

THIRD DIVISION

[G.R. NO. 148072, July 10, 2007]

FRANCISCO MAGESTRADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ELENA M. LIBROJO RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This Petition for Review on *Certiorari* seeks to reverse the (1) Resolution^[1] dated 5 March 2001 of the Court of Appeals in CA-G.R. SP No. 63293 entitled, "*Francisco Magestrado v. Hon. Estrella T. Estrada, in her capacity as the Presiding Judge of Regional Trial Court, Branch 83 of Quezon City, People of the Philippines and Elena M. Librojo,*" which dismissed petitioner Francisco Magestrado's Petition for *Certiorari* for being the wrong remedy; and (2) Resolution^[2] dated 3 May 2001 of the same Court denying petitioner's motion for reconsideration.

Private respondent Elena M. Librojo filed a criminal complaint^[3] for perjury against petitioner with the Office of the City Prosecutor of Quezon City, which was docketed as I.S. No. 98-3900.

After the filing of petitioner's counter-affidavit and the appended pleadings, the Office of the City Prosecutor recommended the filing of an information for perjury against petitioner. Thus, Assistant City Prosecutor Josephine Z. Fernandez filed an information for perjury against petitioner with the Metropolitan Trial Court (MeTC) of Quezon City. Pertinent portions of the information are hereby quoted as follows:

That on or about the 27th day of December, 1997, in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously and knowingly make an untruthful statement under oath upon a material matter before a competent officer authorized to receive and administer oath and which the law so require, to wit: the said accused subscribe and swore to an Affidavit of Loss before Notary Public Erlinda B. Espejo of Quezon City, per Doc. No. 168, Page No. 35, Book No. CLXXIV of her notarial registry, falsely alleging that he lost Owner's Duplicate Certificate of TCT No. N-173163, which document was used in support of a Petition For Issuance of New Owner's Duplicate Copy of Certificate of Title and filed with the Regional Trial Court of Quezon City, docketed as LRC# Q-10052 (98) on January 28, 1998 and assigned to Branch 99 of the said court, to which said Francisco M. Mag[e]strado signed and swore on its verification, per Doc. 413 Page 84 Book No. CLXXV Series of 1998 of Notary Public Erlinda B. Espejo of Quezon City; the said accused knowing fully well that the allegations in the said affidavit and petition are false, the truth of the matter being that the property subject of Transfer Certificate of Title No. N-173163 was mortgaged to complainant Elena M. Librojo as collateral for a loan in the

amount of P 758,134.42 and as a consequence of which said title to the property was surrendered by him to the said complainant by virtue of said loan, thus, making untruthful and deliberate assertions of falsehoods, to the damage and prejudice of the said Elena M. Librojo.^[4]

The case was raffled to the MeTC of Quezon City, Branch 43, where it was docketed as Criminal Case No. 90721 entitled, "*People of the Philippines v. Francisco Magestrado*."

On 30 June 1999, petitioner filed a motion^[5] for suspension of proceedings based on a prejudicial question. Petitioner alleged that Civil Case No. Q-98-34349, a case for recovery of a sum of money pending before the Regional Trial Court (RTC) of Quezon City, Branch 84, and Civil Case No. Q-98- 34308, a case for Cancellation of Mortgage, Delivery of Title and Damages, pending before the RTC of Quezon City, Branch 77, must be resolved first before Criminal Case No. 90721 may proceed since the issues in the said civil cases are similar or intimately related to the issues raised in the criminal action.

On 14 July 1999, MeTC-Branch 43 issued an Order^[6] denying petitioner's motion for suspension of proceedings, thus:

Acting on the "Motion for Suspension of Proceedings" filed by the [herein petitioner Magestrado], thru counsel, and the "Comment and Opposition thereto, the Court after an evaluation of the same, finds the aforesaid motion without merit, hence, is hereby DENIED, it appearing that the resolution of the issues raised in the civil actions is not determinative of the guilt or innocence of the accused.

Hence, the trial of this case shall proceed as previously scheduled on July 19 and August 2, 1993 at 8:30 in the morning.

On 17 August 1999, a motion^[7] for reconsideration was filed by petitioner but was denied by the MeTC in an Order^[8] dated 19 October 1999.

Aggrieved, petitioner filed a Petition for *Certiorari*^[9] under Rule 65 of the Revised Rules of Court, with a prayer for Issuance of a Writ of Preliminary Injunction before the RTC of Quezon City, Branch 83, docketed as Civil Case No. Q-99-39358, on the ground that MeTC Judge Billy J. Apalit committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his motion to suspend the proceedings in Criminal Case No. 90721.

On 14 March 2000, RTC-Branch 83 dismissed the petition and denied the prayer for the issuance of a writ of preliminary injunction, reasoning thus:

Scrutinizing the complaints and answers in the civil cases abovementioned, in relation to the criminal action for PERJURY, this Court opines and so holds that there is no prejudicial question involved as to warrant the suspension of the criminal action to await the outcome of the civil cases. The civil cases are principally for determination whether or not a loan was obtained by petitioner and whether or not he executed the deed of real estate mortgage involving the property covered by TCT No. N-173163, whereas the criminal case is for perjury which imputes upon

petitioner the wrongful execution of an affidavit of loss to support his petition for issuance of a new owner's duplicate copy of TCT No. 173163. Whether or not he committed perjury is the issue in the criminal case which may be resolved independently of the civil cases. Note that the affidavit of loss was executed in support of the petition for issuance of a new owner's duplicate copy of TCT No. N-173163 which petition was raffled to Branch 99 of the RTC. x x x.^[10]

Again, petitioner filed a motion for reconsideration^[11] but this was denied by RTC-Branch 83 in an Order^[12] dated 21 December 2000.

