

FIFTH DIVISION

[CA-G.R. SP No. 129665, March 02, 2015]

NENA PARAGAS, PETITIONER, VS. HON. PEDRO DE LEON GUTIERREZ, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 119 OF PASAY CITY AND SPS. MICHAEL T. VELASCO & CECILIA O. VELASCO, RESPONDENTS.

DECISION

TIJAM, J.:

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, questioning the validity of the following: 1) Order dated April 10, 2013^[2]; 2) Writ of Execution Pending Appeal dated April 10, 2013^[3]; and 3) Order dated April 15, 2013^[4], issued by the Regional Trial Court, Branch 119 of Pasay City (RTC) in Civil Case No. R-PSY-12-11277-CV.

The facts are as follows:

Private Respondents Michael T. Velasco and Cecilia O. Velasco (Respondents) filed a Complaint^[5] for *Accion Publiciana* and damages against Petitioner Nena R. Paragas (Petitioner), docketed as Civil Case No. R-PSY-12-11277-CV. Respondents claimed to be the registered owners of a property covered under TCT No. 138564^[6], which was then in the possession of Petitioner.

The complaint alleged that Petitioner and her husband were in possession of the subject property and were collecting rentals from third persons, when the ownership of said property was transferred to Respondents on June 26, 1997. Sometime in June 2009, the Respondents' lawyer notified Petitioner's husband of Respondents' ownership of the property and demanded that they vacate the same.

When Petitioner failed to vacate the subject property, Respondent Michael Velasco filed a complaint with the office of the Sangguniang Barangay, Barangay 90, Zone 09, Pasay City. Petitioner, however, failed to appear during the three dates set by the barangay. Thus, Respondents filed the said complaint for *accion publiciana* with the RTC.

In her Answer^[7], Petitioner alleged that she and her husband were the duly designated caretakers of the subject property for its registered owners, Rizalino and Renito Martinez (the Martinezes), both of whom reside in the United States. She attached to her Answer, a copy of TCT No. 126851 issued in the name of the Martinezes. She also claimed that the Martinezes have been paying for the annual realty tax of the subject property. Petitioner further alleged that in TCT No. 138654, the title submitted by the Respondents, it can be seen that an adverse claim by the Martinezes is annotated therein.

The Respondents filed their Twin Motions for: 1) Summary Judgment under Rule 35 and 2) Judgment on the Pleadings under Rule 34 on October 23, 2013^[8]. They claimed that the action to quiet title that was filed by the Martinezes against them (the Respondents) was dismissed with finality by the Supreme Court.

In a Judgment dated December 14, 2012, the RTC ruled as follows:

“WHEREFORE, the Court hereby rules that the defendant's motion to dismiss complaint is hereby denied for lack of merit.

On the other hand, the plaintiff's motion for summary judgment on the pleadings are hereby granted.

It is hereby ordered that defendant Nena Paragas and all persons claiming right of possession under her to peacefully vacate and turn over possession of the subject property covered by Transfer Certificate of Title No. 138564, to the plaintiffs, Spouses Michael T. Velasco and Cecilia O. Velasco, the registered owner thereof. Likewise, defendant Nena Paragas is directed to pay the reasonable rentals of P20,000.00 a month, computed from July 2009, up to the time she vacates the subject property.

SO ORDERED.”^[9]

Petitioner moved for the reconsideration of the December 14, 2012 judgment. Meanwhile, the Respondents filed a Motion for Execution Pending Appeal or Motion for Immediate Execution of Judgment^[10], to which Petitioner filed her Opposition^[11] thereto.

The RTC denied the motion for reconsideration in an Order dated March 13, 2013^[12]. Petitioner then filed a Notice of Appeal on April 8, 2013. ^[13]

In the assailed Order dated April 10, 2013^[14], the RTC granted the motion for execution pending appeal, the dispositive portion of which reads:

“WHEREFORE, plaintiff's motion for immediate execution or motion for execution pending appeal is hereby granted.

Let there issue a writ of execution pending appeal directing the defendant Nena Paragas and all persons claiming right of possession under her to peacefully vacate and turn-over the possession of the subject property covered by Transfer Certificate of Title No. 138564, to the plaintiffs, spouses Michael T. Velasco and Cecilia O. Velasco, the registered owner thereof.

