



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 29, 2020**, which reads as follows:

“G.R. No. 215010 – (CONCHITA RODIS, SENFOROSO LAW, JR., and EDUARDO DERIGAY, petitioners v. THE HONORABLE COURT OF APPEALS, SPECIAL 20THDIVISION, CEBU CITY and SPOUSES EDGAR AND KIM MARTINEZ, respondents). – This is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolutions dated June 26, 2014¹ and September 18, 2014,² of the Court of Appeals (CA) in CA-G.R. SP No. 08433.

The Factual Antecedents

On May 4, 2011, spouses Edgar and Kim Martinez (private respondents) filed a Complaint³ for ejectment against petitioners Conchita Rodis, Senforoso Lawa, Jr. and Eduardo Derigay (collectively, petitioners) before Branch 6 of the Municipal Trial Court in Cities (MTCC) of Cebu City, docketed as Civil Case No. R-55604. Private respondents alleged that they are the registered owners of a parcel of land identified as Lot No. 9-B-3-A, consisting an area of 100 square meters, more or less, and registered under Transfer Certificate of Title (TCT) No. 180320⁴ of the Register of Deeds of Cebu City, having bought the same from one Lucita Villamor (Lucita) by virtue of a Deed of Absolute Sale⁵ dated October 21, 2005. Private respondents claimed that petitioners were their lessees who, having been delinquent in the payment of rentals, had failed to comply with the letter⁶ dated May 14, 2009 demanding that they vacate the said property.

¹ Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 28-31.

² Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Renato C. Francisco, concurring; *id.* at 33-39.

³ *Id.* at 40-46.

⁴ *Id.* at 47-48.

⁵ *Id.* at 59-60.

⁶ *Id.* at 65.

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In their Answer,⁷ petitioners countered that private respondents' TCT No. 180320 is the product of a void title. They claimed that the registration over the subject property was obtained by the late Florentino Jurado (Florentino) by falsely declaring the original title thereto to be missing. Thereafter, Florentino conveyed said rights to Lucita who, in turn, transferred the same to petitioners. Since private respondents' rights can be traced back to persons who were not the true and lawful owners of the subject property, they do not have any right to oust them therefrom, petitioners concluded.

The MTCC's Ruling

On February 17, 2012, the MTCC rendered a Decision⁸ in favor of private respondents. It found that petitioners' possession of the subject property started by mere tolerance of private respondents, and that the same became illegal upon private respondents' demand that they vacate the same. Thus, the MTCC directed petitioners to surrender the subject property to private respondents, and to pay the amount of ₱500.00 as monthly rental from October 21, 2005 until such possession is surrendered, and ₱10,000.00 as attorney's fees.

Aggrieved, petitioners interposed an Appeal⁹ with Branch 10 of the Regional Trial Court (RTC) of Cebu City. They contended that by filing an ejectment case before the MTCC, private respondents availed of the wrong mode or remedy. Petitioners theorized that since private respondents only demanded that they vacate the property, and not to pay the rentals thereto, such demand falls squarely within the purview of an action for specific performance, the jurisdiction over which lies with the RTC. Petitioners further asserted that, at any rate, any action on the part of private respondents that involve taking possession of the subject property must be filed under *accion publiciana* or *accion reivindicatoria*, and not ejectment.

The RTC's Ruling

On July 31, 2013, the RTC issued an Order¹⁰ on petitioners' appeal. In addition to adopting the MTCC's findings *in toto*, the RTC sustained the MTCC's jurisdiction over the case. It noted that the last demand to vacate the subject property was sent by private respondents to petitioner on April 6, 2011, and that the complaint for ejectment was filed by private respondents on May 4, 2011. Said complaint was brought to the courts well within the one (1) year prescriptive period for ejectment cases, the RTC declared.

⁷ Id. at 78-85.

⁸ Penned by Judge Pamela A. Baring-Uy; id. at 183-192.

