

## THIRD DIVISION

[ G.R. No. 118691, July 05, 1996 ]

**ALEJANDRO BAYOG AND JORGE PESAYCO, JR., PETITIONERS,  
VS. HON. ANTONIO M. NATINO, PRESIDING JUDGE, REGIONAL  
TRIAL COURT, BRANCH 12, SAN JOSE, ANTIQUE, AND ALBERTO  
MAGDATO, RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court to annul the Order of 18 October 1994<sup>[1]</sup> of the respondent Presiding Judge of the Regional Trial Court (RTC) of San Jose, Antique, Branch 23, in Civil Case No. 2708, a petition for relief from judgment.<sup>[2]</sup> The Order set aside the final and partly executed judgment<sup>[3]</sup> of the Third Municipal Circuit Trial Court (MCTC) of Patnongon-Bugasong-Valderama, Antique, in an ejectment case, Civil Case No. 262,<sup>[4]</sup> and remanded the case to the MCTC for proper disposition.

The antecedent facts are not disputed:

On 16 June 1973, petitioner Alejandro Bayog (hereinafter, BAYOG) and private respondent Alberto Magdato (hereinafter, MAGDATO) entered into an Agricultural Leasehold Contract over a lot with an area of 0.8 hectares located in Centro Pojo, Bugasong, Antique,<sup>[5]</sup> with BAYOG as the LANDOWNER-LESSOR and MAGDATO as TENANT-LESSEE. The contract commenced with crop year 1975-1976 and expressly provided that matters not therein stipulated would be governed by the provisions of R.A. No. 3344, as amended.

On 19 April 1983, then President Ferdinand E. Marcos, pursuant to P.D. No. 27, R.A. No. 3844, and P.D. No. 1425, issued a Certificate of Agricultural Leasehold<sup>[6]</sup> to MAGDATO, declaring that the latter had complied with all the requirements to become the agricultural lessee of the land cultivated by him and owned by BAYOG located in Centro Pojo, Bugasong, Antique. The certificate enumerated the following rights of MAGDATO, *inter alia*:

1. He shall not be ejected, dispossessed, excluded, removed or ousted from his farmholding by any landowner, agricultural lessor or anybody except when his disposition has been authorized by the proper court;
2. He shall have the right to peaceful possession, cultivation and enjoyment of his farmholding;
3. He shall have the right against conversion of the farmholding into . . .

any non-agricultural use or to the production of any other crop by the landowner . . . or anybody acting for and in his behalf, without prior approval of the proper authorities and payment of disturbance compensation. . . .

On 3 September 1990, BAYOG, in consideration of P250,000.00, executed a so-called Deed of Equitable Mortgage, with right of redemption within five years, in favor of Santiago Pesayco. The document covered four parcels of unregistered riceland in Bugasong, Antique, with a total area of 30,187 square meters.<sup>[7]</sup>

In a letter dated 19 October 1992, BAYOG asked MAGDATO to remove his (MAGDATO's) house from BAYOG's land. BAYOG explained that the house was an obstacle to the cultivation of the land by Jorge Pesayco, Jr., the brother and civil law lessee of Santiago Pesayco.<sup>[8]</sup>

As MAGDATO did not comply, BAYOG and Jorge Pesayco, Jr. filed with the Third MCTC of Patnongon-Bugasong-Valderama, Antique, a complaint, dated 26 November 1992, for "Ejectment and/or Abatement of Nuisance with Prayer for Demolition," which was docketed as Civil Case No. 262.<sup>[9]</sup>

In its Order of 15 December 1992, the MCTC declared that the case fell under the Rule on Summary Procedure and directed the issuance of summons which, together with complaint, was served on MAGDATO on 11 January 1993.<sup>[10]</sup>

MAGDATO had then ten days from service of summons (or until 22 January 1993) to file his Answer,<sup>[11]</sup> but he filed it only on 25 January 1993. In his Answer, MAGDATO admitted BAYOG's ownership of the lot, but asserted that he was in actual possession thereof as BAYOG's agricultural lessee as evidenced by the Agricultural Leasehold Contract executed on 17 June 1975. As defenses, MAGDATO alleged that the court had no jurisdiction over the case, it being an agrarian dispute; and that he had not been able to cultivate the land because plaintiff Jorge Pesayco, Jr. threatened to shoot anyone who would work on it.<sup>[12]</sup>