Further, defendant's Nena Paragas (sic) notice of appeal is hereby given due course. Let the records of this case be elevated to the Court of Appeals for further appellate proceedings.

SO ORDERED.”^[15]

On the same day, the RTC issued the assailed Writ of Execution Pending Appeal¹⁶, the dispositive portion of which states:

"NOW THEREFORE, you are hereby commanded to implement the Court's Order dated December 14, 2012, to oust or eject Nena Paragas and all persons claiming right of possession under her to peacefully vacate and turn over the possession of the subject property covered by Transfer Certificate of Title No. 138564 owned by Spouses Michael T. Velasco and Cecilia O. Velasco.

This Writ shall be returned to the Court issuing it immediately after the judgment has been satisfied in full thirty (30) days on the proceedings until the judgment is satisfied in full, or it's (sic) effectivity expires.

xxx"

Petitioner filed an Urgent Motion for Reconsideration of the assailed April 10, 2013 Order and Writ of Execution Pending Appeal^[17], which was denied for lack of merit by the RTC in the assailed Order dated April 15, 2013^[18].

Hence, this Petition.

Petitioner filed her Amended Petition^[19] correcting the verification and certification on non-forum shopping, as directed by this Court in Our Resolution dated May 14, 2013^[20].

Petitioner raises the following grounds before Us:

"3. In this petition for Certiorari, herein Petitioner, as the defendant in Civil Case No. R-PSY-12-11277-CV, is questioning the validity of the Order and Writ of Execution Pending Appeal, both dated April 10, 2013, issued by the respondent Presiding Judge in the said case after the trial court had already lost jurisdiction thereon as of April 8, 2013, with the perfection of the appeal to this Court of Appeals by therein defendant of the judgment/Order dated December 14, 2012 rendered in the case.

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1. Herein Petitioner is also questioning the validity of the Order dated April 15, 2013 of the respondent trial court" (sic), personally served upon this Petitioner on April 17, 2013, DENYING the defendant's 9-pages, single-spaced "Urgent Motion for Reconsideration of Order dated April 10, 2013, and Writ of Execution Pending Appeal", for being tainted with grave abuse of discretion and attended with bias and prejudice in favor of the plaintiffs, in violation of her constitutional rights to due process and equal protection of law.

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2. The immediate implementation of the Order and Writ of Execution Pending Appeal, both dated April 10, 2013, by the posting on the subject land of a NOTICE TO VACATE dated April 11, 2013 issued in this case,

even before the named defendant in the case could have moved for reconsideration of the said court within the prescribed period therefor, is contrary to the rules and violated the defendant's right to due process of law.

4. The foregoing court Orders, issued by the respondent trial Court, without jurisdiction and in grave abuse of discretion, had caused and would continue to cause serious damage and injury to this Petitioner, for which there is no other available legal relief except the present special civil action for Certiorari."^[21]

The crux of the matter then is the propriety of the RTC's grant of the motion for execution pending appeal.

Petitioner insists that the execution pending appeal of judgment was granted without proper motion and without proof of Respondents' right of possession. She further reiterates that it was issued at a time when the RTC had already lost its jurisdiction because she had already perfected her appeal from the judgment.

In their Comment^[22], the Respondents state that there was no grave abuse of discretion in the issuance of the assailed orders. They reiterate that it was admitted by Petitioner that she was only a duly designated caretaker of the Martinezes, who filed an action to quiet title against the Respondents, which had already been dismissed by the Supreme Court. The Respondents claim that it was by virtue of this dismissal that they filed the motion for summary judgment and judgment on the pleadings. The Respondents, in their Memorandum^[23], likewise claim that the Fourteenth Division of the Court of Appeals, to whom the appeal of the Judgment dated December 14, 2012 was raffled to, had issued a Resolution dated January 15, 2014^[24], dismissing the appeal.

The Petition for Certiorari has no merit.

Contrary to Petitioner's position, the RTC had jurisdiction to issue the writ of execution pending appeal. Despite the timely notice of appeal filed by Petitioner, Rule 41 grants the RTC residual power to order an execution pending appeal so long as the original records have not yet been transmitted to the Court of Appeals, and that the requirements of Section 2, Rule 39 on Discretionary Execution, has been complied with.

This can be clearly seen in Section 9, Rule 41 of the Rules of Court:

"Section 9. Perfection of appeal; effect thereof. — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.