

FIRST DIVISION

[G.R. No. 147257, July 31, 2013]

**SPOUSES JESUS DYCOCO and JOELA E. DYCOCO, Petitioners, vs.
THE HONORABLE COURT OF APPEALS, NELLY SIAPNOSANCHEZ
and INOCENCIO BERMA,^[1] Respondents.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This Petition for *Certiorari* under Rule 65 of the Rules of Court questions, for having been rendered with grave abuse of discretion, the Resolution^[2] dated June 2, 2000 of the Court of Appeals dismissing the appeal of petitioner-spouses Jesus and Joela Dycoco in CA-G.R. SP No. 58504, and the Resolution^[3] dated January 10, 2001 denying reconsideration.

On November 23, 1994, petitioner-spouses filed a complaint for ejectment, cancellation of certificates of land transfer, damages and injunction against private respondents Nelly Siapno-Sanchez and Inocencio Berma in the Office of the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB) in Albay. Eusebio Siapno, Rogelio Siapno, Felix Sepato, Sr., Leonora Talagtag and Pablo Bonde, Sr. were also named respondents in the complaint.^[4]

In their complaint, petitioner-spouses alleged that they are the absolute and registered owners of Lot No. 216, a 38,157 sq.m.-parcel of land situated at Bonbon, Libon, Albay, covered by Original Certificate of Title (OCT) No. VH-5187 of the Register of Deeds of Albay. According to them, the respondents named in the complaint took advantage of the liberality of petitioner-spouses, entered the subject property, successfully registered themselves as tenants for agrarian reform purposes, and occupied and cultivated the property to the prejudice of petitioner-spouses. Said respondents deprived petitioner-spouses of the enjoyment and possession of the property without paying petitioner-spouses or the Land Bank the rentals due thereon. Moreover, in violation of agrarian reform laws, said respondents subleased their respective landholdings to other persons.^[5]

Petitioner-spouses reiterated these matters in their position paper.^[6]

All seven respondents named in the complaint were summoned but only Bonde and Rogelio submitted their answer and position paper.^[7] Bonde and Rogelio showed that they already own their portions of the property through Operation Land Transfer under Presidential Decree No. 27. Pursuant to the said law, petitioner-spouses executed deeds of transfer in their favor which resulted in the issuance to them of emancipation patents and, subsequently, OCT No. E-2333 and OCT No. E-2334, respectively.^[8]

Thereafter, the Provincial Adjudicator rendered a decision dated June 27, 1995 finding private respondents "not worthy to become beneficiaries" under Presidential Decree No. 27.^[9] The dispositive portion of the decision reads:

WHEREFORE, finding for the complainants, respondents Nelly Siapno-Sanchez, Leonora Talagtag and Inocencio Berma are hereby adjudged not worthy to become beneficiaries under PD 27[;] hence[,] judgment is hereby issued:

1. Ordering the ejectment of Nelly Siapno-Sanchez, Leonora Talagtag, and Inocencio Berma from their respective tillage;
2. Ordering Rogelio Siapno and Pablo Bonde, Sr. to comply with their obligation under the Deed[s] of Transfer in their favor;
3. Ordering the dismissal of the case against Eusebio Siapno, for lack of evidence; and
4. Ordering the respondents under paragraph 1 to pay complainants jointly and severally nominal damages in the amount of P10,000.00 and attorney's fee[s] in the amount of P10,000.00.^[10]

On motion of petitioner-spouses, the Provincial Adjudicator issued a writ of execution dated November 22, 1995 ordering, among others, the ejectment of private respondents from their respective tillage.^[11] Subsequently, petitioner-spouses filed a Motion for Issuance of Alias Writ of Execution and to Cite Respondents in Contempt, claiming that private respondents returned to the subject property although they have already been ordered ejected.^[12] Private respondents filed a Motion to Quash or Suspend Implementation of the Writ of Execution. They explained that they are already the owners of their respective portions of the property in question by virtue of the Operation Land Transfer under Presidential Decree No. 27. According to private respondents, petitioner-spouses executed deeds of transfer in their favor which resulted to the issuance to them of emancipation patents and, afterwards, OCT No. E-2332 in the name of private respondent Siapno-Sanchez and OCT Nos. E-2335 and E-2336 in the name of private respondent Berma. Private respondents further asserted that the decision ordering their ejectment from their tillage is not yet executory as they have filed a notice of appeal on August 29, 1996.^[13]

Petitioner-spouses submitted their Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated September 16, 1996 and Supplemental Comments [on]/Opposition to the Motion to Quash/Suspend Implementation of Writ of Execution and Notice of Appeal Filed by Respondents dated October 3, 1996 where they countered private respondents' motion by arguing that both the motion to quash and the notice of appeal were filed beyond the prescribed period.^[14]

In an order dated October 16, 1996, the Provincial Adjudicator found that the copy of the decision dated June 27, 1995 was sent by registered mail to and, on July 10, 1995, received by Crispina Berma Penaranda, daughter of private respondent

