

## SECOND DIVISION

[ G.R. No. 131282, January 04, 2002 ]

**GABRIEL L. DUERO, PETITIONER, VS. HON. COURT OF APPEALS,  
AND BERNARDO A. ERADEL, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for certiorari assails the Decision<sup>[1]</sup> dated September 17, 1997, of the Court of Appeals in CA-G.R. No. SP No. 2340- UDK, entitled *Bernardo Eradel vs. Hon. Ermelino G. Andal*, setting aside all proceedings in Civil Case No. 1075, *Gabriel L. Duero vs. Bernardo Eradel*, before the Branch 27 of the Regional Trial Court of Tandag, Surigao del Sur.

The pertinent facts are as follows:

Sometime in 1988, according to petitioner, private respondent Bernardo Eradel<sup>[2]</sup> entered and occupied petitioner's land covered by Tax Declaration No. A-16-13-302, located in Baras, San Miguel, Surigao del Sur. As shown in the tax declaration, the land had an assessed value of P5,240. When petitioner politely informed private respondent that the land was his and requested the latter to vacate the land, private respondent refused, but instead threatened him with bodily harm. Despite repeated demands, private respondent remained steadfast in his refusal to leave the land.

On June 16, 1995, petitioner filed before the RTC a complaint for Recovery of Possession and Ownership with Damages and Attorney's Fees against private respondent and two others, namely, Apolinario and Inocencio Ruena. Petitioner appended to the complaint the aforementioned tax declaration. The counsel of the Ruenas asked for extension to file their Answer and was given until July 18, 1995. Meanwhile, petitioner and the Ruenas executed a compromise agreement, which became the trial court's basis for a partial judgment rendered on January 12, 1996. In this agreement, the Ruenas through their counsel, Atty. Eusebio Avila, entered into a Compromise Agreement with herein petitioner, Gabriel Duero. *Inter alia*, the agreement stated that the Ruenas recognized and bound themselves to respect the ownership and possession of Duero.<sup>[3]</sup> Herein private respondent Eradel was not a party to the agreement, and he was declared in default for failure to file his answer to the complaint.<sup>[4]</sup>

Petitioner presented his evidence *ex parte* on February 13, 1996. On May 8, 1996, judgment was rendered in his favor, and private respondent was ordered to peacefully vacate and turn over Lot No. 1065 Cad. 537-D to petitioner; pay petitioner P2,000 annual rental from 1988 up the time he vacates the land, and P5,000 as attorney's fees and the cost of the suit.<sup>[5]</sup> Private respondent received a copy of the decision on May 25, 1996.

On June 10, 1996, private respondent filed a Motion for New Trial, alleging that he has been occupying the land as a tenant of Artemio Laurente, Sr., since 1958. He explained that he turned over the complaint and summons to Laurente in the honest belief that as landlord, the latter had a better right to the land and was responsible to defend any adverse claim on it. However, the trial court denied the motion for new trial.

Meanwhile, RED Conflict Case No. 1029, an administrative case between petitioner and applicant-contestants Romeo, Artemio and Jury Laurente, remained pending with the Office of the Regional Director of the Department of Environment and Natural Resources in Davao City. Eventually, it was forwarded to the DENR Regional Office in Prosperidad, Agusan del Sur.

On July 24, 1996, private respondent filed before the RTC a Petition for Relief from Judgment, reiterating the same allegation in his Motion for New Trial. He averred that unless there is a determination on who owned the land, he could not be made to vacate the land. He also averred that the judgment of the trial court was void inasmuch as the heirs of Artemio Laurente, Sr., who are indispensable parties, were not impleaded.

On September 24, 1996, Josephine, Ana Soledad and Virginia, all surnamed Laurente, grandchildren of Artemio who were claiming ownership of the land, filed a Motion for Intervention. The RTC denied the motion.

On October 8, 1996, the trial court issued an order denying the Petition for Relief from Judgment. In a Motion for Reconsideration of said order, private respondent alleged that the RTC had no jurisdiction over the case, since the value of the land was only P5,240 and therefore it was under the jurisdiction of the municipal trial court. On November 22, 1996, the RTC denied the motion for reconsideration.

On January 22, 1997, petitioner filed a Motion for Execution, which the RTC granted on January 28. On February 18, 1997, Entry of Judgment was made of record and a writ of execution was issued by the RTC on February 27, 1997. On March 12, 1997, private respondent filed his petition for certiorari before the Court of Appeals.

The Court of Appeals gave due course to the petition, maintaining that private respondent is not estopped from assailing the jurisdiction of the RTC, Branch 27 in Tandag, Surigao del Sur, when private respondent filed with said court his Motion for Reconsideration And/Or Annulment of Judgment. The Court of Appeals decreed as follows:

IN THE LIGHT OF ALL THE FOREGOING, the Petition is GRANTED. All proceedings in "Gabriel L. Duero vs. Bernardo Eradel, et. al. Civil Case 1075" filed in the Court a quo, including its Decision, Annex "E" of the petition, and its Orders and Writ of Execution and the turn over of the property to the Private Respondent by the Sheriff of the Court a quo, are declared null and void and hereby SET ASIDE, No pronouncement as to costs.