⁹ Id. at 199-209.

¹⁰ Penned by Judge Soliver C. Peras, id. at 225-232.

Petitioners' Motion for Reconsideration¹¹ of the foregoing ruling of the RTC was denied in an Order¹² dated February 12, 2014. As admitted by petitioners before the CA, they received a copy of the said issuance on March 14, 2014.

On May 13, 2014, petitioners filed an untitled Rule 65 Petition for *Certiorari*¹³ with the CA, asserting that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (a) in concluding that petitioners have no possessory rights over the subject property; and (b) in giving more weight to TCT No. 180320 over Original Certificate of Title No. 8101.

The CA's Ruling

In the first assailed Resolution dated June 26, 2014, the CA dismissed the petition outright. The CA noted that the petition was riddled with defects, particularly in failing: (a) to allege the date when petitioners filed their motion for reconsideration of the RTC's July 31, 2013 Order; (b) to pay the docket and other lawful fees in full since the same was deficient by ₱180.00; (c) to show proof that a copy of the petition was served on public respondent; (d) to attach a duplicate original or certified true copy of the Orders of the RTC; (e) to append a Certificate of Non-Forum Shopping; and (f) to attach copies of the relevant and pertinent pleadings and documents mentioned in the petition.

In an effort to save their recourse to the CA, petitioners filed a Motion for Reconsideration¹⁴ which was accompanied by an Amended Petition for *Certiorari*¹⁵ purportedly correcting the defects in their earlier petition.

On September 18, 2014, the CA rendered the second assailed Resolution denying petitioners' motion for reconsideration. It ruled that the defects in the petition could not be simply cured by a mere amendment. At any rate, petitioners availed of the wrong mode or remedy. The CA declared that petitioners should have filed a petition for review under Rule 42, not a Rule 65 petition for *certiorari*, because they were assailing the RTC's Order which was made in the exercise of its appellate jurisdiction.

Hence, the present recourse.

¹¹ Id. at 233-236.

¹² Id. at 242.

¹³ Id. at 243-250.

¹⁴ Id. at 294-300.

¹⁵ Id. at 303-309.

Issue

This Court is now tasked with resolving whether or not the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioners' petition for *certiorari* outright.

The Ruling of the Court

The petition is bereft of merit.

Certiorari is a prerogative writ and never issues as a matter of right.¹⁶ As such, a party who seeks to avail of this extraordinary remedy must observe the rules laid down by law and non-observance thereof may not be brushed aside as mere technicality.¹⁷ In filing a Rule 65 petition for *certiorari* before the CA, petitioners committed several violations of procedural rules that cannot simply be ignored.

Petitioners availed of the wrong remedy before the CA.

When the RTC issued its July 31, 2013 Order affirming the findings and conclusions of the MTCC in its February 17, 2012 Decision, it did so in the exercise of its appellate jurisdiction. It is settled that all appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the CA by filing a petition for review under Rule 42.¹⁸ Thus, petitioners availed of the wrong mode or remedy when they sought recourse through the CA by way of a petition for *certiorari* under Rule 65.

It bears stressing that a Rule 42 petition for review is starkly different from a Rule 65 petition for *certiorari*.

A petition for review under Rule 42 is a mode of appeal that may include questions of fact, of law, or mixed questions of fact and law.¹⁹ It is given due course only upon a *prima facie* showing that the RTC committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.²⁰

¹⁶ *Cerilles v. Civil Service Commission*, 821 Phil. 221, 232 (2017).

¹⁷ *De los Santos v. Court of Appeals*, 522 Phil. 313, 322 (2006).

¹⁸ *Land Bank of the Philippines v. Ramos, et al.*, 698 Phil. 725, 732 (2012).

¹⁹ *Intramuros Administration v. Offshore Construction Development Company*, 827 Phil. 303, 320 (2018).

²⁰ *Fortune Life Insurance Company, Inc. v. COA, Proper, et al.*, 752 Phil. 97, 104 (2015).

