

## THIRD DIVISION

[ G.R. NO. 193058, July 08, 2015 ]

**EDGAR C. NUQUE, PETITIONER, VS. FIDEL AQUINO AND SPOUSES ALEJANDRO AND ERLINDA BABINA, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Resolutions<sup>[1]</sup> of the Court of Appeals (CA), dated March 17, 2010<sup>[2]</sup> and July 21, 2010<sup>[3]</sup> in CA-G.R. SP No. 112750. The Resolution of March 17, 2010 dismissed petitioner's Petition for *Certiorari* with Urgent Motion for Ocular Inspection and *Status Quo* Order,<sup>[4]</sup> while the Resolution dated July 21, 2010 denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Herein petitioner is the owner of three parcels of land denominated as Lot Nos. 6018, 6019 and 2625 which are all located in Gerona, Tarlac. He acquired these lots in a public auction sale conducted by the Sheriff of Tarlac City on October 21, 1999. The subject properties were originally owned by one Hospicia Cardona (*Cardona*) who was able to obtain titles over the said properties as early as 1935 (TCT No. 10327 covering Lot No. 2625) and 1941 (OCT No. 2501 covering Lot Nos. 6018 and 6019). It is through Cardona's titles that petitioner derived his ownership over the disputed lands after purchasing them in the abovementioned auction sale. However, petitioner later discovered that, in 1996, herein respondent Fidel Aquino (*Aquino*) was able to obtain title (OCT No. P-17563) over Lot Nos. 6018 and 2625 by means of filing an application for free patent. It appears, however, that when Aquino filed his application for free patent, the subject lots were already owned by Cardona. Nonetheless, Aquino, was able to sell the subject properties to the spouses Alejandro and Erlinda Babina (*respondent spouses*) who also obtained title (TCT No. 351681) over the disputed lots on January 24, 2002. Thus, on September 9, 2002, petitioner filed with the Regional Trial Court (RTC) of Tarlac City a Complaint for cancellation of title with damages.

On November 3, 2004, the RTC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered declaring null and void OCT No. P-17563 and TCT No. 351681 and declaring as valid OCT No. 2501 and TCT 10327. Defendant Fidel Aquino is also ordered to pay plaintiff the sum of Php 10,000.00 as nominal damages and Php5,000.00 as reasonable attorney's fees and to pay the costs. The defendants Fidel Aquino and Spouses Babina are likewise ordered to pay their respective shares in the relocation survey that was conducted in the amount of

Php5,500 each, or a total of Php 11,000.00. The Office of the Provincial Prosecutor should conduct an investigation to determine any possible criminal liability of the DENR Personnel and of Fidel Aquino and to file the necessary charges if warranted.

The defendants are ordered to submit to this Court the owner's copy of TCT No. 351681 within ten (10) days from finality of this decision. Otherwise, the Court will order its cancellation even without the surrender of said title.

SO ORDERED.<sup>[5]</sup>

The case, which was appealed by respondent Alejandro Babina (*Alejandro*), eventually reached this Court. On July 19, 2006, the Court issued a Resolution which resolved to consider the case closed and terminated for failure of Alejandro to file his petition for review on *certiorari*. Per Entry of Judgment<sup>[6]</sup> issued by this Court, the Resolution had become final and executory on September 13, 2006.

Respondent spouses' title over the disputed lots was subsequently canceled pursuant to an Order<sup>[7]</sup> issued by the RTC dated March 30, 2009. In the meantime, petitioner learned that respondent spouses were occupying the subject properties.

On May 4, 2009, petitioner filed with the RTC an *Ex-Parte* Motion for Writ of Possession<sup>[8]</sup> praying that he be placed in possession of the subject lots, considering that respondent spouses no longer have any right over the said properties as a consequence of the cancellation of their title.

Respondent spouses, on the other hand, filed a motion for reimbursement of expenses contending that they are possessors in good faith and that they are entitled to be reimbursed for the improvements they have introduced on the subject property, the alleged value of which is P7,000,000.00

On November 26, 2009, the RTC issued an Order<sup>[9]</sup> denying the motions of both petitioner and respondent spouses. As to petitioner's motion, the RTC held that petitioner's complaint was an action for the cancellation of titles and that there was no prayer for the recovery of possession of the disputed lots. The trial court also ruled that its November 3, 2004 Decision had already become final and executory and has, thus, become immutable and unalterable. Thus, the RTC concluded that, since petitioner's motion for the issuance of a writ of possession is not a legal consequence of his action for cancellation of title, the said motion can no longer be entertained after the finality of the decision in the action for cancellation of title.

Petitioner then filed with the CA a special civil action for *certiorari* under Rule 65 of the Rules of Court.

In its assailed Resolution of March 17, 2010, the CA dismissed petitioner's *certiorari* petition on the ground that the latter failed to move for the reconsideration of the questioned RTC Order before filing his petition for *certiorari*.

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated July 21, 2010.

Hence, the instant petition for review on *certiorari* based on the following arguments:

PUBLIC RESPONDENT COMMITTED A SERIOUS ERROR IN REQUIRING A PRIOR MOTION FOR RECONSIDERATION BEFORE THE FILING OF SUBJECT PETITION FOR CERTIORARI AND CONSIDERING THE ABSENCE THEREOF A FATAL DEFECT, GIVEN THE OBVIOUS FUTILITY OR USELESSNESS OF A MOTION FOR RECONSIDERATION BASED ON THE EXPRESSED SENTIMENTS OF THE TRIAL COURT IN ITS DECISION, WHICH IS ONE OF THE GROUNDS FOR DISPENSING WITH THE REQUIREMENT OF A PRIOR MOTION FOR RECONSIDERATION.

PUBLIC RESPONDENT COMMITTED A SERIOUS ERROR IN MIS-APPRECIATING THAT THE ORDER OF NOVEMBER 26, 2009 IS IN THE NATURE OF A FINAL ORDER, HENCE, IT FALLS WITHIN THE EXCEPTION TO THE RULE REQUIRING A PRIOR MOTION FOR RECONSIDERATION.

SUBJECT PETITION FOR CERTIORARI AND MANDAMUS IS MERITORIOUS, THUS, THE SAME SHOULD BE GIVEN DUE COURSE BY PUBLIC RESPONDENT TO AVOID A MISCARRIAGE OF JUSTICE.<sup>[10]</sup>

The petition lacks merit.

At the outset, the Court agrees with petitioner's contention that the RTC Order denying his motion for the issuance of a writ of possession is in the nature of a final order, as it left nothing else to be resolved thereafter. Proceeding from this premise, petitioner's proper remedy was, thus, to appeal the RTC Order. It is settled that the proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal.<sup>[11]</sup> This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution.<sup>[12]</sup> The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal.<sup>[13]</sup> Thus, it was wrong for petitioner to immediately resort to the extraordinary remedy of *certiorari* when he could have appealed the assailed RTC Order. While it is true that the availability of an appeal does not foreclose recourse to a special civil action of *certiorari* in cases where appeal is not adequate, equally beneficial, speedy and sufficient,<sup>[14]</sup> petitioner failed to demonstrate that these instances are present in the instant case.

In any case, even granting that petitioner's resort to a *certiorari* petition is proper, the Court finds no error on the part of the CA in dismissing his petition on the ground that he failed to move for the reconsideration of the assailed RTC Order prior to filing his *certiorari* petition.

Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for certiorari.* When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion