368 Phil. 653

SECOND DIVISION

[G.R. No. 125465, June 29, 1999]

SPOUSES AUGUSTO HONTIVEROS AND MARIA HONTIVEROS, PETITIONERS, VS. REGIONAL TRIAL COURT, BRANCH 25, ILOILO CITY AND SPOUSES GREGORIO HONTIVEROS AND TEODORA AYSON, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

On December 3, 1990, petitioners, the spouses Augusto and Maria Hontiveros, filed a complaint for damages against private respondents Gregorio Hontiveros and Teodora Ayson before the Regional Trial Court of Iloilo City, Branch 25, where it was docketed as Civil Case No. 19504. In said complaint, petitioners alleged that they are the owners of a parcel of land, in the town of Jamindan, Province of Capiz, as shown by OCT No. 0-2124, issued pursuant to the decision of the Intermediate Appellate Court, dated April 12, 1984, which modified the decision of the Court of First Instance of Capiz, dated January 23, 1975, in a land registration case[1] filed by private respondent Gregorio Hontiveros; that petitioners were deprived of income from the land as a result of the filing of the land registration case; that such income consisted of rentals from tenants of the land in the amount of P66,000.00 per year from 1968 to 1987, and P595,000.00 per year thereafter; and that private respondents filed the land registration case and withheld possession of the land from petitioners in bad faith.[2]

In their answer, private respondents denied that they were married and alleged that private respondent Hontiveros was a widower while private respondent Ayson was single. They denied that they had deprived petitioners of possession of and income from the land. On the contrary, they alleged that possession of the property in question had already been transferred to petitioners on August 7, 1985, by virtue of a writ of possession, dated July 18, 1985, issued by the clerk of court of the Regional Trial Court of Capiz, Mambusao, the return thereof having been received by petitioners' counsel; that since then, petitioners have been directly receiving rentals from the tenants of the land; that the complaint failed to state a cause of action since it did not allege that earnest efforts towards a compromise had been made, considering that petitioner Augusto Hontiveros and private respondent Gregorio Hontiveros are brothers; that the decision of the Intermediate Appellate Court in Land Registration Case No. N-581-25 was null and void since it was based upon a ground which was not passed upon by the trial court; that petitioners' claim for damages was barred by prescription with respect to claims before 1984; that there were no rentals due since private respondent Hontiveros was a possessor in good faith and for value; and that private respondent Ayson had nothing to do with the case as she was not married to private respondent Gregorio Hontiveros and did not have any proprietary interest in the subject property. Private respondents prayed for the dismissal of the complaint and for an order against petitioners to pay damages

to private respondents by way of counterclaim, as well as reconveyance of the subject land to private respondents.[3]

On May 16, 1991, petitioners filed an Amended Complaint to insert therein an allegation that "earnest efforts towards a compromise have been made between the parties but the same were unsuccessful."

In due time, private respondents filed an Answer to Amended Complaint with Counterclaim, in which they denied, among other things, that earnest efforts had been made to reach a compromise but the parties were unsuccessful.

On July 19, 1995, petitioners moved for a judgment on the pleadings on the ground that private respondents' answer did not tender an issue or that it otherwise admitted the material allegations of the complaint.[4] Private respondents opposed the motion alleging that they had denied petitioners' claims and thus tendered certain issues of fact which could only be resolved after trial.[5]

On November 23, 1995, the trial court denied petitioners' motion. At the same time, however, it dismissed the case on the ground that the complaint was not verified as required by Art. 151 of the Family Code and, therefore, it did not believe that earnest efforts had been made to arrive at a compromise. The order of the trial court reads:[6]

> The Court, after an assessment of the diverging views and arguments presented by both parties, is of the opinion and so holds that judgment on the pleadings is inappropriate not only for the fact that the defendants in their answer, particularly in its paragraph 3 to the amended complaint, specifically denied the claim of damages against them, but also because of the ruling in De Cruz vs. Cruz, G.R. No. 27759, April 17, 1970 (32 SCRA 307), citing Rili vs. Chunaco, 98 Phil. 505, which ruled that the party claiming damages must satisfactorily prove the amount thereof and that though the rule is that failure to specifically deny the allegations in the complaint or counter-claim is deemed an admission of said allegations, there is however an exception to it, that is, that when the allegations refer to the amount of damages, the allegations must still be proved. This ruling is in accord with the provision of Section 1, Rule 9 of the Rules of Court.
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> That while the plaintiffs in their amended complaint allege that earnest efforts towards a compromise with the defendants were made, the fact is that their complaint was not verified as provided in Article 151 of the Family Code. Besides, it is not believed that there were indeed earnest efforts made to patch up and/or reconcile the two feuding brothers, Gregorio and Augusto, both surnamed Hontiveros.
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> The submission of the plaintiffs that, assuming no such earnest efforts were made, the same is not necessary or jurisdictional in the light of the ruling in Rufino Magbaleta, et al., petitioners, vs. Hon. Arsenio M. Gonong, et al., respondents, No. L-44903, April 22, 1977, is, to the mind of this Court, not applicable to the case at bar for the fact is the rationale in that case is not present in the instant case considering these salient

