suspend said proceedings.

6. The issuance of the writ of execution after the decision had become final and executory was ministerial on the part of respondent Judge Brillantes.

From said dismissal, private respondents went to the Court of Appeals on a petition for certiorari, prohibition and mandamus, docketed as CA-G.R. SP No. 22521, seeking to annul the aforesaid order of August 6, 1990 issued by the regional trial court in Civil Case No. 89-50315, as well as the alias writ of execution dated August 8, 1990, and the notice of sale dated August 9, 1990, issued by the metropolitan trial court in Civil Case No. 127019-CV. A temporary restraining order was issued by respondent Court of Appeals in its resolution of August 17, 1990.[15]

On August 20, 1990, private respondents filed before respondent court an urgent motion to immediately restore them to the premises in question and require Sheriff Javier to return all the goods he had seized from the subject premises. It is likewise alleged therein that on August 9, 1990, the alias writ of execution sought to be annulled had already been implemented by Sheriff Javier.

On August 24, 1990, respondent court issued a resolution which, after recapitulating the reasons hereinbefore stated for the dismissal by the regional trial court of the petition for certiorari in Civil Case No. 89-50315, decreed that:

"In view of the foregoing, petitioners' motion for a resolution from this Court to order restoration to them of the possession over the subject premises and to order respondent Sheriff Javier to return to them the goods removed from said premises, is denied, for the reason that when we promulgated our resolution on August 17, 1990, the alias writ of execution in question had already been implemented on August 9, 1990. If the petitioners have any protest against the manner in which the writ was enforced, they could address the matter to respondent Judge Brillantes.

"Meanwhile, pending outcome of the instant petition, our resolution of August 17, 1990 shall be strictly complied with by respondents. As to respondent Sheriff Javier, he is hereby ordered to maintain the status quo, more especially with respect to the condition of the subject premises and of the custody of petitioners' goods, as of the date and hour he was served a copy of our said resolution which embodied in it a restraining order.

"SO ORDERED."[16]

On September 4, 1990, respondent court issued another resolution,[17] premised "(u)pon agreement of the parties," ordering private respondents, among other things, to deposit in escrow with the Philippine National Bank the back rentals due on the premises in question. Petitioner, for his part, was ordered, upon said deposit, to return to private respondents all the goods listed in the inventory which had been seized by the sheriff and to return to private respondents the subject premises if they had regularly consigned the current monthly rental of P5,000.00 as fixed by the metropolitan trial court.

Petitioner filed a Manifestation and Urgent Motion for Reconsideration[18] of the aforesaid resolution on the ground that the same is contrary to what had been suggested. He contended that what was suggested by respondent court was the payment of back rentals and the disposition of the levied goods; that nowhere in the transcripts does it appear that he agreed to return the premises in question; and since the matter of the premises was never touched upon, to order the return thereof for occupancy by private respondents is without factual and legal bases.

Petitioner further alleged that the escrow deposit of P110,000.00 made by private respondents was insufficient because the deposit should have been in the amount of P118,000.00; that the decision of the metropolitan trial court ejecting private respondents had become final and executory; that respondent court has no jurisdiction over the petition; that certiorari is not the remedy to obtain the review of a decision which has already become final; and that said decision had already been fully executed with respect to the ejectment aspect.

Private respondents filed their opposition to the manifestation and urgent motion for reconsideration and prayed for the implementation of the resolution dated September 4, 1990, insisting that they had effected compliance by increasing the escrow deposit to P118,000.00. On October 9, 1990, petitioner filed his reply to said opposition of private respondents, alleging, inter alia, that the back rentals represented by the escrow deposit has long been overdue; that since private respondents had occupied the subject premises they should already pay the back rentals to petitioner; that private respondents had refused to cooperate with petitioner in the withdrawal of the escrow deposit from the Philippine National Bank; and praying that, unless petitioner was paid the P118,000.00 back rentals, the seized goods of private respondents be sold at public auction to pay the same.

On these antecedent facts was issued the resolution of respondent court now being impugned in the instant petition, the dispositive portion of which provides:

"WHEREFORE, the foregoing incidents will be disposed of in this resolution, thus:

1. Private respondent is ordered:

- (a) to open the padlocked premises in question and deliver possession of the premises to petitioners;
- (b) to return the seized goods listed in the inventory on record to petitioners.

2. Petitioners are ordered:

- (a) to accompany private respondent to the PNB and serve a copy of this certified resolution on said bank so that private respondent can avail himself of the cash equivalent of the escrow deposit in the amount of P118,000.00;
- (b) to pay private respondent a monthly rental of P5,000.00, as fixed by the Metropolitan Trial Court of Manila, for the occupancy of the subject premises during the pendency of this petition.

