

TENTH DIVISION

[CA-G.R. SP No. 136535, February 27, 2015]

HEIRS OF CARLITO VALERIO REPRESENTED BY ELIZABETH CRUZ, PETITIONER-APPELLANT, VS. MALYN MASIAN AND ALL PERSONS CLAIMING RIGHTS UNDER HER, CAROLINA J. ESGUERRA, IN HER CAPACITY AS ACTING PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 64, MAKATI CITY, RESPONDENTS.

DECISION

DIAMANTE, J.:

This is an ordinary appeal directed against the May 9, 2014 Decision^[1] of the Makati City Regional Trial Court, Branch 134, in Civil Case No. 14-113.

It appears from the records that a Complaint for Ejectment was filed by herein petitioner-appellant against private respondent Malyn Masian before the City of Makati Metropolitan Trial Court (MeTC), raffled off to Branch 66 and docketed as Civil Case No. 104589.

Several pleadings were filed by the parties that led to the issuance by the aforesaid branch of MeTC of the Order^[2] dated January 24, 2013, the fallo of which reads:

“Finally, after going over the allegations in the omnibus motion and comment filed by the defendant and plaintiff, respectively, the court resolves, that pending the disposition of the instant case, the plaintiff is directed to allow defendant and any persons claiming rights under her, entry and exit of the leased premises.

Notify the parties of this order by personal service.

SO ORDERED.”

Herein petitioner-appellant filed a Motion for Reconsideration^[3] from the aforesaid Order but the same was apparently denied^[4] by public respondent.

Aggrieved, petitioner-appellant instituted a Petition for Certiorari^[5] before the Makati City Regional Trial Court (RTC), raffled off to Branch 134, seeking to annul the Order dated January 24, 2013 issued by the Makati City MeTC, Branch 66 and the Order dated December 3, 2013 issued by the Makati City MeTC, Branch 64.

Noting that it was not shown in the petition how the assailed Orders could have been issued without jurisdiction, with grave abuse of discretion amounting to lack or excess of jurisdiction nor was it shown that petitioner-appellant had no plain, speedy and adequate remedy in the ordinary course of law, not to mention the failure on

the part of petitioner-appellant to observe Section 3, Rule 46 of the Rules of Court, and taking into consideration Section 19 (g) of the 1991 Revised Rules on Summary Procedure, the Makati City RTC, Branch 134, disposed of the case as follows:

"WHEREFORE, premises considered, the petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED."^[6]

Dissatisfied with the outcome of the case, petitioner-appellant elevated the matter before Us and assigned the following as errors^[7] allegedly committed by the Makati City RTC in the exercise of its original jurisdiction:

"(1) That the Honorable Second Level Court erred in stating that the petitioner has not demonstrated how the assailed orders could have been issued without jurisdiction, in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction;

(2) That the Honorable Second Level Court erred in stating that the petitioner failed to comply with any of the requirements for the issuance of a writ of Certiorari;

(3) That the Honorable Second Level Court erred in holding that the herein controversy is an off-shoot of an ejectment suit which is covered by the Revised Rules on Summary Procedure."

On January 26, 2015, verification^[8] from this Court's Case Management Information System (CMIS) showed that private respondent did not file an appellee's Memorandum despite having received the Notice to file the same on August 27, 2014.^[9] Thus, private respondent is deemed to have waived the filing of Memorandum and the case is now submitted for decision sans appellee's Memorandum.

We have ploughed through the records of this case and is convinced that the RTC did not err when it dismissed the Petition for Certiorari filed by petitioner-appellant.

First. The assailed Order issued by MeTC – Branch 66 is an interlocutory order having been issued pending the disposition of the Ejectment case filed by herein petitioner-appellant. As aptly pointed out by the RTC, the assailed Order is an offshoot of the aforesaid Ejectment case. Rule 70, Section 13 (7) of the Rules of Court is explicit that Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court, *inter alia* shall not be allowed. Moreover, Ejectment cases are governed by summary procedure.^[10] As such, the petition for certiorari of an interlocutory order of the MeTC is a prohibited pleading under Sec. 19(g) of the Rules on Summary Procedure.

Second. Petitioner-appellant alleged that the dismissal by the RTC of the petition for certiorari was attended with grave abuse of discretion. Jurisprudence, however, dictates that it should be established that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be