On 20 September 1993, the MCTC issued an Order<sup>[13]</sup> holding that since MAGDATO's Answer was filed outside the reglementary period, it could not take cognizance thereof without exceeding its jurisdiction under Section 36 of B.P. Blg. 129. It then considered "needless" for the court to resolve all pleadings subsequently filed, such as the answer; and then claiming authority under Section 5<sup>[14]</sup> of the Rule on Summary Procedure, the MCTC rendered judgment in favor of plaintiffs BAYOG and Pesayco, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant, as follows:

1. Ejecting defendant from the parcel of land plaintiff Alejandro Bayog described in paragraph 2 of this complaint and ordering defendant to remove his house therefrom before judgment becomes final and executory;

2. Ordering the Provincial Sheriff, or his defendant, to demolish and destroy defendant's house on the above-mentioned land of plaintiff Alejandro Bayog, in case defendant should fail to remove the same therefrom before judgment against him becomes final and executory; and

3. Ordering defendant to pay plaintiffs jointly and severally the sum of P1,000.00, Philippine Currency, as and by way of actual litigation expenses.

SO ORDERED.<sup>[15]</sup>

MAGDATO's counsel, Atty. Marcelo C. Josue, received a copy of the Order on 11 October 1993.<sup>[16]</sup>

On 16 December 1993, the MCTC issued an Order of Execution<sup>[17]</sup> commanding the Provincial Sheriff or his deputy to eject MAGDATO, his "attorney-in-fact, agent, or any other person acting on his behalf" from the parcel of land in question and to "demolish and destroy" MAGDATO's house standing thereon "should he fail to remove it before the judgment against him becomes final."

The Sheriff's Return of Service<sup>[18]</sup> dated 26 January 1994 reported that the order was personally served on MAGDATO on 24 January 1994, and upon MAGDATO's receipt thereof, "he and any other person acting under his . . . authority were ejected from the parcel of land . . . and his house was demolished and destroyed." However, "there was no monetary satisfaction of the judgment since [MAGDATO] refused to give the amount and he has no real/personal properties [sic] that can be levied on execution."

On 9 February 1994, MAGDATO filed a petition for relief from judgment with injunction and prayer to litigate as a pauper with the RTC of San Jose, Antique, Branch 12 (Civil Case No. 2708). MAGDATO alleged therein that the late filing of his answer was due to mistake or excusable neglect, for at the time he received summons, he was stricken with pulmonary tuberculosis which restricted his mobility and sound judgment. Further, his illiteracy limited his understanding of the English language, hence, he was unaware of the "unextendible" 10-day period, and by the time he consulted a lawyer in San Jose, Antique, said period had already lapsed. In fact, it was only when his house was demolished in the latter part of January 1994, that he learned of the judgment rendered against him.

MAGDATO further asserted that he had good, valid, and strong evidence to counteract BAYOG's claim, and if given a chance to be heard, would prove that he was a duly instituted tenant of BAYOG, as evidenced by copies of the Agricultural Leasehold Contract and the Certificate of Agricultural Leasehold. More importantly, this tenancy relationship had never been terminated for cause. Finally, he contended that as the MCTC judgment had already been partly executed, he was bereft of other avenues, to protect his rights. He thus prayed for a writ of preliminary injunction to prevent disturbance of his possession; that he be allowed to litigate in *forma pauperis*, as he owned no real property as attested to by a certification from the Office of the Municipal Assessor;<sup>[19]</sup> and that the MCTC judgment in Civil Case

No. 262 be set aside and a new trial ordered.<sup>[20]</sup>

On 19 May 1994, BAYOG filed a Motion to Dismiss<sup>[21]</sup> Civil Case No. 2708 on grounds of: (a) lack of jurisdiction on the part of the RTC; (b) failure of the petition to state a cause of action; and (c) prescription and/or laches.

As to the first, BAYOG asserted that a petition for relief from judgment was a prohibited pleading under Section 19(d) of the Revised Rule on Summary Procedure. Moreover, the petition was not accompanied by the affidavit of merit required by Section 3, Rule 38 of the Rules of Court.

Anent the second, BAYOG maintained that the petition did not contain a statement of facts constituting fraud, accident, mistake, or excusable negligence. In any event, the cause of action was mooted by the partial execution of the MCTC judgment, for it was settled that relief from judgment was not available where the judgment had already been executed, without, however, prejudice on the part of the aggrieved party to sue to recover the property.<sup>[22]</sup>

Finally, BAYOG contended that Section 3, Rule 38 of the Rules of Court required that petitions for relief from judgment be "filed within sixty (60) days after the petitioner learns of the judgment . . . to be set aside, and not more than six (6) months after such judgment . . . was entered. . . ." Considering that MAGDATO learned of the MCTC judgment through his lawyer on 11 October 1993 when the latter received a copy thereof, the 60-day period expired on 12 December 1993. Since the petition for relief was filed only on 9 February 1994, it was then filed out of time.