points:

a) Teodora Ayson, the alleged wife of defendant Gregorio Hontiveros and allegedly not a member of the Hontiveros Family, is not shown to be really the wife of Gregorio, a fact which Gregorio also denied in their verified answer to the amended complaint;

b) Teodora Ayson has not been shown to have acquired any proprietary right or interest in the land that was litigated by Gregorio and Augusto, unlike in the cited case of Magbaleta where it was shown that a stranger to the family acquired certain right;

c) In the decision rendered by the appellate court no mention was made at all of the name of Teodora Ayson as part-awardee of Lot 37 that was adjudged to Gregorio other than himself who was therein described as a widower. Moreover, Teodora was never mentioned in said decision, nor in the amended complaint and in the amended motion for judgment on the pleadings that she ever took any part in the act or transaction that gave rise to the damages allegedly suffered by the plaintiffs for which they now claim some compensation.

WHEREFORE, in the light of all the foregoing premises, the Court orders, as it hereby orders, the dismissal of this case with cost against the plaintiffs.

SO ORDERED.

Petitioners moved for a reconsideration of the order of dismissal, but their motion was denied.[7] Hence, this petition for review on *certiorari*. Petitioners contend:

I. THE REGIONAL TRIAL COURT PALPABLY ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT IT DOES NOT ALLEGE UNDER OATH THAT EARNEST EFFORTS TOWARD A COMPROMISE WERE MADE PRIOR TO THE FILING THEREOF AS REQUIRED BY ARTICLE 151 OF THE FAMILY CODE.

II. THE REGIONAL TRIAL COURT PALPABLY ERRED IN NOT DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS AND ORDERING A TRIAL ON THE MERITS.

Private respondents raise a preliminary question. They argue that petitioners should have brought this case on appeal to the Court of Appeals since the order of the trial court judge was actually a decision on the merits. On the other hand, even if petition for *certiorari* were the proper remedy, they contend that the petition is defective because the judge of the trial court has not been impleaded as a respondent.[8]

Private respondents' contention is without merit. The petition in this case was filed pursuant to Rule 45 of the Rules of Court. As explained in *Atlas Consolidated Mining and Development Corporation v. Court of Appeals*:[9]

> Under Section 5, subparagraph (2)(e), Article VIII of the 1987 Constitution, the Supreme Court is vested with the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases in which only an error or question of law is involved. A similar provision is contained in Section 17, fourth paragraph, subparagraph (4) of the Judiciary Act of 1948, as amended by Republic Act No. 5440. And, in such cases where only questions of law are involved, Section 25 of the Interim Rules and Guidelines implementing Batas Pambansa Blg. 129, in conjunction with Section 3 of Republic Act No. 5440, provides that the appeal to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court.
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> The rule, therefore, is that direct appeals to this Court from the trial court on questions of law have to be through the filing of a petition for review on certiorari. It has been held that:

x x x when a CFI (RTC) adjudicates a case in the exercise of its original jurisdiction, the correct mode of elevating the judgment to the Court of Appeals is by ordinary appeal, or appeal by writ of error, involving merely the filing of a notice of appeal - except only if the appeal is taken in special proceedings and other cases wherein multiple appeals are allowed under the law, in which even the filing of a record on appeal is additionally required. Of course, when the appeal would involve purely questions of law or any of the other cases (except criminal cases as stated hereunder) specified in Section 5(2), Article X of the Constitution, it should be taken to the Supreme Court by petition for review on certiorari in accordance with Rules 42 and 45 of the Rules of Court.

By way of implementation of the aforestated provisions of law, this Court issued on March 9, 1990 Circular No. 2-90, paragraph 2 of which provides:

2. Appeals from Regional Courts to the Supreme Court. - Except in criminal cases where the penalty imposed is life imprisonment or *reclusion perpetua*, judgments of regional trial courts may be appealed to the Supreme Court only by petition for review on certiorari in accordance with Rule 45 of the Rules of Court in relation to Section 17 of the Judiciary Act of 1948, as amended, this being the clear intendment of the provision of the Interim Rules that (a)ppeals to the Supreme Court shall be taken by petition for certiorari which shall be governed by Rule 45 of the Rules of Court.

> Under the foregoing considerations, therefore, the inescapable conclusion is that herein petitioner adopted the correct mode of appeal in G.R. No. 88354 by filing with this Court a petition to review on certiorari the decision of the Regional Trail Court of Pasig in Civil Case No. 25528 and raising therein purely questions of law.

In *Meneses v. Court of Appeals*, it was held:[10]

> It must also be stressed that the trial court's order of 5 June 1992 dismissing the petitioner's complaint was, whether it was right or wrong, a final order because it had put an end to the particular matter resolved, or settled definitely the matter therein disposed of and left nothing more to be done by the trial court except the execution of the order. It is a