

FIRST DIVISION

[G.R. No. 198925, July 13, 2016]

**SPOUSES ARCHIBAL LATOJA AND CHARITO LATOJA,
PETITIONERS, VS. HONORABLE ELVIE LIM, PRESIDING JUDGE,
BRANCH 1, REGIONAL TRIAL COURT, BORONGAN, EASTERN
SAMAR, ATTY. JESUS APELADO, REGISTER OF DEEDS,
BORONGAN, EASTERN SAMAR, ALVARO CAPITO, AS SHERIFF,
BRANCH 2, REGIONAL TRIAL COURT, BORONGAN, EASTERN
SAMAR, AND TERESITA CABE, REPRESENTED BY ADELINA
ZAMORA, RESPONDENTS.**

D E C I S I O N

SERENO, C.J.:

This is a Petition^[1] for *Certiorari*, Prohibition, and Mandamus under Rule 65 of the 1997 Revised Rules of Court assailing the Order^[2] in Civil Case No. 3488 issued by Hon. Elvie P. Lim (Judge Lim) as acting presiding judge of Regional Trial Court Branch 2 (RTC-Br. 2), Borongan, Eastern Samar. The assailed Order granted the Motion for Issuance of Writ of Possession in favor of respondent Teresita Cabe over the property covered by Original Certificate of Title (OCT) No. 41.

The Petition likewise prays for the issuance of a preliminary injunction and/or temporary restraining order (TRO) to enjoin the execution of the assailed Order.

THE ANTECEDENT FACTS

On 21 May 1997, respondent Cabe, together with Donato A. Cardona II (Cardona II), executed a Deed of Sale with *Pacto de Retro*^[3] over a parcel of land covered by OCT No. 41, registered under the "Heirs of Donato Cardona represented by Jovita T. Cardona."^[4] The sale was with the conformity of Jovita Cardona and spouses Rhodo and Myrna Cardona (Spouses Cardona), who are Cardona II's grandmother and parents, respectively.

For failure of Cardona II to repurchase the property from her within one year as agreed upon in the deed, Cabe filed a Petition for Consolidation xof Ownership^[5] over OCT No. 41 pursuant to Article 1607 of the Civil Code.^[6] Docketed as Civil Case No. 3488 (consolidation case) and assigned to RTC-Br. 2, the Petition was granted by the trial court through a Decision dated 20 May 2002.^[7]

Cardona II questioned the trial court's Decision by filing with the Court of Appeals (CA) a Rule 65 Petition for *Certiorari*^[8] which was dismissed by the CA.^[9] Cardona II further appealed to the Supreme Court, but his appeal was also denied and, on 13 July 2005, an Entry of Judgment issued.^[10]

Pursuant to this Court's Resolution denying Cardona IPs appeal, respondent Cabe filed a motion for execution of the RTC Decision in the consolidation case^[11] which was granted.^[12]

RTC-Br. 2 then issued a Writ of Execution.^[13] Pursuant thereto, the Register of Deeds cancelled OCT No. 41 and issued, in lieu thereof, Transfer Certificate of Title No. 114-2011000028 under the name of respondent Cabe.^[14]

Thereafter, Cabe prayed for the issuance of a Writ of Possession. This was granted through the assailed Order^[15] of Judge Lim as acting Presiding Judge of RTC-Br. 2.^[16] In accordance with the assailed Order, a Writ of Possession was issued in favor of Cabe.^[17] Subsequently, a Notice of Demand to Vacate^[18] was issued by the court sheriff of RTC-Br. 2 pursuant to the Writ of Possession.

Petitioner-spouses Archibal and Charito Latoja (Spouses Latoja) now come to us alleging grave abuse of discretion on the part of Judge Lim.^[19] They allege that in 2006, this same Judge Lim rendered a Judgment by Compromise^[20] in an Action for Partition of Real Properties. This action was filed by Spouses Latoja against Spouses Cardona, who are the parents of Cardona II, respondent in the consolidation case.^[21] Among the properties included in the partition case was OCT No. 41,^[22] the same property subject of the consolidation case. The Judgment by Compromise awarded OCT No. 41 on a 50/50 *pro indiviso* ownership to Spouses Latoja and Spouses Cardona pursuant to their Compromise Agreement.^[23]

Spouses Latoja contend that Judge Lim, as acting presiding judge of **RTC-Br. 2**, wrongly granted the motion for the issuance of a Writ of Possession to Cabe despite the Judgment by Compromise he had previously rendered in the partition case. Judge Lim was then the presiding judge of **RTC-Br. 1**, Borongan, Eastern Samar when he awarded half of the same property to petitioners.^[24] Alleging that they are in possession of a portion of the subject property,^[25] petitioners also pray for the issuance of a TRO to enjoin the implementation of the assailed Order in view of the issuance of the Notice to Vacate issued by the court sheriff.^[26] In a Resolution dated 14 December 2011, this Court granted the TRO prayed for.^[27]

In her Comment,^[28] respondent Cabe contends that the Decision in the consolidation case had become final on 13 July 2005 after this Court dismissed the appeal of Cardona II and before the Judgment by Compromise was rendered in 2006. Therefore, Judge Lim was simply guided by the rule on the finality of judgment when he issued the assailed Order. Cabe asserts that she is therefore entitled to the writ of possession prayed for.^[29]

THE ISSUE

The crucial issue in this case is whether public respondent Judge Lim committed grave abuse of discretion when he issued the Order granting the Motion for Issuance of Writ of Possession in favor of private respondent Cabe in the consolidation case.

