

THIRD DIVISION

[G.R. No. 166802, July 04, 2008]

**SPS. ALBERTO GUTIERREZ AND EPIFANIA GUTIERREZ,
PETITIONERS, VS. SPS. ROGELIO AND JOSEPHINE VALIENTE,
HON. ALEXANDER TAMAYO, PRESIDING JUDGE, BRANCH 15,
REGIONAL TRIAL COURT OF MALOLOS, BULACAN AND SHERIFF
IV PABLO R. GLORIOSO, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution^[1] dated October 22, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 86957 which dismissed outright the Petition for *Certiorari* and Prohibition of petitioners Spouses Alberto and Epifania Gutierrez (Spouses Gutierrez) for being deficient in form, and the CA Resolution^[2] dated January 20, 2005 denying their Motion for Reconsideration with Motion to Admit Annexes and to Allow Payment of Additional Docket Fees.

The present controversy involves a boundary dispute between owners of adjoining Lot 6098-D and Lot 6098-E situated in Banga, Meycauayan, Bulacan. Lot 6098-D is a 250-square meter parcel of land owned by Spouses Gutierrez under Transfer Certificate of Title (TCT) No. T-5728 (M). Lot 6098-E is a 425-square meter parcel of land owned by respondents Rogelio and Josephine Valiente (Spouses Valiente) under TCT No. T-26901 (M).

Lot 6098-E was previously owned by Crispin Gutierrez, the brother of petitioner Alberto Gutierrez, under TCT No. 5729 (M). On January 28, 1997, Spouses Valiente bought said Lot 6098-E thru a Deed of Extra-judicial Settlement of Estate with Sale from the surviving heirs of Crispin Gutierrez, namely, his widow Milagros, and daughters Maricris and Marissa. The vendors told the vendees that a portion of the lot was occupied by Spouses Gutierrez at the mere tolerance of the vendees. Sometime in April 1997, Spouses Valiente conducted a relocation survey to verify the boundaries of their lot. The relocation survey revealed that Spouses Gutierrez occupied a 99-square meter portion of the lot of Spouses Valiente. When Spouses Valiente demanded the return of the encroached area, Spouses Gutierrez refused, claiming ownership of the occupied portion under their title.

Thus, on May 23, 1997, Spouses Valiente filed a complaint^[3] against Spouses Gutierrez for Quieting of Title and Recovery of Possession with Damages before the Regional Trial Court (RTC), Branch 15, Malolos, Bulacan, docketed as Civil Case No. 355-M-97.

On August 8, 1997, Spouses Gutierrez filed a Motion to Dismiss.^[4] On October 30,

1997, the RTC issued an Order^[5] denying the Motion to Dismiss and required Spouses Gutierrez to submit their Answer.

Instead of filing an Answer, Spouses Gutierrez filed on November 7, 1997 a Motion for Reconsideration.^[6] On November 19, 1997, Spouses Valiente filed an Opposition to the Motion for Reconsideration with Motion to Declare Defendants in Default and Render Judgment.^[7] On November 21, 1997, the RTC issued an Order^[8] denying the Motion for Reconsideration of Spouses Gutierrez and reset the hearing to December 11, 1997.

At the scheduled hearing of December 11, 1997, Spouses Gutierrez and their counsel failed to appear.^[9] Thereupon, Spouses Valiente moved that their Motion to Declare Defendants in Default and to Render Judgment be granted considering that Spouses Gutierrez have not filed their answer within the allowable period given them.^[10] Finding merit in the motion, the RTC issued an Order^[11] declaring Spouses Gutierrez in default and allowed Spouses Valiente to present their evidence *ex-parte*.

On December 17 and 18, 1997, Spouses Valiente presented their evidence *ex-parte*. Upon the submission of their evidence, Spouses Valiente rested their case and submitted it for decision. On February 12, 1998, Spouses Gutierrez filed a Motion to Set Aside Order of Default.^[12] However, the records do not show that the RTC acted on the motion.

On August 17, 1999, Spouses Valiente filed a Manifestation with Motion to Render Judgment^[13] since no decision had been rendered 18 months from submission of the case for decision. On March 13, 2000, Spouses Valiente filed an *Ex-Parte* Manifestation^[14] reiterating their motion to render judgment.

