

## FIRST DIVISION

[ G.R. No. 187208, February 23, 2011 ]

**CEFERINA LOPEZ TAN PETITIONER, VS. SPOUSES APOLINAR P. ANTAZO AND GENOVEVA O. ANTAZO RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Ceferina Lopez Tan seeks to nullify the Resolution<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 105514 which dismissed her petition for *certiorari* for being the wrong mode of appeal.

The factual antecedents follow.

Respondent Spouses Apolinar and Genoveva Antazo are the registered owners of two parcels of land, namely: (1) a 1,024-square meter lot identified as Lot No. 2190, Cad 609-D, Case-17, AP-04-004442, situated at *Barangay* Pilapila, Binangonan, Rizal and covered by Original Certificate of Title (OCT) No. M-11592; and (2) a 100-square meter portion of a 498-square meter lot identified as Lot 2175, Cad 609-D. An *accion reivindicatoria* suit with damages, docketed as Civil Case No. 06-019, was filed by respondents against petitioner for encroaching on their properties. On 25 July 2008, the Regional Trial Court (RTC), Branch 68, Binangonan, Rizal, rendered judgment favoring respondents, the dispositive portion of which reads:

WHEREFORE, judgment is rendered as follows:

- A. That the defendant encroached on the property of the plaintiffs by 114 square meters.
- B. The defendant is hereby ordered to vacate the 114 square meters of the plaintiffs' property illegally occupied by the defendant and to turn over its full possession and ownership in favor of the plaintiffs. To remove the fence constructed on the encroached area.
- C. The plaintiffs are awarded attorney's fees in the amount of 50,000 pesos.<sup>[2]</sup>

Petitioner filed a motion for reconsideration but was later denied by the RTC on 21 August 2008.

Aggrieved, petitioner filed a petition for *certiorari* before the Court of Appeals on 2

October 2008.

On 6 November 2008, the Court of Appeals dismissed the petition for adopting a wrong remedy or mode of appeal. Petitioner filed a motion for reconsideration but it was subsequently denied in a Resolution dated 10 March 2009.

Hence, the instant recourse grounded on a sole assigned error - that the Court of Appeals has decided a question of substance in a way not in accord with law or with applicable decisions of the Supreme Court.<sup>[3]</sup>

Petitioner maintains that she rightfully filed a petition for *certiorari* before the Court of Appeals on the ground of grave abuse of discretion on the part of the trial court. While conceding that *certiorari* is available only if there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, petitioner avers that her case presents an exception to such general rule because the decision rendered by the trial court is an example of an oppressive exercise of judicial authority. Petitioner justifies the mode of appeal she adopted before the Court of Appeals in that under the Rules of Court, no appeal may be taken from an order denying a motion for reconsideration, *i.e.*, the 21 August 2008 Resolution of the RTC. Petitioner now prays for a liberal interpretation of the rules of procedure.

On the other hand, respondents contend that the instant petition deserves outright dismissal for being fatally defective due to failure to show competent evidence of the identities of the affiants who signed the affidavit of service and the verification and certification against forum shopping. Respondents also assert that *certiorari* is not the proper remedy to assail the decision issued by the RTC. Being improper, respondents argue that the filing of the *certiorari* petition before the Court of Appeals did not toll the running of the appeal period. Consequently, the RTC judgment had already lapsed into finality. Respondents also emphasize that petitioner raises questions of facts which are beyond the purview of this Court to resolve.

The pivotal issue in this case is the correctness of a special civil action for *certiorari* before the Court of Appeals as a remedy against the Decision and Resolution of the Regional Trial Court.

A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.<sup>[4]</sup>

Only the first requisite is here present. Petitioner correctly impleaded the trial court judge in her *certiorari* petition.

Regarding to the second requisite, it is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.<sup>[5]</sup>

The petitioner lists the particulars of the alleged grave abuse of discretion, thus -

THE RESPONDENT JUDGE OR TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN ISSUING THE QUESTIONED ORDERS ANNEXES "A" AND "B."

Under this heading, the following are disputed as tantamount to grave abuse of discretion amounting to lack of jurisdiction and/or without jurisdiction that led to the questioned orders Annexes "A" and "B", viz:

- I. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN FAILING TO APPRECIATE THE DEFENSES AND ARGUMENTS ADVANCED BY THE PETITIONER;
- II. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN FINDING THAT THE EVIDENCE IS SUFFICIENT TO PROVE THAT SPOUSES ANTAZO'S PROPERTY WAS ENCROACHED BY THE PETITIONER BY 114 SQUARE METERS;
- III. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN ORDERING THE PETITIONER TO VACATE AND TURNOVER THE FULL POSSESSION AND OWNERSHIP OF SAID 114 SQUARE METERS TO RESPONDENTS SPOUSES ANTAZO DESPITE THE LATTER'S ABSENCE OF A CLEAR TITLE THERETO;
- IV. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN NOT SUMMARILY DISMISSING THE INSTANT COMPLAINT FOR VIOLATION OF THE RULES ON NON-FORUM SHOPPING;
- V. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN AWARDING RESPONDENTS SPOUSES