On the other hand, under Rule 65, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.²¹ It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* - beyond the ambit of appeal.²²

The records show that upon receipt of the July 31, 2013 Order of the RTC, they filed a motion for reconsideration thereof. The RTC denied said motion in a second Order dated February 12, 2014, a copy of which petitioners received on March 14, 2014. Under the rules, they had fifteen (15) days from said date within which to perfect their appeal to the CA through a petition for review under Rule 42. Petitioners having failed to do so, the RTC's Orders dated July 31, 2013 and March 14, 2014, had therefore attained finality.

A judgment that lapses into finality becomes immutable and unalterable.²³ This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land.²⁴

Petitioners, having failed to seek a timely recourse to the CA through Rule 42 petition for review, can no longer be allowed to revive the same in the form of a Rule 65 petition for *certiorari*. *Certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.²⁵ *Certiorari*, by its very nature, is proper only when appeal is not available to the aggrieved party; the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.²⁶ Thus, in *Butuan Dev't. Corp. v. Court of Appeals, et al.*,²⁷ the Court declared:

A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there

²¹ *Bugaoisan v. OWI Group Manila*, 825 Phil. 764, 774-775 (2018).

²² *Miranda v. Sandiganbayan, et al.*, 815 Phil. 123, 142 (2017).

²³ *Mercury Drug Corp., et al. v. Sps. Huang, et al.*, 817 Phil. 434, 437 (2017).

²⁴ *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 366 (2008).

²⁵ *Sps. Dycoco v. Court of Appeals, et al.*, 715 Phil. 550, 562 (2013).

²⁶ *Guzman v. Guzman, et al.*, 706 Phil. 319, 327 (2013).

²⁷ 808 Phil. 443 (2017).

appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.²⁸

Indeed, *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy.²⁹ The Rules preclude recourse to the special civil action of *certiorari* if appeal, by way of a petition for review, is available.³⁰ In the same vein, We cannot accede to petitioners' prayer for liberality in the absence of any compelling reason to do so. As edified by the Court in *Heirs of Garcia I v. Municipality of Iba, Zambales*:³¹

The plea for liberality is unworthy of any sympathy from the Court. We have always looked at appeal as not a matter of right but a mere statutory privilege. As the parties invoking the privilege, the petitioners should have faithfully complied with the requirements of the Rules of Court. Their failure to do so forfeited their privilege to appeal. Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the Rules of Court.³²

Accordingly, grave abuse of discretion amounting to lack or excess of jurisdiction cannot be imputed to the CA.

Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish 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.³³ Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law, or existing jurisprudence.³⁴ To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.³⁵

²⁸ Id. at 451.

²⁹ *Indoyon, Jr. v. Court of Appeals, et al.*, 706 Phil. 200, 213 (2013).

³⁰ *Sonic Steel Industries, Inc. v. Court of Appeals, et al.*, 640 Phil. 203, 208 (2010).

³¹ 764 Phil. 408(2015).

³² Id. at 416-417.

³³ *Chua v. People*, 821 Phil. 271, 279 (2017).

³⁴ *Ifurung v. Carpio Morales*, G.R. No. 232131, April 24, 2018, 862 SCRA 684, 701.

³⁵ *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

All told, this Court finds no grave abuse of discretion on the part of the CA when it enforced adherence to procedural rules *motu proprio*, thereby resulting in the outright dismissal of petitioners' petition for *certiorari*. Under Supreme Court Circular No. 2-90,³⁶ an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal.³⁷

WHEREFORE, the petition is **DISMISSED** for lack of merit. Accordingly, the Resolutions dated June 26, 2014 and September 18, 2014, of the Court of Appeals in CA-G.R. SP No. 08433 are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
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Division Clerk of Court
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³⁶ GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT dated March 9, 1990.

³⁷ *Indoyon v. Court of Appeals*, supra note 29 at 208.