On May 15, 2000, the RTC, now acting through a different judge, issued an Order^[15] directing the verification and relocation survey of Lots 6098-D and 6098-E by the government Geodetic Engineer to determine the exact description, monuments and areas, as appearing on both titles of the lots, for the reconveyance of the encroached portion to the party entitled thereto. The relocation survey, however, was delayed several times due to the interference of Spouses Gutierrez.^[16]

Two years later, or on May 17, 2002, Geodetic Engineer Joel Atienzo (Engr. Atienzo) submitted his Surveyor's Report^[17] with a Sketch Plan.^[18] He stated in his report that an existing alley with an area of 45 square meters was within the boundary of Lot 6098-E.

On July 3, 2002, Spouses Valiente filed their Comments on the Surveyor's Report^[19] seeking clarification of the Surveyor's Report since the Sketch Plan delineated two other portions apparently encroached in Lot 6098-E, with areas of 17.95 square meters and 44 square meters, but Engr. Atienzo did not state them as encroached upon in his Surveyor's Report.

At the hearing on September 20, 2002, the parties manifested in open court their agreement to the Surveyor's Report and intimated that Spouses Gutierrez were

willing to negotiate with respect to the payment of the property encroached upon per Surveyor's Report.^[20]

During the November 20, 2002 hearing attended by both parties, Engr. Atienzo clarified in open court that the 17.95-square meter, 45-square meter and 44-square meter portions delineated in the Sketch Plan were also encroachments on Lot 6098-E.^[21] On the same day, the RTC issued an Order^[22] directing the parties to submit their joint commitments on the issues of encroachment and/or payment, considering that there are three encroached portions of the subject lot but only one was reported to be within the boundary of Lot 6098-E.

On March 7, 2003, Spouses Valiente filed a Manifestation^[23] stating that the parties could no longer submit any commitment on the issues on encroachment and/or payment thereof because no agreement was arrived at between the parties regarding said issues. They also manifested that with the declaration in open court of Engr. Atienzo that the 17.95-square meter, 45-square meter and 44-square meter portions delineated in his Sketch Plan are the encroached areas in Lot 6098-E, then the RTC may finally dispose of the case *sans* the parties' joint commitments. No other pleading was filed by the parties.

Thus, on June 23, 2003, the RTC issued an Order^[24] approving the Surveyor's Report and directing Spouses Gutierrez to reconvey to Spouses Valiente the 17.95-square meter, 45-square meter and 44-square meter encroached portions of Lot 6098-E. No motion for reconsideration or appeal from said Order was filed by Spouses Gutierrez.

On August 11, 2003, Spouses Valiente filed a Motion for Execution,^[25] which was granted by the RTC in an Order^[26] dated February 5, 2004. On May 25, 2004, respondent Sheriff gave Notice to Spouses Gutierrez of the Writ of Execution.

On May 28, 2004, Spouses Gutierrez filed their Urgent Motion to Quash Writ of Execution and to Stay Notice of May 25, 2004^[27] on the ground that the Orders dated May 15, 2000 and June 23, 2003 directing reconveyance of the encroached portions exceeded the nature of the reliefs prayed for in the complaint.

On June 9, 2004, the RTC issued an Order^[28] denying the motion to quash of Spouses Gutierrez. It held that the May 15, 2000 Order had long attained finality and that the order for reconveyance in the June 23, 2003 Order is related to the reliefs prayed for in the complaint. Spouses Gutierrez filed a Motion for Reconsideration^[29] but it was denied by the RTC in an Order^[30] dated September 9, 2004.

On October 14, 2004, Spouses Gutierrez filed a Petition for *Certiorari* and Prohibition^[31] in the CA assailing the RTC Orders dated May 15, 2000, June 23, 2003, June 9, 2004 and September 9, 2004.

On October 22, 2004, the CA issued a Resolution^[32] dismissing outright the petition for: (a) defective verification because it did not give the assurance that the allegations of the petition are true and correct based on authentic records; (b) failure to attach material portions of the record, to wit:

Motion to Dismiss Complaint, Order dated October 30, 1997 and the Motion for Reconsideration thereto, Order dated November 21, 1997, Motion to Declare Defendants in Default, Order dated December 11, 1997, Motion to Set Aside Order of Default, Motion to Require the Acting Chief, Survey Party of CENRO, Tabang Guiguinto, Bulacan to Submit Verification/Relocation, Orders dated April 26, 2001 and November 20, 2002, Motion for Writ of Execution dated August 11, 2003, Motion for Reconsideration dated July 1, 2004 and the Opposition thereto and Reply.

[33]

and (c) insufficient payment of docket fees.