SO ORDERED. [6]

Petitioner now comes before this Court, alleging that the Court of Appeals acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it held that:

I.

... THE LOWER COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II

... PRIVATE RESPONDENT WAS NOT THEREBY ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE LOWER COURT EVEN AFTER IT SUCCESSFULLY SOUGHT AFFIRMATIVE RELIEF THEREFROM.

III

... THE FAILURE OF PRIVATE RESPONDENT TO FILE HIS ANSWER IS JUSTIFIED.<sup>[7]</sup>

The main issue before us is whether the Court of Appeals gravely abused its discretion when it held that the municipal trial court had jurisdiction, and that private respondent was not estopped from assailing the jurisdiction of the RTC after he had filed several motions before it. The secondary issue is whether the Court of Appeals erred in holding that private respondent's failure to file an answer to the complaint was justified.

At the outset, however, we note that petitioner through counsel submitted to this Court pleadings that contain inaccurate statements. Thus, on page 5 of his petition, <sup>[8]</sup> we find that to bolster the claim that the appellate court erred in holding that the RTC had no jurisdiction, petitioner pointed to *Annex E*<sup>[9]</sup> of his petition which supposedly is the Certification issued by the Municipal Treasurer of San Miguel, Surigao, specifically containing the notation, "Note: Subject for General Revision Effective 1994." But it appears that *Annex E* of his petition is not a Certification but a xerox copy of a Declaration of Real Property. Nowhere does the document contain a notation, "Note: Subject for General Revision Effective 1994." Petitioner also asked this Court to refer to *Annex F*,<sup>[10]</sup> where he said the zonal value of the disputed land was P1.40 per sq.m., thus placing the computed value of the land at the time the complaint was filed before the RTC at P57,113.98, hence beyond the jurisdiction of the municipal court and within the jurisdiction of the regional trial court. However, we find that these annexes are both merely xerox copies. They are obviously without evidentiary weight or value.

Coming now to the principal issue, petitioner contends that respondent appellate court acted with grave abuse of discretion. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.<sup>[11]</sup> But here we find that in its decision holding that the municipal court has jurisdiction

over the case and that private respondent was not estopped from questioning the jurisdiction of the RTC, respondent Court of Appeals discussed the facts on which its decision is grounded as well as the law and jurisprudence on the matter.<sup>[12]</sup> Its action was neither whimsical nor capricious.

Was private respondent estopped from questioning the jurisdiction of the RTC? In this case, we are in agreement with the Court of Appeals that he was not. While participation in all stages of a case before the trial court, including invocation of its authority in asking for affirmative relief, effectively bars a party by estoppel from challenging the court's jurisdiction,<sup>[13]</sup> we note that estoppel has become an equitable defense that is both substantive and remedial and its successful invocation can bar a right and not merely its equitable enforcement.<sup>[14]</sup> Hence, estoppel ought to be applied with caution. For estoppel to apply, the action giving rise thereto must be unequivocal and intentional because, if misapplied, estoppel may become a tool of injustice.<sup>[15]</sup>

In the present case, private respondent questions the jurisdiction of RTC in Tandag, Surigao del Sur, on legal grounds. Recall that it was petitioner who filed the complaint against private respondent and two other parties before the said court,<sup>[16]</sup> believing that the RTC had jurisdiction over his complaint. But by then, Republic Act 7691<sup>[17]</sup> amending BP 129 had become effective, such that jurisdiction already belongs not to the RTC but to the MTC pursuant to said amendment. Private respondent, an unschooled farmer, in the mistaken belief that since he was merely a tenant of the late Artemio Laurente Sr., his landlord, gave the summons to a Hipolito Laurente, one of the surviving heirs of Artemio Sr., who did not do anything about the summons. For failure to answer the complaint, private respondent was declared in default. He then filed a Motion for New Trial in the same court and explained that he defaulted because of his belief that the suit ought to be answered by his landlord. In that motion he stated that he had by then the evidence to prove that he had a better right than petitioner over the land because of his long, continuous and uninterrupted possession as *bona-fide* tenant-lessee of the land.<sup>[18]</sup> But his motion was denied. He tried an alternative recourse. He filed before the RTC a Motion for Relief from Judgment. Again, the same court denied his motion, hence he moved for reconsideration of the denial. In his Motion for Reconsideration, he raised for the first time the RTC's lack of jurisdiction. This motion was again denied. Note that private respondent raised the issue of lack of jurisdiction, not when the case was already on appeal, but when the case was still before the RTC that ruled him in default, denied his motion for new trial as well as for relief from judgment, and denied likewise his two motions for reconsideration. After the RTC still refused to reconsider the denial of private respondent's motion for relief from judgment, it went on to issue the order for entry of judgment and a writ of execution.

Under these circumstances, we could not fault the Court of Appeals in overruling the RTC and in holding that private respondent was not estopped from questioning the jurisdiction of the regional trial court. The fundamental rule is that, the lack of jurisdiction of the court over an action cannot be waived by the parties, or even cured by their silence, acquiescence or even by their express consent.<sup>[19]</sup> Further, a party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal.<sup>[20]</sup> The appellate court did not err in saying that