3. The Philippine National bank (Ermita Branch) is ordered:

- (a) to pay to private respondent Leopoldo C. Sy the cash equivalent of petitioners' escrow deposit of P118,000.00, under Acct. No. 220-566178-9, immediately upon presentation by petitioners of a certified copy of this resolution, with interest on the deposit to inure to private respondent's benefit, and (the) bank's service fees, if any, to be borne by petitioners, pursuant to this court's resolution of September 4, 1990.

4. Respondent deputy sheriff Rolando Javier is ordered:

- (a) to implement this resolution in conjunction with this court's resolution of September 4, 1990.

5. If, despite payment to him by the PNB of the P118,000.00 plus any interest accrued thereon, private

respondent, for any reason at all, still refuses to open the padlocked premises and deliver the possession thereof to petitioners, as well as to return petitioners' seized goods as listed in the inventory on record, respondent sheriff Javier is hereby authorized to force open and deliver said premises to petitioners, as well as force open the bodega and deliver the goods stored therein as listed in said inventory to the same petitioners; and, if the assistance of police authorities is needed, this resolution hereby orders the police officer or officers whom said sheriff may call upon to immediately render the necessary assistance to implement this resolution.

"All concerned are warned to comply herewith under pain of contempt.

"SO ORDERED." [19]

Petitioner contends that Paragraphs 1(a) and (b), 4 and 5 of the aforequoted decretal portion of said resolution were made with grave abuse of discretion, or without or in excess of jurisdiction, alleging that respondent court should not have assumed jurisdiction over the petition for certiorari filed by private respondents considering that the latter had already lost their right to appeal from the decision of the trial court.

We may observe, at this juncture, that actions for forcible entry and unlawful detainer falling within the jurisdiction of the municipal and metropolitan trial courts shall be governed by the Rule on Summary Procedure, except where the question of ownership is involved, or where the damages or unpaid rentals sought to be recovered by the plaintiff exceed P20,000.00 at the time of the filing of the complaint. It appears that the question of ownership is not directly involved in nor has it been definitively raised as an issue to be decided in connection with the merits of Civil Case No. 127019-CV or is, at least, a determinant factor in the proceedings to be conducted in said case.

Private respondents insist that the Rule on Summary Procedure does not apply since there is a question of ownership involved albeit in another case pending in another court, that is, the aforesaid Civil Case No. 88-47264 in the Regional Trial Court of Manila. We apprehend that if this theory is adopted, the applicability of the Rule on Summary Procedure in ejectment cases could easily be thwarted by the defendant through the simple expedient of filing an action in a regional trial court contesting plaintiff's ownership over the property from which defendant is sought to be evicted. Hence, the obvious intimation of private respondents that the regular procedure, and not the summary procedure, should be followed in the hearing of Civil Case No. 127019-CV, because of the existence of Civil Case No. 88-47264, does not impress us as being endowed with legal or logical support.

The rule is that the pendency of an action for annulment of sale and reconveyance may not be successfully pleaded in abatement of an action for unlawful detainer or forcible entry. It is provided that, in ejectment cases, when the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.[20] But this rule is not even involved in the present case since the determination of the question of ownership is the subject of another case and is reposed in another court.

Thus, the fact that the tenant had previously filed a separate action in the former Court of First Instance involving the ownership of the land is not a valid reason to frustrate the summary remedy of ejectment. Such action filed by the tenant only lends credence to the fact that the ejectment case filed by plaintiffs against the former does not involve the question of title.[21] This is so because the judgment rendered in an ejectment suit shall not bar an action between the same parties respecting title to the land or building nor shall it be held conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.[22] Furthermore, in ejectment cases the jurisdiction of the court is determined by the allegations of the complaint, not by the defenses raised by defendant.[23]

By any standard, the delay in the resolution of the unlawful detainer case and the enforcement of the decision

therein is anathema to the summary nature of unlawful detainer proceedings. This is especially true under the Rule on Summary Procedure streamlining the proceedings in forcible entry and detainer cases to achieve a more expeditious and less expensive determination thereof. The pendency of the action for reconveyance does not constitute a compelling reason to delay the termination of an ejectment case, for it gives rise merely to an expectancy that the documents assailed therein may be nullified and the subject properties may be ordered reconveyed to private respondents, as compared to the clear, actual and existing legal right of petitioner to the possession of the subject property as the registered owner.[24]

