

## SECOND DIVISION

[ G.R. No. 173379, December 01, 2010 ]

**ABUBAKAR A. AFDAL AND FATIMA A. AFDAL, PETITIONERS, VS.  
ROMEO CARLOS, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the 3 January 2005<sup>[2]</sup> and 16 June 2006<sup>[3]</sup> Orders of the Regional Trial Court, Branch 25, Biñan, Laguna (RTC) in Civil Case No. B-6721. In its 3 January 2005 Order, the RTC ordered the dismissal of petitioners Abubakar A. Afdal and Fatima A. Afdal's (petitioners) petition for relief from judgment. In its 16 June 2006 Order, the RTC denied petitioners' motion for reconsideration.

#### The Facts

On 18 December 2003, respondent Romeo Carlos (respondent) filed a complaint for unlawful detainer and damages against petitioners, Zenaida Guijabar (Guijabar), John Doe, Peter Doe, Juana Doe, and all persons claiming rights under them docketed as Civil Case No. 3719 before the Municipal Trial Court, Biñan, Laguna (MTC). Respondent alleged that petitioners, Guijabar, and all other persons claiming rights under them were occupying, by mere tolerance, a parcel of land in respondent's name covered by Transfer Certificate of Title No. T-530139<sup>[4]</sup> in the Registry of Deeds Calamba, Laguna. Respondent claimed that petitioner Abubakar Afdal (petitioner Abubakar) sold the property to him but that he allowed petitioners to stay in the property. On 25 August 2003, respondent demanded that petitioners, Guijabar, and all persons claiming rights under them turn over the property to him because he needed the property for his personal use.<sup>[5]</sup> Respondent further alleged that petitioners refused to heed his demand and he was constrained to file a complaint before the *Lupon ng Tagapamayapa* (*Lupon*). According to respondent, petitioners ignored the notices and the *Lupon* issued a "certificate to file action."<sup>[6]</sup> Then, respondent filed the complaint before the MTC.

According to the records, there were three attempts to serve the summons and complaint on petitioners - 14 January, 3 and 18 February 2004.<sup>[7]</sup> However, petitioners failed to file an answer.

On 2 June 2004, respondent filed an ex-parte motion and compliance with position paper submitting the case for decision based on the pleadings on record.<sup>[8]</sup>

In its 23 August 2004 Decision,<sup>[9]</sup> the MTC ruled in favor of respondent. The

dispositive portion of the 23 August 2004 Decision reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants as follows:

1. Ordering defendants Abubakar Afdal, Zenaida Guijabar and all persons claiming rights under them to vacate the subject property and peacefully turn-over possession of the same to plaintiff;
2. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (P10,000.00) as rental arrears from August 25, 2003 up to the date of decision;
3. Ordering defendants to pay plaintiff the amount of TEN THOUSAND PESOS (P10,000.00) a month thereafter, as reasonable compensation for the use of the subject premises until they finally vacate the same;
4. Ordering defendants to pay plaintiff the amount of FIFTY THOUSAND PESOS (P50,000.00) as and for attorney's fees plus ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00) appearance fee;
5. Ordering defendants to pay the costs of suit.

SO ORDERED.<sup>[10]</sup>

On 1 October 2004, the MTC issued a writ of execution.<sup>[11]</sup>

On 30 October 2004, petitioners filed a petition for relief from judgment with the MTC.<sup>[12]</sup> Respondent filed a motion to dismiss or strike out the petition for relief.<sup>[13]</sup> Subsequently, petitioners manifested their intention to withdraw the petition for relief after realizing that it was a prohibited pleading under the Revised Rule on Summary Procedure. On 10 November 2004, the MTC granted petitioners' request to withdraw the petition for relief.<sup>[14]</sup>

On 6 December 2004, petitioners filed the petition for relief before the RTC.<sup>[15]</sup> Petitioners alleged that they are the lawful owners of the property which they purchased from spouses Martha D.G. Ubaldo and Francisco D. Ubaldo. Petitioners denied that they sold the property to respondent. Petitioners added that on 15 December 2003, petitioner Abubakar filed with the Commission on Elections his certificate of candidacy as mayor in the municipality of Labangan, Zamboanga del Sur, for the 10 May 2004 elections. Petitioners said they only learned of the MTC's 23 August 2004 Decision on 27 October 2004. Petitioners also pointed out that they never received respondent's demand letter nor were they informed of, much less participated in, the proceedings before the *Lupon*. Moreover, petitioners said they were not served a copy of the summons and the complaint.

On 3 January 2005, the RTC issued the assailed Order dismissing the petition for relief. The RTC said it had no jurisdiction over the petition because the petition should have been filed before the MTC in accordance with Section 1 of Rule 38 of

the Rules of Court which provides that a petition for relief should be filed "in such court and in the same case praying that the judgment, order or proceeding be set aside."

Petitioners filed a motion for reconsideration. In its 16 June 2006 Order, the RTC denied petitioners' motion.

Hence, this petition.

### **The Issue**

Petitioners raise the sole issue of whether the RTC erred in dismissing their petition for relief from judgment.

### **The Ruling of the Court**

Petitioners maintain that the RTC erred in dismissing their petition for relief. Petitioners argue that they have no other recourse but to file the petition for relief with the RTC. Petitioners allege the need to reconcile the apparent inconsistencies with respect to the filing of a petition for relief from judgment under Rule 38 of the Rules of Court and the prohibition under the Revised Rule on Summary Procedure. Petitioners suggest that petitions for relief from judgment in forcible entry and unlawful detainer cases can be filed with the RTC provided that petitioners have complied with all the legal requirements to entitle him to avail of such legal remedy.

Section 13(4) of Rule 70 of the Rules of Court provides:

SEC. 13. *Prohibited pleadings and motions.* - The following petitions, motions, or pleadings shall not be allowed: x x x

4. Petition for relief from judgment; x x x

Section 19(d) of the Revised Rule on Summary Procedure also provides:

SEC. 19. *Prohibited pleadings and motions.* - The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule: x x x

(d) Petition for relief from judgment; x x x

Clearly, a petition for relief from judgment in forcible entry and unlawful detainer cases, as in the present case, is a prohibited pleading. The reason for this is to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.<sup>[16]</sup>

Moreover, Section 1, Rule 38 of the Rules of Court provides:

SEC. 1. *Petition for relief from judgment, order or other proceedings.* - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, **he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.** (Emphasis supplied)

A petition for relief from judgment, if allowed by the Rules and not a prohibited pleading, should be filed with and resolved by the court in the same case from which the petition arose.<sup>[17]</sup>

In the present case, petitioners cannot file the petition for relief with the MTC because it is a prohibited pleading in an unlawful detainer case. Petitioners cannot also file the petition for relief with the RTC because the RTC has no jurisdiction to entertain petitions for relief from judgments of the MTC. Therefore, the RTC did not err in dismissing the petition for relief from judgment of the MTC.

The remedy of petitioners in such a situation is to file a petition for certiorari with the RTC under Rule 65<sup>[18]</sup> of the Rules of Court on the ground of lack of jurisdiction of the MTC over the person of petitioners in view of the absence of summons to petitioners. Here, we shall treat petitioners' petition for relief from judgment as a petition for certiorari before the RTC.

An action for unlawful detainer or forcible entry is a real action and *in personam* because the plaintiff seeks to enforce a personal obligation on the defendant for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by way of reasonable compensation for his use or occupation of the property.<sup>[19]</sup> In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case.<sup>[20]</sup> Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.<sup>[21]</sup> If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

Sec. 6. *Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. *Substituted Service.* - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Any judgment of the court which has no jurisdiction over the person of the