THE COURT'S RULING

We grant the Petition for reasons as follows.

The Petition warrants a relaxation of procedural rules.

At the outset, We note some procedural lapses in the Petition filed before Us.

The Court enjoins the observance of the established policy on the hierarchy of courts.^[30] Here, petitioners filed the present Petition for *Certiorari* directly before this Court instead of the CA. Such a course of action ought to be disallowed.^[31]

Moreover, it is a rule that a motion for reconsideration of an assailed order is a condition precedent before filing a petition for *certiorari* under Rule 65.^[32] In the present case, petitioners failed to file a motion for reconsideration of the Order granting the Motion for the Issuance of Writ of Possession, thereby depriving RTC-Br. 2 of the opportunity to correct an error it might have unwittingly committed.^[33]

Despite these procedural lapses, the Court deems it prudent to provide a resolution of the substantial issues raised by the parties. The resolution of these issues is pursuant to the policy that cases should as much as possible be resolved on the merits, and not on technicalities.^[34] Strict adherence to rules of procedure must not get in the way of achieving substantial justice.^[35] The Court, on compelling and meritorious grounds, has overlooked procedural flaws, such as (1) lack of a motion for reconsideration prior to a Rule 65 petition;^[36] (2) non-exhaustion of administrative remedies;^[37] (3) a disregard of the hierarchy of courts;^[38] and (4) an erroneous service of a petition on the opposing party, instead of the counsel of record.^[39]

Indeed, the exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities, so as to allow the parties to determine their respective rights and liabilities under the law. In particular, we take note of the fact that the case involved here has been dragging on for years, with the consolidation case commencing as early as 1999.^[40] Further, the merits of the present case, as will be shown later, justify the relaxation of procedural technicalities.

Judge Lim committed grave abuse of discretion in granting the Motion for Issuance of Writ of Possession.

We find that Judge Lim committed grave abuse of discretion when he issued the Order for the issuance of the Writ of Possession prayed for by respondent Cabe in the consolidation case. We make this finding on grounds other than those posited by petitioners as will further be explained below.

Jurisprudence provides only these four instances when a writ of possession may issue: (1) land registration proceedings; (2) extrajudicial foreclosure of mortgage of real property; (3) judicial foreclosure of property, provided that the mortgagor has possession, and no third party has intervened; and (4) execution sales.^[41]

Here, respondent Cabe sought the writ as a consequence of the trial court's Decision

ordering the consolidation of the title over the subject property and vesting absolute ownership thereof in her name. Since the instant case clearly does not fall among the four instances enumerated above, the issuance of the Writ of Possession was not proper.

It is apparent that Cabe availed herself of the wrong remedy in seeking possession of the property via a Writ of Possession. She contends that she is entitled as a matter of right to the issuance of the writ as she has in her favor a court judgment, a writ of execution, and a new TCT under her own name.^[42] This contention lacks merit.

The consolidation of title prescribed in Article 1607^[43] of the Civil Code is merely for the purpose of registering and consolidating title to the property in case of a vendor *a retro's* failure to redeem.^[44] Here, the trial court's Decision (affirmed by both the CA and the SC) merely resolved the issue of consolidation of ownership over the subject property.^[45] Possession and ownership are distinct legal concepts.^[46] A judgment in favor of ownership, therefore, does not necessarily include possession as a necessary incident.^[47]

To further seek possession of the land would violate the established rule that a writ of execution must conform to the dispositive portion of the decision it seeks to enforce and cannot vary the terms thereof.^[48] Otherwise, the execution is void.^[49] Since the Writ of Possession in this case was issued as part of the execution process,^[50] it is likewise subject to this rule. Consequently, as the judgment being executed does not involve a disposition on Cabe's right of possession, the Writ of Possession itself is a patent nullity.

Deprived of possession, Cabe's remedy is not a Writ of Possession, but any of the available actions for the recovery of possession of real property, specifically the following: *accion interdictal*, when the dispossession has not lasted for more than one year; *accion publiciana*, when the dispossession has lasted for more than one year; or *accion reivindicatoria*, which seeks the recovery of ownership and necessarily includes possession.^[51]

Judge Lim overlooked the nature of the *Pacto de Retro* sale entered into by Cabe and Cardona II. It is basic that in a *pacto de retro sale*, the title and ownership of the property sold are immediately vested in the vendee *a retro*.^[52] As a result, the vendee *a retro* has a right to the immediate possession of the property sold, unless otherwise agreed upon.^[53]

Therefore, the right of respondent Cabe to possess the subject property must be founded on the terms of the *Pacto de Retro* Sale itself, and not on the Decision in the consolidation case. It would be erroneous to conclude that she is entitled as a matter of right to possession of the subject property by virtue of the Decision on consolidation which has become final and executory.^[54]

Judge Lim committed grave abuse of discretion in issuing the Order granting Cabe's motion for the issuance of a writ of possession, as he went against basic law and established jurisprudence.