Berma, who resided in a different *barangay*. Still, the Provincial Adjudicator ruled that private respondent Berma was bound by his daughter's receipt and the decision is already final and executory as against him. Thus, with respect to him, the notice of appeal was filed out of time. On the other hand, there was no showing that private respondent Siapno-Sanchez has been served a copy of the decision before she procured a copy of it from the Office of the Provincial Adjudicator on August 26, 1996. Hence, as regards her, the notice of appeal was filed on time. Therefore, the Provincial Adjudicator denied the Motion to Quash or Suspend Implementation of the Writ of Execution with respect to private respondent Berma, and approved and granted the same motion with respect to private respondent Siapno-Sanchez.^[15]

Private respondent Berma moved for reconsideration but his motion was denied.^[16] Nevertheless, he joined the appeal memorandum filed by private respondent Siapno-Sanchez in the DARAB.^[17] On the other hand, petitioner-spouses filed a Counter-Memorandum With Motion to Dismiss Appeal dated February 9, 1997, reiterating that private respondents' appeal was filed out of time.^[18]

In a decision dated March 20, 2000,^[19] the DARAB found that both private respondents were beneficiaries of Presidential Decree No. 27 and that they are no longer tenants but owners of their respective portions of the property as evidenced by OCT No. E-2332 in the name of private respondent Siapno-Sanchez and OCT Nos. E-2335 and E-2336 in the name of private respondent Berma. Ejectment would therefore not lie as against them as landholdings covered by the Operation Land Transfer under Presidential Decree No. 27 do not revert to the original owner. Thus, the DARAB reversed and set aside the decision dated June 27, 1995 in so far as private respondents were concerned. The immediate reinstatement of private respondents to their respective landholdings was ordered, as well as their restoration to their original status as owner-beneficiaries of the landholdings awarded to them pursuant to Presidential Decree No. 27.^[20]

Petitioner-spouses received a copy of the DARAB decision on April 3, 2000 and had until April 18, 2000 to file an appeal. They filed a motion in the Court of Appeals praying for an extension of 30 days within which to file their intended petition.^[21] The Court of Appeals granted them an extension of 15 days, with warning that no further extension will be given.^[22] Thus, petitioner-spouses had until May 3, 2000 to file their petition.

Petitioner-spouses filed the petition by registered mail on May 8, 2000. The petition was denied due course and dismissed by the Court of Appeals in a Resolution dated June 2, 2000. In its entirety, the said resolution reads:

The petition (for review), filed under Rule 43 of the 1997 Rules of Civil Procedure is **DENIED DUE COURSE** and, as a consequence, **DISMISSED**, for late filing, as the petition was filed beyond the extended period of fifteen (15) days granted under Resolution dated May 5, 2000, which resolution was issued pursuant to Section 4 of Rule 43, as follows:

"Sec. 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" x x x.^[23]

Petitioner-spouses moved for reconsideration but it was denied in a resolution dated January 10, 2001.

Hence, this petition.

Petitioner-spouses invoke the rule of liberality in the construction of the provisions of the Rules of Court. The petition was filed after the period granted by the Court of Appeals because, on April 10, 2000, they secured the services of a new counsel who still had to study the voluminous records. They claim that the petition they filed with the Court of Appeals is supported by compelling reasons. According to petitioner-spouses, they were deprived of their property without just compensation either from the tenant- beneficiaries or from the government. They were also deprived of due process when the DARAB took cognizance of private respondents' appeal although it was filed more than one year after the decision of the Provincial Adjudicator had become final and executory. In view of the said reasons, the Court of Appeals should have given their petition due course although it was filed five days after the lapse of the extended period.

Petitioner-spouses are wrong.

Firstly, petitioner-spouses are before this Court with a petition for *certiorari* under Rule 65 of the Rules of Court which is a wrong remedy.

A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[24]

Contrary to the claim of petitioner-spouses in the opening paragraph of their petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition, the right recourse was to appeal to this Court in the form of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The

petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

The Resolutions dated June 2, 2000 and January 1, 2001 of the Court of Appeals were final and appealable judgments. In particular, the Resolution dated June 2, 2000 denied due course to the petition and dismissed it, while the Resolution dated January 1, 2001 denied the motion for reconsideration of the former Resolution. The said Resolutions disposed of the appeal of petitioner-spouses in a manner that left nothing more to be done by the Court of Appeals in respect to the said appeal. Thus, petitioner-spouses should have filed an appeal by petition for review on *certiorari* under Rule 45, not a petition for *certiorari* under Rule 65, in this Court.

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. 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. 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.^[25]

The failure of petitioner-spouses to file an appeal by *certiorari* under Rule 45 of the Rules of Court cannot be remedied by the mere expedient of conjuring grave abuse of discretion to avail of a petition for *certiorari* under Rule 65. In *Balayan v. Acorda*^[26] the Court ruled:

It bears emphasis that the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. x x x. (Citations omitted.)

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. In this case, petitioner-spouses received the Resolution dated January 1, 2001 on January 19, 2001^[27] and, under the rules,^[28] had until February 5, 2001 to file an appeal by way of a petition for review on *certiorari* in this Court. Petitioner-spouses allowed this period to lapse without filing an appeal and, instead, filed this petition for *certiorari* on March 16, 2001.^[29]

Secondly, petitioner-spouses claim that the Court of Appeals committed grave abuse of discretion in dismissing their appeal on the ground of late filing. This is also wrong.

The Court of Appeals granted petitioner-spouses a 15-day extension, within which to file their intended petition. The action of the Court of Appeals was in accordance