

## **SPECIAL EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 07328, December 23, 2014 ]**

**REMEDIOS DE LA CRUZ, PETITIONER, VS. HONORABLE  
REGIONAL TRIAL COURT, 8TH JUDICIAL REGION, BRANCH 15,  
THRU HON. PRESIDING JUDGE, YOLANDA U. DAGANDAN, AND  
ERZON SONGAHID, RESPONDENTS.**

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

**INGLES, G. T., J.:**

#### **THE CASE**

Before this Court is a Petition for Certiorari<sup>[1]</sup> filed by petitioner assailing the Orders<sup>[2]</sup> issued by Regional Trial Court, Branch 15 of Burauen, Leyte in a case for Partition with Prayer for Issuance of Preliminary Prohibitory Injunction and TRO with Damages.

#### **THE PARTIES**

Petitioner Remedios De La Cruz is of legal age, Filipino and a resident of Aguadas St., Burauen, Leyte. Petitioner is the defendant in Civil Case No. 2010-01-CR-13, for Judicial Partition.<sup>[3]</sup>

Private Respondent Erzon Songahid is of legal age, single, and a resident of San Ramon, Burauen, Leyte and is the plaintiff in the above-cited case<sup>[4]</sup>.

The Regional Trial Court, 8th Judicial Region, Branch 15, Burauen, Leyte through Hon. Presiding Judge Yolanda U. Dagandan is impleaded as a Public Respondent and is sued in its official capacity for issuing the questioned orders. It may be served with notices and other processes at 2/F LF&V Fatima Bldg., Real St., Tacloban City.

#### **THE ANTECEDENTS**

Sometime in the first quarter of 2004, private respondent Erzon instituted a case for Unlawful Detainer against petitioner Remedios for allegedly encroaching on the 393.5 square meter portion of his property.<sup>[5]</sup> The subject property is described as follows:

"A parcel of land located in Aguadas St., Burauen, Leyte consisting of 403 square meters identified as lot no. 5115 of the Burauen Cadastre bounded on the Northeast by lot no. 516, on the Southeast by lot no. 988 on the Southwest by Sta. Ana St., and on the Northwest by Santiago St., covered by Original Certificate of Title No. T-15115 to the names of Liborio Rebana and Eugenia Coral and declared for taxation purposes in

the names of the same owners in Tax Declaration No. R12 05-08-005-00101”<sup>[6]</sup>

The case was however dismissed by the Municipal Trial Court of Burauen, Leyte (MTC)<sup>[7]</sup> upon showing that no proper delineation and partition of the properties has been conducted to determine the specific area owned by plaintiff and defendant over Lot 5115.<sup>[8]</sup> On Appeal, the Regional Trial Court, Branch 15 of Burauen, Leyte (RTC) affirmed the decision of the MTC and denied plaintiff's prayer of evicting defendant from the subject property.<sup>[9]</sup>

To delineate his right over Lot 5115, private respondent filed a Complaint for Partition with Prayer for Issuance of Preliminary Prohibitory Injunction and a Temporary Restraining Order with Damages.<sup>[10]</sup> Thereafter, the case for Partition was docketed as Civil Case No. B-08-07-613.

On May 25, 2012, the Regional Trial Court rendered a Decision<sup>[11]</sup> finding in favor of private respondent and ordering the partition of the subject property. It ruled:

WHEREFORE, premises considered the Court renders judgment in favor of the plaintiff and against the defendant. In view thereof, the Court orders the partition of the subject property segregating or setting aside 9.6 square meters and award the said portion to the defendant while the remaining portion in the subject property should be given to the plaintiff after the estate taxes shall have been paid. The partition shall be executed in a manner that the defendant is least disturbed from her possession if that is possible. The counterclaim is ordered DISMISSED.<sup>[12]</sup>

Prevailing in his purpose, on July 11, 2012, private respondent filed a Motion for Execution of Judgment<sup>[13]</sup>.

On July 16, 2012, an Entry of Judgment was issued by the respondent Court certifying that the May 25, 2012 Decision in Civil Case No. B-08-07-613 has become final and executory on July 6, 2012. An Opposition/Comment<sup>[14]</sup> thereto dated August 22, 2012 was filed by petitioner.

On September 4, 2012, an Order was issued by the respondent Court granting the Motion for Execution. In its *ratio*, the Lower Court noted that a period of fifteen (15) days has lapsed from the time of defendants' receipt of the judgment. From the time thereon, neither a Motion for Reconsideration was filed by private respondent nor an appeal was pursued. Hence, it disposed:

WHEREFORE, over the opposition/comment made by the defendant through counsel, the Court grants the Motion for Execution. Let a Writ of Execution be issued.<sup>[15]</sup>

On September 11, 2012, a Motion for Reconsideration and/or Quashal of Order/Writ of Execution<sup>[16]</sup> was filed by private respondent. Petitioner raised the following issues as grounds for the granting of her motion: 1.) That the judgment may not be carried out without the appointment of Commissioners pursuant to Section 3 Rule 69 of the Rules of Court; 2.) That the property sought to be executed is defendant's

family home and is therefore exempt from execution; 3.) That the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it granted an Order/Writ of Execution of a Judgment which is not final and executory.<sup>[17]</sup>

On October 4, 2012, the respondent Court resolved the Motion for Reconsideration filed and ruled for its denial. It held:

WHEREFORE, for want of any factual and legal bases (*sic*) the motion for reconsideration and/or quashal of order/writ of execution is DENIED. Xxx  
<sup>[18]</sup>