Dissatisfied, petitioner filed with the Court of Appeals a Petition for *Certiorari*^[13] under Rule 65 of the Revised Rules of Court, which was docketed as CA-G.R. SP No. 63293. Petitioner alleged that RTC Judge Estrella T. Estrada committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the Petition for *Certiorari* in Civil Case No. Q-99-39358, and in effect sustaining the denial by MeTC-Branch 43 of petitioner's motion to suspend the proceedings in Criminal Case No. 90721, as well as his subsequent motion for reconsideration thereof.

On 5 March 2001, the Court of Appeals dismissed^[14] the Petition in CA-G.R. SP No. 63293 on the ground that petitioner's remedy should have been an appeal from the dismissal by RTC-Branch 83 of his Petition for *Certiorari* in Q-99-39358. The Court of Appeals ruled that:

Is this instant Petition for *Certiorari* under Rule 65 the correct and appropriate remedy?

We rule negatively.

The resolution or dismissal in special civil actions, as in the instant petition, may be appealed x x x under Section 10, Rule 44 of the 1997 Rules of Civil Procedure and not by petition for *certiorari* under Rule 65 of the same rules. Thus, the said rule provides:

Section 10. Time for filing memoranda on special cases. In *certiorari*, prohibition, mandamus, quo warranto and habeas corpus cases, the parties shall file in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record x x x.

WHEREFORE, in consideration of the foregoing premises, the instant Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is hereby DISMISSED.^[15]

The Court of Appeals denied petitioner's Motion for Reconsideration^[16] in a Resolution^[17] dated 3 May 2001.

Hence, petitioner comes before us via a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court raising the following issues:

1. Whether or not the Orders of Judge Estrella T. Estrada dated March 14, 2000 denying petitioner's Petition for *Certiorari* under Rule 65 of the Rules of Court, and her subsequent Order dated December 21, 2000, denying the Motion for Reconsideration thereafter filed can only be reviewed by the Court of Appeals thru appeal under Section 10, Rule 44 of the 1997 Rules of Civil Procedure.
2. Whether or not Judge Estrella T. Estrada of the Regional Trial Court, Branch 83, Quezon City, had committed grave abuse of discretion amounting to lack or in excess of her jurisdiction in denying the Petition for *Certiorari* and petitioner's subsequent motion for reconsideration on the ground of a prejudicial question pursuant to the Rules on Criminal Procedure and the prevailing jurisprudence.

After consideration of the procedural and substantive issues raised by petitioner, we find the instant petition to be without merit.

The procedural issue herein basically hinges on the proper remedy which petitioner should have availed himself of before the Court of Appeals: an ordinary appeal or a petition for *certiorari*. Petitioner claims that he correctly questioned RTC-Branch 83's Order of dismissal of his Petition for *Certiorari* in Civil Case No. Q-99-39358 through a Petition for *Certiorari* before the Court of Appeals. Private respondent and public respondent People of the Philippines insist that an ordinary appeal was the proper remedy.

We agree with respondents. We hold that the appellate court did not err in dismissing petitioner's Petition for *Certiorari*, pursuant to Rule 41, Section 2 of the Revised Rules of Court (and not under Rule 44, Section 10, invoked by the Court of Appeals in its Resolution dated 5 March 2001).

The correct procedural recourse for petitioner was appeal, not only because RTC-Branch 83 did not commit any grave abuse of discretion in dismissing petitioner's Petition for *Certiorari* in Civil Case No. Q-99-39358 but also because RTC-Branch 83's Order of dismissal was a final order from which petitioners should have appealed in accordance with Section 2, Rule 41 of the Revised Rules of Court.

An order or a judgment 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. *Au contraire*, an interlocutory order does not dispose of the case completely, but leaves something to be done as regards the merits of the latter.^[18] RTC-Branch 83's Order dated 14 March 2001 dismissing petitioner's Petition for *Certiorari* in Civil Case No. Q-99-39358 finally disposes of the said case and RTC-Branch 83 can do nothing more with the case.

Under Rule 41 of the Rules of Court, an appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Revised Rules of Court to be appealable. The manner of appealing an RTC judgment or final order is also provided in Rule 41 as follows:

Section 2. *Modes of appeal.* —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Certiorari generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here, appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action for *certiorari*.

We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law."^[19] *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy,^[20] *certiorari* not being a substitute for lost appeal.^[21]

As *certiorari* is not a substitute for lost appeal, we have repeatedly emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Neither can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.^[22]

The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.^[23] A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*.^[24] As this Court held in *Fajardo v. Bautista*^[25]:

Generally, an order of dismissal, whether right or wrong, is a final order, and hence a proper subject of appeal, not *certiorari*. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Accordingly, although the special civil action of *certiorari* is not proper when an ordinary appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual. Nevertheless, *certiorari* cannot be a substitute for the lost or lapsed