

THIRD DIVISION

[G.R. No. 196598, January 17, 2018]

EDITHA B. ALBOR, PETITIONER, VS. COURT OF APPEALS, NERVA MACASIL JOINED BY HER HUSBAND RUDY MACASIL AND NORMA BELUSO, JOINED BY HER HUSBAND NOLI BELUSO, RESPONDENTS.

D E C I S I O N

MARTIRES, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to reverse and set aside the 24 September 2009^[1] and 15 February 2011^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 03895. The assailed CA Resolutions dismissed herein petitioner Editha B. Albor's (*Editha*) appeal from the 8 October 2008 Decision^[3] of the Department of Agrarian Reform Adjudication Board (*DARAB*) in DARAB Case No. 13162, for having been filed out of time.

ANTECEDENTS

Editha was the agricultural lessee of a 1.60 hectare riceland portion and a 1.5110 hectare sugarland portion of Lot 2429 located at Barangay Dinginan, Roxas City. Lot 2429 was covered by Transfer Certificate of Title (*TCT*) No. RT-108 (522),^[4] registered in the name of Rosario Andrada (*Rosario*), married to Ramon Gardose. As agricultural lessee, Editha had been paying rent to the agricultural lessors, the heirs of Rosario. On 22 September 2000, the Municipal Agrarian Reform Officer (*MARO*) of Roxas City, invited Editha to appear before the MARO office on 20 October 2000. Editha heeded the invitation and there met respondents who informed her that they had purchased Lot 2429 from the heirs of Rosario. No Deed of Sale, however, was shown to Editha.

On 7 November 2000, Editha was able to obtain from the Clerk of Court of the Regional Trial Court (*RTC*) in Roxas City, a document entitled "Extra-Judicial Settlement with Deed of Sale," purportedly executed by the heirs of Rosario. It appears that on 6 June 1997, the heirs of Rosario adjudicated unto themselves Lot 2429 and thereupon sold the same to respondents for P600,000.00. Asserting that she had the right to redeem Lot 2429 from respondents, Editha lodged a complaint for redemption of landholding and damages before the Provincial Agrarian Reform Adjudicator (*PARAD*).

In the main, Editha alleged that under Section 12 of Republic Act (*R.A.*) No. 3844,^[5] as amended by R.A. No. 6389, she had the right to redeem Lot 2429 within 180 days from notice in writing of the sale which shall be served by the vendee on all lessees affected and on the Department of Agrarian Reform upon registration of the sale. Considering that the said extrajudicial settlement with deed of sale had not yet been registered with the Register of Deeds of Roxas City, her 180-period for

redemption did not commence. Thus, she prayed that judgment be rendered declaring her entitled to redeem the said lot, at the price of P60,000.00.

On their part, respondents asserted that prior to the actual sale of Lot 2429, Editha knew that the selling price was P600,000.00 and not P60,000.00, as misleadingly alleged in her complaint. Respondents stated that on 21 April 1997,^[6] a certain Atty. Alejandro Del Castillo, together with Eva Gardose-Asis, representing the heirs of Rosario, conferred with Editha and her son Bonifacio Albor about the impending sale of Lot 2429. During the conference, Editha was apprised of her right of preemption, and Lot 2429 was offered to her for the price of P600,000.00. This notwithstanding, Editha did not exercise her preemptive right to buy the lot; consequently, the sale was consummated between the heirs of Rosario and respondents on 6 June 1997.

Respondents further claimed that Editha was well-informed in writing regarding the sale of Lot 2429. They alleged that Felisa Aga-in and Teresita Gardose, acting in behalf of the other heirs of Rosario, executed a notice, dated 16 March 1998, informing Editha that respondents were interested in buying Lot 2429; and that if she so desired, she could still repurchase the property from respondents.

Finally, respondents averred that they sent Editha a written demand for payment of rentals reckoned from 1998. Instead of complying, Editha instituted the complaint for redemption. Accordingly, respondents prayed for collection of back rentals, termination of the agricultural leasehold agreement, moral damages, attorney's fees, and litigation expenses.

In its 30 June 2003 decision,^[7] the PARAD found that Editha was not properly notified of the sale. It observed that the 16 March 1998 notice which respondents presented failed to indicate the terms and particulars of the sale. As such, it ruled that Editha's right of redemption did not prescribe for want of a valid written notice.

While the PARAD sustained Editha's right of redemption, it nevertheless resolved to dismiss her complaint after finding that only P216,000.00 was consigned as redemption price. Citing jurisprudence on the matter, the PARAD opined that tender of payment must be for the full amount of the repurchase price; otherwise, the offer to redeem would be held ineffectual. It noted that in the extrajudicial settlement and deed of sale which Editha herself procured, the purchase price stated was P600,000.00, and that such price was never disputed. Hence, absent evidence to the contrary, there can be no doubt that P600,000.00 was the actual amount that respondents paid for Lot 2429. The decretal portion of the PARAD's decision reads:

WHEREFORE, premises considered, judgement is hereby rendered as follows:

- 1) DISMISSING the complaint for redemption;
- 2) ORDERING the defendants, their agents or representatives and any other persons acting for and in their names to maintain the complainant and the immediate members of her family in peaceful possession, cultivation and enjoyment of the subject land;