Petitioner now files the instant petition ascribing grave abuse of discretion on the part of the respondent Court. In justifying the granting of her petition, Remedios cites the following grounds:

THE HONORABLE COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

- 1) When it granted the Motion for Issuance of a Writ of Execution outright in open court on September 4, 2012 Hearing without taking into consideration the written and oral opposition set up by the defendant;
- 2) When it issued the corresponding Writ of Execution the day following the September 4, 2012 Hearing and commanded the sheriff to forthwith execute and enforce the same on September 6, 2012, well within the 15-day period before said order becomes final;
- 3) When it granted the motion for issuance of writ of execution without complying with the provisions of Section 3 of Rule 69 of the Rules of Court;
- 4) When it granted an order/writ of execution of a judgment which is not final and executory;
- 5) When it denied the Motion for Reconsideration and/or Quashal of the Writ of Execution despite the indubitable existence of the additional ground that the subject thereof is a family home, hence exempt from execution.<sup>[19]</sup>

Petitioner argues that the respondent judge acted arbitrarily, capriciously, and despotically when (September 4, 2012 Order) it denied outright petitioner's opposition to the motion for execution on the sole ground that the subject judgment is already final and executory.

Petitioner further expounds that the respondent court blatantly disregarded the rule that any order, resolution, or decision may not be enforced within the reglementary period of 15 days.<sup>[20]</sup> Worse, the court a quo issued the corresponding writ the following day, September 5, 2012, and commanded the sheriff to execute the same.  
<sup>[21]</sup>

With regard to the dispositive portion of the decision, the Court required for the

partition to be executed in such a manner that she shall be least disturbed of her possession if the same is possible. Petitioner submits that the sheriff, by the nature of his profession, lacks the competence to make the partition himself. Also, the sheriff could not forthwith enforce the judgment since there is yet not partition to speak of that would enable him to deliver the corresponding portion belonging to the parties.<sup>[22]</sup> Thus, the appointment of three (3) competent, disinterested commissioners is necessary to enforce the partition. Hence, the issuance of the writ of execution of the judgment is premature, capricious and arbitrary.<sup>[23]</sup>

Petitioner likewise raises the fact that the Decision in Civil Case No. B-08-07-613 recognizes the issue of legal redemption raised. The private respondent is but a mere stranger and not an heir of the primitive owners of the subject property. However, the respondent Court declined to resolve the issue.

Petitioner contends that private respondent's right of redemption whether resolved in the partition case or in another action will indispensably affect plaintiff's right to demand partition.<sup>[24]</sup> Remedios adds, the judgment was silent with respect to the disposition of the residential house of the defendant standing as an improvement on the lot subject of partition which covers an area of 124.8 square meters, more or less. For these reasons, petitioner submits, the judgment cannot become final and therefore may not be the subject of execution.<sup>[25]</sup>

Petitioner also interposes, not all the heirs of the decedent were impleaded as indispensable parties. By virtue of their non-participation, the judgment of the court cannot attain finality.<sup>[26]</sup>

Finally, petitioner interjects that the house on which the subject property is constituted is a family home and therefore exempt from execution.<sup>[27]</sup>

From the foregoing, petitioner prays that the order granting the Motion for Execution be reconsidered or set aside and/or the writ itself be quashed.<sup>[28]</sup>

In a Resolution<sup>[29]</sup> dated February 5, 2013, We required private respondent to file Comment on the petition. The Judicial Records Division of this Court however reported that none was filed despite the directive of this Court.<sup>[30]</sup> Having waived his right to file the appropriate pleading, We declared the instant case submitted for decision.<sup>[31]</sup>

## **ISSUE**

Whether or not the respondent Court committed grave abuse of discretion in issuing the assailed Orders;

## **THE COURT'S RULING**

Before we delve into the matters at hand, this Court shall clarify the nature of the present petition in order to avoid any future confusion that may arise. On February 5, 2013, this Court issued a Resolution denominating the present petition as "Petition for Review under Rule 42". A perusal of the records however reveal that indeed the instant petition is a Petition for Certiorari.

From the records, petitioner foreclosed her right to appeal the Decision of the Court *a quo* when she neglected to file a Motion for Reconsideration or a Notice of Appeal.

In an attempt to rectify the procedural lapse committed, petitioner now files the instant Petition for Certiorari.

*A petition for certiorari is not a substitute for a lost appeal.*

It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari. Likewise, it has been repeatedly stressed that a petition for certiorari is not a substitute for a lost appeal.<sup>[32]</sup>

A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal... Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.<sup>[33]</sup>

This is due to the nature of a Rule 65 petition for certiorari which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." <sup>[34]</sup>

Nevertheless, this salutary rule has been disregarded on occasion by the Supreme Court in instances where valid and compelling circumstances warrant.<sup>[35]</sup> The Supreme Court ruled in *Spouses Leynes vs. Court of Appeals*:<sup>[36]</sup>

We bear in mind that the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. The provisions of the Rules of Court, which are technical rules, may be relaxed in certain exceptional situations. Where a rigid application of the rule that *certiorari* cannot be a substitute for appeal will result in a manifest failure or miscarriage of justice, it is within our power to suspend the rules or exempt a particular case from its operation.

*A relaxation of technical rules may be made when the broader interest of justice so requires.*

Thus, while a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

Under the circumstances, this Court finds that a relaxation of the procedural rules must be made in consideration of broader interest of justice. Hence, exercising this Court's discretion, We shall entertain the Petition for Certiorari filed.

Preliminarily, this Court notes that the grounds raised by petitioner are the very