

SECOND DIVISION

[G.R. No. 152992, July 28, 2005]

**LEONARDO DAVID, PETITIONER, VS. NELSON AND DANNY
CORDOVA, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

In this *Petition*^[1] under Rule 45 of the Rules of Court, petitioner Leonardo A. David (David) assails the *Decision*^[2] of the Court of Appeals, Fifteenth Division, and the *Resolution*^[3] of the same division denying his *Motion for Reconsideration*^[4] and *Supplement to the Motion for Reconsideration*.^[5] The Court of Appeals declared null and void the *Decision*^[6] of the First Municipal Circuit Trial Court (FMCTC) of Dinalupihan-Hermosa, Bataan and the *Order*^[7] of the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5.

The antecedents are as follows:

Petitioner David filed a *Complaint*^[8] for forcible entry, docketed as Civil Case No. 1067, with the FMCTC of Dinalupihan, Bataan against respondents Nelson and Danny Cordova (the Cordovas). The *Complaint* alleged these material facts:

. . . .

3. That plaintiff is the co-owner of Lot 774, with an area of 14,000 square meters, situated in Dinalupihan, Bataan, Philippines, covered by Tax Declaration No. 009087, xerox copy of which is hereto attached, marked as ANNEX "A", and made part hereof.
4. That on April 26, 1997, plaintiff passed by said Lot 774 on his way to Dinalupihan Public Market and he noticed persons who forcibly entered said Lot 774 by destroying the fence and started erecting a structure thereon.
5. That when plaintiff got near said Lot 774, defendants and their workers threatened him with harm should he interfere with their work.
6. That plaintiff requested defendants and their workers to stop the construction of a structure inside said Lot 774, but defendants and their workers refused to stop their said construction.

7. That plaintiff reported the matter to the Government Authorities of Dinalupihan, Bataan and requested assistance in stopping said construction undertaken by defendants inside said Lot 774 of plaintiff.
8. That the Municipal Engineer together with some policemen of Dinalupihan, Bataan, went to the place where said Lot 774 is situated and they stopped the construction undertaken by defendants.
9. However, on the succeeding days, defendants continued with construction of the structure inside plaintiff's Lot 774, despite plaintiff's vehement protest.
10. That this construction undertaken by defendants inside plaintiff's said Lot 774 is without the knowledge and consent of plaintiff nor his co-owners.
11. That plaintiff brought the matter before the Barangay Authorities for conciliation, but no settlement was arrived at the Barangay Authorities, xerox copy of the Barangay Certification is hereto attached, marked as ANNEX "B", and made part hereof.
12. That plaintiff has been compelled by defendants to litigate to enforce his rights and to engage the services of counsel for the sum of P20,000.00
13. That the reasonable compensation for the use and occupation by defendants of plaintiff's said Lot 774 is P15,000.00 per month.

ALLEGATIONS FOR THE ISSUANCE OF THE WRIT OF
PRELIMINARY MANDATORY INJUNCTION

14. That plaintiff hereby reproduced all the allegations of the preceding paragraphs insofar as they are material to issuance of the writ of preliminary mandatory injunction.
15. That under the provisions of Article 539 of the Civil Code of the Philippines and Section 3, Rule 70, Revised Rules of Court, plaintiff should be restored to the possession of said Lot 774.
16. That plaintiff is ready, able and willing to post a bond to be fixed by this Honorable Court to answer for any and all damages in the event that the Honorable Court finally adjudge that plaintiff is entitled thereto.^[9]

and incorporated the following-

P R A Y E R

WHEREFORE, it is respectfully prayed that after the filing of the case and upon posting of the bond to be fixed by this Honorable Court, a writ of

preliminary mandatory injunction issue to restore plaintiff in possession of said Lot 774,^[10]

Before filing their *Answer*,^[11] respondents filed a motion to dismiss alleging that it is the Department of Agrarian Reform (DAR) and not the FMCTC that has jurisdiction over the case. Said motion was denied in an *Order* of the lower court dated 24 November 1997.^[12]

In their *Answer*, the Cordovas contended that David "is not a co-owner of the subject property, it being owned by the Government as said property forms part and parcel of the Dinalupihan Landed Estate"^[13] The Cordovas questioned the jurisdiction of the FMCTC to take cognizance of the case as allegedly the subject property is under the disposition and administration of DAR which will award it to qualified beneficiaries such as respondents. The Cordovas prayed that the *Complaint* be dismissed for lack of cause of action and lack of jurisdiction.^[14]

Based on the position papers submitted by the parties to the case, the inferior court rendered a *Decision* on 20 January 1998, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:

1. Ordering the defendants and all persons claiming rights under them to vacate the landholdings in suit;
2. Ordering defendants to pay jointly and severally plaintiff the amount of P2,000.00 per month as reasonable compensation for the use and occupation of the property;
3. Ordering the defendants to pay jointly and severally the amount of P3,000.00 as attorney's fees; and
4. To pay the costs of suit.