- 3) ORDERING the complainant to pay the defendants ONE HUNDRED (101) CAVANS of clean palay as back rentals for the riceland portion and TWO THOUSAND FIVE HUNDRED (P2,500.00) PESOS as back rentals for the sugarland portion representing the rentals in arrears for agricultural crop years 1998-1999 to 2001-2002, and thereafter, 50 cavans of palay and P1,000.00 pesos annually until the execution of this decision;
- 4) ORDERING the parties to seek the assistance of the Department of Agrarian Reform through its Municipal Office concerned and execute an agricultural lease contract over the subject land;
- 5) DIRECTING the Department of Agrarian Reform through its Provincial and/or Municipal Offices to initiate and conduct mediation between the parties, assist them in the determination and fixing of agricultural lease rentals and in the execution of agricultural lease contract; and
- 6) DIRECTING further the Department of Agrarian Reform through its Provincial and/or Municipal Offices to conduct a survey on the sugarland portion for the determination of its exact area in aid of their fixing of rentals.

All claims and counterclaims are hereby dismissed for lack of evidence.

SO ORDERED.^[8]

Aggrieved, Editha filed an appeal before the DARAB. On 10 November 2008, Editha's erstwhile counsel, Atty. Fredicindo A. Talabucon (*Atty. Talabucon*), received a copy of the DARAB's 8 October 2008 decision which affirmed *in toto* the PARAD's ruling.

On 25 November 2008, Editha filed before the CA a motion for extension of time^[9] to file a Rule 43 petition for review. She prayed for an additional fifteen (15) days, or from 25 November 2008 until 10 December 2008.

Shortly thereafter, on 3 December 2008, a motion to withdraw as counsel,^[10] dated 28 November 2008, was filed by Atty. Talabucon. It was alleged that Editha decided to engage the services of another counsel and for said reason, Atty. Talabucon was withdrawing his appearance. Editha signified her conformity to the motion to withdraw as counsel.

On 9 December 2008, Editha's new counsel, Atty. Ferdinand Y. Samillano (*Atty. Samillano*), filed with the CA a notice of appearance^[11] and at the same time moved for an extension of thirty (30) days, or from 10 December 2008 until 9 January 2009, within which to file the petition for review. The second motion for extension of time was grounded on heavy workload and the need for more time to study the case.

Eventually, Editha's petition for review was filed on 5 January 2009.

The Assailed CA Resolutions

In the assailed resolution, dated 24 September 2009, the CA dismissed Editha's petition for review for having been filed out of time. The appellate court ratiocinated that while it may grant Editha's first motion for extension of fifteen (15) days within which to file the petition, it was devoid of authority to grant her second motion for extension which asked for an additional time of thirty (30) days.

Editha filed a motion for reconsideration, which was likewise denied by the CA in its 15 February 2011 resolution. Both resolutions denying Editha's petition for review were anchored on Section 4, Rule 43 of the Rules of Court, *viz*:

Section 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

In her bid to undo the CA resolutions, Editha comes before this Court via a Rule 65 petition for certiorari.

ISSUE

WHETHER OR NOT THE CA ERRED IN DISMISSING EDITHA'S PETITION FOR REVIEW FOR HAVING BEEN FILED OUT OF TIME.

OUR RULING

Editha's petition fails.

Editha availed of the wrong mode of appeal in bringing her case before this Court.

The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45; and such is not similar to a petition for certiorari under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.^[12]

On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse.^[13] It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure

or mistakes in the findings or conclusions of the lower court.^[14] As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.^[15]

The 24 September 2009 and 15 February 2011 resolutions of the CA were final and appealable judgments. In particular, the resolution dated 24 September 2009 dismissed Editha's Rule 43 petition for review, while the resolution dated 15 February 2011 denied her motion for reconsideration of the earlier resolution. The assailed resolutions disposed of Editha's appeal in a manner that left nothing more to be done by the CA with respect to the said appeal.^[16] Hence, Editha should have filed an appeal before this Court by way of a petition for review on certiorari under Rule 45, not a petition for certiorari under Rule 65.^[17]

Editha received the 15 February 2011 resolution denying her motion for reconsideration on 28 February 2011. Under the rules, she had until 15 March 2011 to file a petition for review on certiorari with this Court. Editha allowed the period to lapse without filing an appeal and, instead, filed this petition for certiorari on 29 April 2011. Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.^[18] Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.^[19] Accordingly, adoption of an improper remedy already warrants outright dismissal of this petition.^[20]

Even if the Court looks beyond Editha's procedural misstep, her petition must fail.

Editha imputes grave abuse of discretion on the part of the CA and argues that it was too technical and constricted in applying the rules of procedure. She insists that Section 4, Rule 43 of the Rules of Court admits of an exception, as the said provision states that a second extension may be granted for compelling reason.

Editha posits that there is a compelling reason to grant a second extension of time because on 3 December 2008, Atty. Talabucon suddenly withdrew as her counsel. It was only on 9 December 2008 that she hired a new counsel, Atty. Samillano. Having just entered the picture, Atty. Samillano needed more time to study the case, and he could not be expected to finish drafting the petition for review in just one (1) day before the expiration of the 15-day extension granted by the CA. In this accord, Editha contends that the filing of the second motion for extension of time was justified; and that the CA's dismissal of her petition for review impinged on her substantive right to due process.

The arguments proffered are specious and deserve scant consideration.

It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well.^[21] The