Petitioner submits that under the Rule on Summary Procedure, a motion for reconsideration is a prohibited pleading, the filing of which does not stop the running of the reglementary period to appeal, hence the notice of appeal of private respondents was filed out of time and the decision of the trial court became final and executory. He also invokes the rule that if a judgment of an inferior court is alleged to be erroneous and is sought to be reviewed, the remedy is an appeal to the regional trial court, not the filing with that court of a special civil action for certiorari. Appeal, whether from an inferior court or from a regional trial court, is antithetical to the special civil action of certiorari. We cannot fault his submission that perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, much less to entertain the appeal.[25]

Time and again, this Court has dismissed petitions for certiorari to annul decisions or orders which could have, but have not, been appealed. Where the court has jurisdiction over the subject matter, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction. However erroneous they may be, they cannot be corrected by certiorari. The few significant exceptions are when public welfare and the advancement of public policy so dictate;[26] or when the broader interests of justice so require; or when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority;[27] or when appeal is satisfactorily shown to be an inadequate remedy under the circumstances.[28]

It is, therefore, imperative that under the factual ambience of this case and the events that have apparently supervened therein, respondent court should primarily and promptly determine whether any of the aforesaid exceptions apply to justify its assuming jurisdiction over a case the judgment wherein is postulated to have become final and executory.

Respondent court is, of course, aware that a notice of appeal was filed in the trial court in Civil Case No. 127019-CV but was not given due course for having been filed out of time, a fact confirmed by the regional trial court in Civil Case No. 89-50315. Moreover, in its resolution of August 24, 1990, hereinbefore discussed and which appears to be the prudent course of action pending the decision in CA-G.R. SP No. 22521, respondent court already denied private respondents' motion for restoration to them of the possession of subject premises, and the return of the goods removed therefrom, precisely because the alias writ of execution subject of the petition with said court had already been enforced. We find no plausible reason, and none has apparently been offered or advanced, to justify the issuance of respondent court's resolution of October 31, 1990 which is exactly the reverse of and contrary to its previous orders.

With the challenge to its jurisdiction looming large as the primal question which it should have addressed, we repeat that there is an exigent need for respondent court to first decide whether the main action is dismissible or may be given due course and the writ granted as prayed for. The ancillary issues subject of the challenged resolution could be preemptive or may render nugatory the legal effects of the resolution which respondent court may hand down on the issues which can be decided on the merits only in the main case itself.

ACCORDINGLY, the assailed resolution of October 31, 1990 is hereby ANNULLED and SET ASIDE, with the directive that respondent court forthwith proceed with deliberate dispatch in CA-G.R. SP No. 22521 in the manner indicated herein.

SO ORDERED.

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

* Substituted as the public respondent in lieu of the Justices thereof who were originally impleaded, per resolution of this Court dated November 12, 1990.

[1] Penned by Associate Justice Jesus M. Elbinias, with Justices Rodolfo A. Nocon and Pedro A. Ramirez concurring; Annex A, Petition; Rollo, 23.

[2] Rollo, CA-G.R. SP No. 22521, 12.

[3] Ibid., id., 18.

[4] Ibid., id., 37.

[5] Ibid., id., 43 & 58.

[6] Penned by Judge Ernesto A. Reyes; *ibid.*, id., 59.

[7] Ibid., id., 70.

[8] Annex G, Petition; Rollo, 37.

[9] Rollo, CA-G. R. SP No. 22521, 73.

[10] Ibid., id., 74.

[11] Ibid., id., 75.

[12] Ibid., id., 91.

[13] Ibid., id., 98.

[14] Annex K, Petition; Rollo, 49.

[15] Annex M, Petition; Rollo, 58.

[16] Annex N, Petition; Rollo, 61.

[17] Rollo, CA-G. R. SP No. 22521, 182.

[18] Ibid., id., 193.

[19] Rollo, 26-27.

[20] Sec. 33 (2), B.P. Blg. 129; Par. 10, Interim Rules and Guidelines.

[21] *Lozada vs. Abragan, et al.*, 66 SCRA 600 (1975).

[22] *Ang Ping, et al. vs. Regional Trial Court of Manila, Branch 40, et al.*, 154 SCRA 77 (1987).

[23] *Ramirez vs. Chit*, 21 SCRA 1364 (1967).

[24] Galgala, et al. vs. Benguet Consolidated Inc., et al., 177 SCRA 288 (1989).

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

[26] Lansang, Jr., et al. vs. Court of Appeals, et al., 184 SCRA 230 (1990).

[27] Sunbeam Convenience Foods, Inc., et al. vs. Court of Appeals, et al., 181 SCRA 443 (1990).

[28] Bank of America NT & SA vs. Court of Appeals, et al., 186 SCRA 417 (1990).

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