On 22 June 1994, MAGDATO filed an Opposition<sup>[23]</sup> to the Motion to Dismiss, to which BAYOG filed a Reply<sup>[24]</sup> on 7 July 1994.

On 16 September 1994, BAYOG filed another Motion to Dismiss Civil Case No. 2708 on the ground that the petition for relief from judgment was not accompanied by a sworn certification against forum-shopping as required by Administrative Circular No. 9-94 of this Court.<sup>[25]</sup> MAGDATO filed his Comment<sup>[26]</sup> thereto on 3 October 1994, while BAYOG filed a Reply<sup>[27]</sup> to the Comment on 10 October 1994.

In its Order<sup>[28]</sup> of 18 October 1994, the RTC denied BAYOG's first and second motions to dismiss and ruled as follows:

WHEREFORE, the judgment in Civil Case No. 262 rendered by Judge Deogracias K. del Rosario of the Municipal Circuit Trial Court of Patnongon-Bugasong and Valderama is set aside and let this case be remanded back to that court for proper disposal.

The grounds relied upon for the denial were: (1) that the petition for relief from judgment is not a prohibited pleading under the Rule on Summary Procedure since the latter does not apply to Regional Trial Courts, per the ruling in *Jakihaca vs. Aquino*;<sup>[29]</sup> (2) the petition states a cause of action as MAGDATO, as shown in Annex "B" of the petition, is a tenant farmer who is entitled to protection against ejectment; (3) the issue of prescription must yield to the fact that MAGDATO is a

tenant farmer, or his ejectment by the MCTC was a violation of the law; (4) BAYOG and Pesayco did not come to court with clean hands as they did not reveal the fact that MAGDATO is a holder of a certificate of agricultural leasehold; (5) the MCTC should not have disregarded MAGDATO's answer filed therein which showed that the MCTC had no jurisdiction over the case; and (6) Administrative Circular No. 04-94 took effect only on 1 April 1994, or before the filing of the petition for relief from judgment, hence, it could not be given retroactive effect.

BAYOG's Motion for Reconsideration of the Order<sup>[30]</sup> was denied on 12 December 1994.<sup>[31]</sup>

Hence, BAYOG and Pesayco (hereinafter, Petitioners) filed this petition for certiorari and ask us to set aside the above order. They reiterate their arguments regarding the prohibition against petitions for relief from judgment; maintain that Rule 38 of the Rules of Court is inconsistent with the letter and spirit of the Revised Rule on Summary Procedure; allege that since MAGDATO's Answer in Civil Case No. 262 was filed out of time, it should be deemed not to have been filed at all, in light of *Lesaca vs. Court of Appeals*,<sup>[32]</sup> assert that the RTC has no jurisdiction over the petition for relief from judgment since the decision challenged therein was already final and executory; and characterize the Order in question as void as it directs the conduct of a new trial, contrary to Section 19(c) of the Revised Rule on Summary Procedure.

As to the petition for relief from judgment itself, the petitioners assert that it was fatally defective for it was not accompanied by an affidavit of merit; it was filed out of time; its subject matter had become moot and academic; and it is not the proper remedy pursuant to *Banco Español-Filipino vs. Palanca*,<sup>[33]</sup> where this Court held that the proper remedy was an action to annul the judgment and enjoin its enforcement, if not yet carried into effect; or an action to recover the property if the judgment had already been executed and the property of the aggrieved party disposed of.

We required the respondents to Comment on the petition and issued a temporary restraining order.

In his Comment, MAGDATO admits that his answer in Civil Case No. 262 was filed out of time; however, he insists that the MCTC should not have disregarded it as it alleged the existence of a tenancy relationship between the parties, thereby bringing the case beyond its jurisdiction, and within that of the Department of Agrarian Reform Adjudication Board (DARAB).

As to the affidavit of merit, MAGDATO countered that "the affidavit of merit may be set forth in the petition itself and need not be in a separate document (*Consul vs. Consul*, L-22713, July 26, 1966)," if the "facts constituting petitioner's substantial cause of action or defense . . . are alleged in the verified petition for the oath elevated the petition to the same category as a separate affidavit (*Fabar, Inc. vs. Rodelas*, L-46394, Oct. 24, 1977)."

In their Reply to the Comment, the petitioners contend that while MAGDATO used to be a tenant-lessee on another parcel of land of petitioner BAYOG, this ceased when MAGDATO sold his tenancy rights, without BAYOG's prior knowledge or consent, to Federico Valdevieso, Sr. under a Deed of Mortgage of Tenancy Rights dated 31