On November 22, 2004, Spouses Gutierrez filed their Motion for Reconsideration with Motion to Admit Annexes and to Allow Payment of Additional Docket Fees,^[34] attaching thereto (a) an amended verification, (b) copies of the required documents and portions of the record, and (c) a postal money order for P680.00.

In a Resolution^[35] dated January 20, 2005, the CA denied the Motion for Reconsideration of Spouses Gutierrez, holding that strict compliance with the rules of Court is indispensable for the prevention of needless delays or for the orderly expeditious dispatch of judicial business. It also found no merit to the claim of Spouses Gutierrez that the RTC committed grave abuse of discretion in issuing the assailed orders.

Hence, the present petition with the following assigned errors:

A. THE COURT OF APPEALS GRAVELY ERRED IN NOT ALLOWING THE SUBMISSION AND/OR AMENDMENT OF THE VERIFICATION AND CERTIFICATION ON NON-FORUM AND THE SUBMISSION OF THE ALLEGED MATERIAL PORTIONS OF THE RECORD; AND THE FULL PAYMENT OF THE BALANCE OF THE APPELLATE DOCKET FEE OF P680.00;^[36]

B. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S DEPARTURE FROM THE USUALLY ACCEPTED JUDICIAL PROCEDURE WHEN THE LATTER AWARDED RELIEFS IN THE JUDGMENT OF DEFAULT NOT PRAYED FOR IN THE COMPLAINT; AND IN ISSUING A WRIT OF EXECUTION OF A JUDGMENT/ORDER THAT WAS CONDITIONAL AND WHICH COULD NOT BECOME FINAL AND EXECUTORY.^[37]

Spouses Gutierrez invoke liberality and the primordial interest of substantial justice over the strict enforcement of the rules of technicality. They submit that the CA should have resolved the petition on the merits, instead of indulging on strict technicalities. They contend that the RTC gravely abused its discretion when it did not quash the Writ of Execution because the Orders dated May 15, 2000 and June 23, 2003 cannot be the basis of the Writ of Execution: the May 15, 2000 Order being an interlocutory order and the June 23, 2003 Order exceeded the reliefs prayed for in the complaint.

On the other hand, Spouses Valiente submit that the CA correctly dismissed the petition for procedural and substantive infirmities since Spouses Gutierrez not only

failed to comply with the procedural requirements of the rules but also failed to show that the RTC committed grave abuse of discretion in issuing the assailed orders.

On the procedural aspect of the case, the Court finds in favor of Spouses Gutierrez.

On the matter of defective verification, Section 4, Rule 7 of the Rules of Court states that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. This Court has consistently held that this requirement is formal, not jurisdictional.^[38] It is a condition affecting the form of the pleading; non-compliance with this requirement does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.^[39] Thus, the appellate court could have simply ordered the correction of the pleading or act on the unverified pleading, if the attending circumstances are such that strict compliance with the rule may be dispensed with in order to serve the ends of justice.^[40] Besides, there appears to be no intention to circumvent the need for proper verification since Spouses Gutierrez submitted an amended verification in their Motion for Reconsideration.

With regard to the failure to attach material portions of the record in support of the petition, Section 1 of Rule 65 of the Rules of Court requires that petition for *certiorari* shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the records as are referred to therein, and other documents relevant or pertinent thereto; and failure of compliance shall be sufficient ground for the dismissal of the petition.

In the present case, the CA dismissed the petition for failure to attach the following documents:

Motion to Dismiss Complaint, Order dated October 30, 1997 and the Motion for Reconsideration thereto, Order dated November 21, 1997, Motion to Declare Defendants in Default, Order dated December 11, 1997, Motion to Set Aside Order of Default, Motion to Require the Acting Chief, Survey Party of CENRO, Tabang Guiguinto, Bulacan to Submit Verification/Relocation, Orders dated April 26, 2001 and November 20, 2002, Motion for Writ of Execution dated August 11, 2003, Motion for Reconsideration dated July 1, 2004 and the Opposition thereto and Reply,^[41]

These documents, however, are not at all relevant to the petition for *certiorari*. Since the issue of whether the RTC committed grave abuse of discretion pertain only to the Orders dated May 15, 2000, June 23, 2003, June 9, 2004 and September 9, 2004, copies of said Orders would have sufficed as basis for the CA to resolve the issue. It is in these Orders that the RTC supposedly made questionable rulings. Thus, the attachment of these Orders in the petition was already sufficient even without the other pleadings and portions of the case record. Moreover, Spouses Gutierrez corrected the purported deficiency by submitting the required documents in their Motion for Reconsideration.