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THIRD DIVISION

[G.R. No. 175910, July 30, 2009]

ATTY. ROGELIO E. SARSABA, PETITIONER, VS. FE VDA. DE TE, REPRESENTED BY HER ATTORNEY-IN-FACT, FAUSTINO CASTAÑEDA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari*[1] with prayer for preliminary injunction assailing the Order[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 19, Digos City, Davao del Sur, in Civil Case No. 3488.

The facts, as culled from the records, follow.

On February 14, 1995, a Decision was rendered in NLRC Case No. RAB-11-07-00608-93 entitled, *Patricio Sereno v. Teodoro Gasing/Truck Operator*, finding Sereno to have been illegally dismissed and ordering Gasing to pay him his monetary claims in the amount of P43,606.47. After the Writ of Execution was returned unsatisfied, Labor Arbiter Newton R. Sancho issued an Alias Writ of Execution[3] on June 10, 1996, directing Fulgencio R. Lavarez, Sheriff II of the National Labor Relations Commission (NLRC), to satisfy the judgment award. On July 23, 1996, Lavarez, accompanied by Sereno and his counsel, petitioner Atty. Rogelio E. Sarsaba, levied a Fuso Truck bearing License Plate No. LBR-514, which at that time was in the possession of Gasing. On July 30, 1996, the truck was sold at public auction, with Sereno appearing as the highest bidder.[4]

Meanwhile, respondent Fe Vda. de Te, represented by her attorney-in-fact, Faustino Castañeda, filed with the RTC, Branch 18, Digos, Davao del Sur, a Complaint[5] for recovery of motor vehicle, damages with prayer for the delivery of the truck *pendente lite* against petitioner, Sereno, Lavarez and the NLRC of Davao City, docketed as Civil Case No. 3488.

Respondent alleged that: (1) she is the wife of the late Pedro Te, the registered owner of the truck, as evidenced by the Official Receipt[6] and Certificate of Registration;[7] (2) Gasing merely rented the truck from her; (3) Lavarez erroneously assumed that Gasing owned the truck because he was, at the time of the "taking,"[8] in possession of the same; and (4) since neither she nor her husband were parties to the labor case between Sereno and Gasing, she should not be made to answer for the judgment award, much less be deprived of the truck as a consequence of the levy in execution.

Petitioner filed a Motion to Dismiss[9] on the following grounds: (1) respondent has no legal personality to sue, having no real interests over the property subject of the

instant complaint; (2) the allegations in the complaint do not sufficiently state that the respondent has cause of action; (3) the allegations in the complaint do not contain sufficient cause of action as against him; and (4) the complaint is not accompanied by an Affidavit of Merit and Bond that would entitle the respondent to the delivery of the tuck *pendente lite*.

The NLRC also filed a Motion to Dismiss[10] on the grounds of lack of jurisdiction and lack of cause of action.

Meanwhile, Lavarez filed an Answer with Compulsory Counterclaim and Third-Party Complaint.[11] By way of special and affirmative defenses, he asserted that the RTC does not have jurisdiction over the subject matter and that the complaint does not state a cause of action.

On January 21, 2000, the RTC issued an Order[12] denying petitioner's Motion to Dismiss for lack of merit.

In his Answer,[13] petitioner denied the material allegations in the complaint. Specifically, he cited as affirmative defenses that: respondent had no legal personality to sue, as she had no interest over the motor vehicle; that there was no showing that the heirs have filed an intestate estate proceedings of the estate of Pedro Te, or that respondent was duly authorized by her co-heirs to file the case; and that the truck was already sold to Gasing on March 11, 1986 by one Jesus Matias, who bought the same from the Spouses Te. Corollarily, Gasing was already the lawful owner of the truck when it was levied on execution and, later on, sold at public auction.

Incidentally, Lavarez filed a Motion for Inhibition,[14] which was opposed[15] by respondent.

On October 13, 2000, RTC Branch 18 issued an Order[16] of inhibition and directed the transfer of the records to Branch 19. RTC Branch 19, however, returned the records back to Branch 18 in view of the appointment of a new judge in place of Judge-designate Rodolfo A. Escovilla. Yet, Branch 19 issued another Order[17] dated November 22, 2000 retaining the case in said branch.

Eventually, the RTC issued an Order[18] dated May 19, 2003 denying the separate motions to dismiss filed by the NLRC and Lavarez, and setting the Pre-Trial Conference on July 25, 2003.

On October 17, 2005, petitioner filed an Omnibus Motion to Dismiss the Case on the following grounds:[19] (1) lack of jurisdiction over one of the principal defendants; and (2) to discharge respondent's attorney-in-fact for lack of legal personality to sue.

It appeared that the respondent, Fe Vda. de Te, died on April 12, 2005.[20]

Respondent, through her lawyer, Atty. William G. Carpentero, filed an Opposition,[21] contending that the failure to serve summons upon Sereno is not a ground for dismissing the complaint, because the other defendants have already submitted

their respective responsive pleadings. He also contended that the defendants, including herein petitioner, had previously filed separate motions to dismiss the complaint, which the RTC denied for lack of merit. Moreover, respondent's death did not render *functus officio* her right to sue since her attorney-in-fact, Faustino Castañeda, had long testified on the complaint on March 13, 1998 for and on her behalf and, accordingly, submitted documentary exhibits in support of the complaint.

