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SECOND DIVISION

[G.R. No. 140959, December 21, 2004]

ANA RUBENITO AND BABY MACAYA, PETITIONERS, VS. LOLITA LAGATA, ROLANDO BINCANG, HON. METROPOLITAN TRIAL COURT, BRANCH 75, MARIKINA CITY, AND SHERIFF EDWIN C. GARCIA, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a "petition for review on *certiorari*" filed on December 21, 1999 which should be a petition for *certiorari* under Rule 65 of the Rules of Court. It assails the Writ of Execution dated April 16, 1999, the Notice to Vacate dated May 18, 1999 and the Order of Demolition dated November 24, 1999 of the Metropolitan Trial Court (Branch 75) Marikina City (MeTC for brevity) in Civil Case No. 95-6178.

The factual background of the case is as follows:

Sometime in June 1991, private respondents Lolita Lagata and Rolando Bincang, who are registered owners of a parcel of land located in Interior Balubad Street, Nangka, Marikina City and known as Lot 3-K-4-C-4 of the subdivision plan Psd-007402-023755-D, filed with the Punong Barangay of Nangka, Marikina City a complaint for ejectment against petitioners Ana Rubenito and Baby Macaya. Mediation proceedings were conducted by the *Punong Barangay*, Chairman of the *Lupong Tagapamayapa*. On June 11, 1991, a compromise agreement or amicable settlement denominated as "*KASUNDUANG PAG-AAYOS*" was executed by the parties and attested to by the *Punong Barangay*, which reads as follows:

> Ang may-sumbong,[1] ay nagpakita ng mga dokumento at papeles at titulo, na nagpapatunay na ang lupa ay kanyang nabili, buhat sa mga Santos.
>
> At ang ipinagsumbong,[2] ay walang maipakita na anumang papeles na magpapatunay na sadyang ang lupa ay hindi kanila.
>
> Kaya ang ipinag-sumbong ay inaatasan ng may-sumbong na sila ay bigyan ng palugit ng 6 na buwan, upang sila ay makahanap ng matitirikan o matitirhan, upang ang nasabing lupa ay tuluyang iwanan ng ipinag-sumbong.
>
> Ang pag-alis ng ipinag-sumbong ay sa ika-11 ng Disyembre 1991.[3]

Petitioners did not vacate the premises within the stipulated period. When further demands to vacate went unheeded, private respondents filed with the MeTC a complaint against petitioners for execution of the barangay compromise agreement,

docketed as Civil Case No. 95-6178.[4]

In their Answer, petitioners admitted the execution of the document but denied that such was a compromise agreement to vacate. They alleged that it was merely an acknowledgment that private respondents wanted to eject them and that they should vacate the premises within six months. Petitioners further questioned the propriety of the sale of the property in favor of private respondents as violative of their right of first refusal.[5]

In an Order dated October 20, 1995, the MeTC treated the complaint as an ordinary complaint for ejectment.[6] In a Decision dated May 9, 1996, the MeTC dismissed the complaint on the ground that no prior demand to vacate was made upon petitioners.[7]

On appeal, the Regional Trial Court (Branch 272) of Marikina City (RTC) affirmed the MeTC's decision. The RTC treated the "KASUNDUANG PAG-AAYOS" as a mere contract.[8]

On petition for review, the Court of Appeals (CA), in a Decision dated April 16, 1998, held that private respondents' complaint before the MeTC was not for ejectment, as the lower courts have inadvertently treated it to be, but one for execution or enforcement of an unrepudiated amicable settlement arrived at in a *barangay* conciliation proceedings which by statute has the force and effect of a final judgment of a court. It added that since the complaint was filed within the proper period (Article 1144, Civil Code; Sec. 9, Rule 39, Rules of Court), it was the MeTC's ministerial duty to order the execution of the said amicable settlement, under which petitioners bound themselves to vacate the premises not later than December 11, 1991. Thus, the CA set aside the decision of the lower courts and directed the MeTC to order the execution of the disputed amicable settlement by ousting petitioners from the premises.[9]

On May 18, 1999, Sheriff III Edwin Garcia served upon petitioners a copy of the Writ of Execution,[10] dated April 16, 1999, and the Notice to Vacate,[11] dated May 18, 1999, directing the petitioners to vacate the premises in question within five days from receipt of the notice.

Petitioners filed a Motion to Lift Writ of Execution and Notice to Vacate,[12] dated May 21, 1999, on the ground that the MeTC did not acquire jurisdiction because petitioners had not yet received a copy of the decision of the CA, as such the decision is not yet final and executory and the writ of execution and notice to vacate were issued in excess or jurisdiction of without jurisdiction of the court.

On November 24, 1999, upon motion of private respondents, the MeTC issued an Order of Demolition[13] which petitioners claim they did not also receive.

Hence, the instant petition anchored on the following assignment of errors:

1. THAT THE HONORABLE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AND WITHOUT JURISDICTION WHEN IT ISSUED THE WRIT OF EXECUTION, DATED APRIL 16, 1999, THE NOTICE TO VACATE, DATED MAY 18,

1999, DESPITE OF THE FACT THAT THE RECORD DOES NOT SHOW THAT PETITIONERS OR THEIR COUNSEL RECEIVED A COPY OF THE DECISION OF THE COURT OF APPEALS.

2. THAT THE HONORABLE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDER OF DEMOLITION WITHOUT FIRST RESOLVING THE MOTION TO LIFT WRIT OF EXECUTION AND NOTICE TO VACATE.[14]

Petitioners invoke the Court's appellate jurisdiction under Rule 45 of the Rules of Court in assailing the orders of the MeTC. They claim that they or their original counsel did not receive a copy of the decision of the CA, as such the said decision is not yet final and executory and the orders of the MeTC were issued with grave abuse of discretion amounting to lack of jurisdiction.

Prefatorily, we note that petitioners erroneously invoke the appellate jurisdiction of this Court under Rule 45 of the Rules of Court in assailing the orders of the court *a quo*. The instant petition shall be treated as a petition for *certiorari* under Rule 65 of the Rules of Court since the subject of the recourse, is one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction.[15] As enunciated by the Court in *Fortich vs. Corona*:[16]

> Anent the first issue, in order to determine whether the recourse of petitioners is proper or not, it is necessary to draw a line between an error of judgment and an error of jurisdiction. An *error of judgment* is one which the court may commit *in the exercise of its jurisdiction*, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body *without* or *in excess of jurisdiction*, or *with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction*. This error is correctible [sic] only by the extraordinary writ of *certiorari*.[17] (Emphasis supplied.)

Considering that the instant petition assails the jurisdiction of the court *a quo* to issue the Writ of Execution, Notice to Vacate and the Order of Demolition in view of the alleged non-finality of the decision of the CA, it falls within the ambit of a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Nonetheless, petitioners' direct resort to this Court was in utter disregard of the hierarchy of courts. Although the Supreme Court, Regional Trial Courts and the CA have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. As held in *People vs. Cuaresma*:[18]

> This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. **A direct**