SO ORDERED.^[15]

The Cordovas thereafter filed with the RTC, Branch 5 of Dinalupihan, Bataan, a petition^[16] for certiorari under Rule 65 of the Rules of Court to nullify the *Decision* of the lower court, docketed as Civil Case No. DH-456-98. The Cordovas contended that the inferior court had no jurisdiction over the forcible entry case as the property, being an agricultural land, is within the administration and disposition of the DAR. Hence, they argued that the *Decision* dated 20 January 1998 was null and void for having been issued without jurisdiction.^[17]

On 26 May 1998, the RTC issued an order^[18] dismissing the petition. Apart from the petition being filed out of time, the RTC ruled that the findings of facts of the lower court is given due respect and at times treated with finality.

On 8 September 1998, the Cordovas filed another petition^[19] for certiorari under Rule 65 of the Rules of Court before the RTC of Bataan to annul the *Decision* dated 20 January 1998 of the lower court, docketed as Civil Case No. DH-492-98. Again,

the Cordovas put forward that the assailed *Decision* was null and void as the inferior court had no jurisdiction to entertain the forcible entry case considering that subject property is government-owned and falls within the administration and disposition of the

DAR.^[20] The Cordovas' petition was dismissed by the RTC, this time on the ground of *res judicata*.^[21]

The Cordovas then filed a petition^[22] for certiorari before the Court of Appeals praying that the *Decision* dated 20 January 1998 of the lower court be nullified. They restated before the Court of Appeals their previous assertion that the *Decision* rendered by the lower court was null and void for having been issued without jurisdiction, the subject property being under the administration and disposition of the DAR. And for the first time they raised the argument that the *Complaint* for forcible entry suffers from a fatal flaw as it failed to allege prior physical possession of the property by David.^[23]

For his part, David contended that the petition should be dismissed for having resorted to in lieu of the lost remedy of appeal and for having been filed out of time at that.^[24]

On 8 April 1999, the Court of Appeals promulgated a *Decision*^[25] granting the Cordovas' petition. It agreed with the Cordovas' allegation that the lower court lacked jurisdiction over the property in litigation as this was supported by a certification^[26] dated 12 January 1999 issued by the Municipal Agrarian Reform Office in Dinalupihan, Bataan to the effect that the land in suit is situated within the Dinalupihan Landed Estate; and that Danilo Cordova had filed an application dated 10 January 1997 to purchase the said lot.^[27]

The Court of Appeals likewise considered a statement in the *Order*^[28] dated 14 May 1992 of the Secretary of Agrarian Reform which pointed out that-

(r)egarding Lot No. 774, it was not included in the Order of Partition and based on the report of the Chief of Landed Estate Division of DAR Region III, the said lot is not identifiable at the moment for lack of approved reference map.^[29]

in its finding that David fell short of proving that he has a better right to the subject property as he failed to prove ownership of the same and the identity thereof.^[30]

The Court of Appeals also observed that the *Complaint* for forcible entry suffers from a major flaw as it failed to allege, much less prove, prior physical possession over the property. It held that such allegation is indispensable in actions for forcible entry.^[31]

In the instant *Petition*, David insists that the Cordovas' petition before the Court of Appeals should not have been given due course as it was filed out of time and in lieu of a timely appeal. David also maintains that the FMCTC of Dinalupihan, Bataan has jurisdiction over the forcible entry case he filed against the Cordovas.

We grant the petition.

*Petition before Court of Appeals
was a wrong remedy that was even
filed out of time*

At the outset, the petition must be upheld on procedural grounds. We find, as David has repeatedly posited, the Court of Appeals erred in giving due course to the Cordovas' petition for certiorari as it was filed in lieu of appeal which is the prescribed remedy, and far beyond the reglementary period to boot. Quite lamentably, the appellate court did not accord the fundamental grounds raised by David even with a perfunctory acknowledgment, totally ignoring said grounds and opting to rule on the petition solely on the basis of the arguments raised therein.

Instead of filing an appeal, the Cordovas filed two petitions for certiorari^[32] under Rule 65 before the RTC and a petition for certiorari also under Rule 65 before the Court of Appeals on 16 November 1998, notably almost nine (9) months after the lower court had rendered its assailed *Decision* on 20 January 1998. It bears stressing that a petition for certiorari under Rule 65 must be filed "not later than sixty (60) days from notice of the judgment, order or resolution"^[33] sought to be annulled. Presumably the Cordovas received a copy of the assailed *Decision* of the lower court when they first filed a petition for certiorari before the RTC on 5 May 1998. Even if we were to begin counting the period from such date or from 26 May 1998, when the RTC issued an order denying the Cordovas' petition, the petition for certiorari before the Court of Appeals would still have been filed out of time.

In addition, a petition for certiorari cannot be a substitute for an appeal from a lower court decision. Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefore is grave abuse of discretion.^[34]

As certiorari is not a substitute for lost appeal, time and again, we have 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.^[35]

As the Cordovas failed to file a timely appeal, the lower court's *Decision* had long become final and executory in favor of David. The Court of Appeals should have denied outright the Cordovas' petition for certiorari.