On March 22, 2006, the RTC issued the assailed Order[22] denying petitioner's aforesaid motion.

Petitioner then filed a Motion for Reconsideration with Motion for Inhibition,[23] in which he claimed that the judge who issued the Order was biased and partial. He went on to state that the judge's husband was the defendant in a petition for judicial recognition of which he was the counsel, docketed as Civil Case No. C-XXI-100, before the RTC, Branch 21, Bansalan, Davao del Sur. Thus, propriety dictates that the judge should inhibit herself from the case.

Acting on the motion for inhibition, Judge Carmelita Sarno-Davin granted the same[24] and ordered that the case be re-raffled to Branch 18. Eventually, the said RTC issued an Order[25] on October 16, 2006 denying petitioner's motion for reconsideration for lack of merit.

Hence, petitioner directly sought recourse from the Court via the present petition involving pure questions of law, which he claimed were resolved by the RTC contrary to law, rules and existing jurisprudence.[26]

There is a "**question of law**" when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "**question of fact**" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.[27]

Verily, the issues raised by herein petitioner are "questions of law," as their resolution rest solely on what the law provides given the set of circumstances availing. The first issue involves the jurisdiction of the court over the person of one of the defendants, who was not served with summons on account of his death. The second issue, on the other hand, pertains to the legal effect of death of the plaintiff during the pendency of the case.

At first brush, it may appear that since pure questions of law were raised, petitioner's resort to this Court was justified and the resolution of the aforementioned issues will necessarily follow. However, a perusal of the petition requires that certain procedural issues must initially be resolved before We delve into the merits of the case.

Notably, the petition was filed directly from the RTC which issued the Order in the exercise of its original jurisdiction. The question before Us then is: whether or not petitioner correctly availed of the mode of appeal under Rule 45 of the Rules of

Court.

Significantly, the rule on appeals is outlined below, to wit:[28]

(1) In all **cases decided by the RTC in the exercise of its original jurisdiction**, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all **cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law**, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42.

Accordingly, an appeal may be taken from the RTC which exercised its original jurisdiction, before the Court of Appeals or directly before this Court, provided that the subject of the same is a **judgment or final order** that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable.[29] The first mode of appeal, to be filed before the Court of Appeals, pertains to a writ of error under Section 2(a), Rule 41 of the Rules of Court, if questions of fact or questions of fact and law are raised or involved. On the other hand, the second mode is by way of an appeal by *certiorari* before the Supreme Court under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[30]

An order or judgment of the RTC is deemed **final** when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[31] On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is **interlocutory**. *Interlocutory* refers to something between the commencement and the end of the suit which decides some point or matter, but is not a final decision on the whole controversy.[32]

The subject of the present petition is an Order of the RTC, which denied petitioner's Omnibus Motion to Dismiss, for lack of merit.

We have said time and again that an order denying a motion to dismiss is interlocutory.[33] Under Section 1(c), Rule 41 of the Rules of Court, an interlocutory order is not appealable. As a remedy for the denial, a party has to file an answer and interpose as a defense the objections raised in the motion, and then to proceed to trial; or, a party may immediately avail of the remedy available to the aggrieved party by filing an appropriate special civil action for *certiorari* under Rule 65 of the Revised Rules of Court. Let it be stressed though that a petition for *certiorari* is appropriate only when an order has been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Based on the foregoing, the Order of the RTC denying petitioner's Omnibus Motion

to Dismiss is not appealable even on pure questions of law. It is worth mentioning that the proper procedure in this case, as enunciated by this Court, is to cite such interlocutory order as an error in the appeal of the case -- in the event that the RTC rules in favor of respondent -- and not to appeal such interlocutory order. On the other hand, if the petition is to be treated as a petition for review under Rule 45, it would likewise fail because the proper subject would only be judgments or final orders that completely dispose of the case.[34]

Not being a proper subject of an appeal, the Order of the RTC is considered interlocutory. Petitioner should have proceeded with the trial of the case and, should the RTC eventually render an unfavorable verdict, petitioner should assail the said Order as part of an appeal that may be taken from the final judgment to be rendered in this case. Such rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid

undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

In one case,[35] the Court adverted to the hazards of interlocutory appeals:

> It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that "the proper remedy in such cases is an ordinary appeal from an adverse judgment *on the merits*, incorporating in said appeal the grounds for assailing the interlocutory order. Allowing appeals from interlocutory orders would result in the `sorry spectacle' of a case being subject of a counterproductive *ping-pong* to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings. x x x.

Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, trial on the merits of the case would necessarily be delayed for a considerable length of time and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court.[36]

And, even if We treat the petition to have been filed under Rule 65, the same is still dismissible for violating the principle on hierarchy of courts. Generally, a direct resort to us in a petition for *certiorari* is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts.[37] This principle, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule is not necessary when cases brought before the appellate courts do not involve factual but legal questions.[38]