

## FIRST DIVISION

[ G.R. No. 129184, February 28, 2001 ]

### EMERGENCY LOAN PAWNSHOP INCORPORATED AND DANILO R. NAPALA, PETITIONERS, VS. THE COURT OF APPEALS (TENTH DIVISION) AND TRADERS ROYAL BANK, RESPONDENTS.

#### D E C I S I O N

##### **PARDO, J.:**

May an appeal be taken from a decision of the Regional Trial Court denying a motion to dismiss the complaint on the ground of improper venue? If not, will *certiorari* lie?

The case before the Court is a petition for review on *certiorari* assailing the decision of the Court of Appeals,<sup>[1]</sup> granting respondent's petition for *certiorari* and dismissing the complaint below on the ground of improper venue.

On January 18, 1996, Traders Royal Bank (TRB for brevity) sold in favor of petitioner Emergency Loan Pawnshop Incorporated (ELPI for brevity) a parcel of land located at Km. 3 Asin, Baguio City for Five Hundred Thousand Pesos (P500,000.00).<sup>[2]</sup>

At the time of the sale, TRB misrepresented to ELPI that the subject property was a vacant residential lot valued at P600.00 to P800.00 per square meters, with a usable land area of 1,143.75 square meters (approximately 75% of the land area of 1,525 sq.m.) without any illegal occupants or squatters, when in truth the subject property was dominantly a public road with only 140 square meters usable area.

ELPI, after having spent to fully ascertain the actual condition of the property, demanded from TRB the rescission and cancellation of the sale of the property. TRB refused, hence, on April 16, 1996, ELPI filed with the Regional Trial Court, Davao, Branch 17, a complaint for annulment of sale and damages against TRB.<sup>[3]</sup>

On August 27, 1996, TRB filed a Motion to Dismiss<sup>[4]</sup> the complaint on the ground of improper venue. On September 18, 1996 the trial court denied the motion to dismiss.<sup>[5]</sup> On October 21, 1996, TRB filed a motion for reconsideration.<sup>[6]</sup> On November 14, 1996, the trial court denied the motion.<sup>[7]</sup>

On January 15, 1997, TRB elevated the case to the Court of Appeals by petition for *certiorari* and prohibition with preliminary injunction or temporary restraining order, contending that the trial court committed a grave abuse of discretion in denying its motion to dismiss the complaint on the ground of improper venue.<sup>[8]</sup>

After due proceedings, on March 11, 1997, the Court of Appeals promulgated its decision, the dispositive portion of which reads:

**"WHEREFORE**, finding merit in the petition, the Orders dated September 18, 1996 and November 14, 1996 are hereby **ANNULLED** and **SET ASIDE** and Civil Case No. 24,317-96 is hereby **DISMISSED** on ground of improper venue."<sup>[9]</sup>

Hence, this petition.<sup>[10]</sup>

Petitioners seek to set aside the decision of the Court of Appeals alleging that:

1. The Court of Appeals erred in entertaining the petition for certiorari and prohibition, for lack of jurisdiction;
2. The Court of Appeals erred in ruling that the Regional Trial Court erred in not dismissing the complaint for improper venue.<sup>[11]</sup>

According to petitioners, the determination of whether the venue of an action was improperly laid was a question of law, thus, the Court of Appeals had no jurisdiction to entertain the petition for *certiorari* and prohibition, which involves pure questions of law.

Petitioners further alleged that an order denying a motion to dismiss is interlocutory in nature that can not be the subject of an appeal and can not be even reviewed by a special civil action for *certiorari*.

We find the petition not meritorious.

The general rule is that the denial of a motion to dismiss a complaint is an interlocutory order and, hence, cannot be appealed or questioned *via* a special civil action of *certiorari* until a final judgment on the merits of the case is rendered.<sup>[12]</sup>

The remedy of the aggrieved party is to file an answer to the complaint and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. However, the rule is not ironclad. Under certain situations, recourse to *certiorari* or *mandamus* is considered appropriate, that is, (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or, (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case."<sup>[13]</sup>

In the case at bar, we agree with the Court of Appeals that the trial court erred grievously amounting to ousting itself of jurisdiction. The motion of respondent TRB was well founded because venue was clearly improperly laid. The action in the Regional Trial Court was for annulment of sale involving a parcel of land located at Km. 3 Asin Road, Baguio City. The venue of such action is unquestionably within the territorial jurisdiction of the proper court where the real property or part thereof lies.

<sup>[14]</sup> An action affecting title to real property, or for recovery of, or foreclosure of mortgage on real property, shall be commenced and tried in the proper court having jurisdiction over the area where the real property or any part thereof lies.<sup>[15]</sup>