

## SECOND DIVISION

[ G.R. No. 172588, March 18, 2013 ]

**ISABEL N. GUZMAN, PETITIONER, VS. ANIANO N. GUZMAN AND PRIMITIVA G. MONTEALTO, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve the petition for review on *certiorari*,<sup>[1]</sup> filed by petitioner Isabel N. Guzman, assailing the February 3, 2006 decision<sup>[2]</sup> and the April 17, 2006 resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 90799. The CA decision dismissed the petitioner's petition for *certiorari* for being the wrong mode of appeal and for lack of merit. The CA resolution denied the petitioner's motion for reconsideration for lack of merit.

#### THE FACTUAL ANTECEDENTS

On June 15, 2000, the petitioner filed with the Municipal Trial Court (MTC) of Tuguegarao City, Cagayan, Branch 4, a complaint for ejectment against her children, respondents Aniano N. Guzman and Primitiva G. Montealto.<sup>[4]</sup> The petitioner alleged that she and Arnold N. Guzman owned the 6/7<sup>th</sup> and 1/7<sup>th</sup> portions, respectively, of a 1,446-square meter parcel of land, known as Lot No. 2419-B, in Tuguegarao City, Cagayan, under Transfer Certificate of Title No. T-74707;<sup>[5]</sup> the respondents occupied the land by tolerance; the respondents did not comply with her January 17, 2000 written demand to vacate the property;<sup>[6]</sup> and subsequent *barangay* conciliation proceedings failed to settle the differences between them.<sup>[7]</sup>

In their answer,<sup>[8]</sup> the respondents countered that the petitioner transferred, in a December 28, 1996 document,<sup>[9]</sup> all her property rights in the disputed property, except her usufructuary right, in favor of her children, and that the petitioner engaged in forum shopping since she already raised the issue of ownership in a petition for cancellation of adverse claim against the respondents, pending with Branch 4 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan.<sup>[10]</sup>

#### THE MTC's RULING

In a November 27, 2002 decision,<sup>[11]</sup> the MTC found the petitioner to be the lawful owner of the land with a right to its possession since the respondents had no vested right to the land since they are merely the petitioner's children to whom no ownership or possessory rights have passed. It held that the petitioner committed no forum shopping since she asserted ownership only to establish her right of possession, and the lower courts can *provisionally* resolve the issue of ownership to determine who has the better right of possession. The MTC directed the

respondents to vacate the land and surrender possession to the petitioner, and to pay P5,000.00 as monthly rental from January 2000 until possession is surrendered, plus P15,000.00 as moral and exemplary damages.

The respondents appealed to the RTC of Tuguegarao City, Cagayan, Branch 1.<sup>[12]</sup> They argued that: (a) the MTC had no jurisdiction over the case; (b) the petitioner has no cause of action against the respondents; (c) the petitioner engaged in forum shopping; and (d) the MTC erred in deciding the case in the petitioner's favor.<sup>[13]</sup>

### **THE RTC's RULING**

In its May 19, 2005 decision,<sup>[14]</sup> the RTC rejected the respondents' arguments, finding that the MTC has jurisdiction over ejectment cases under Section 33(2) of Batas Pambansa Bilang 129;<sup>[15]</sup> the petitioner has a valid cause of action against the respondents since the complaint alleged the petitioner's ownership, the respondents' possession by tolerance, and the respondents' refusal to vacate upon the petitioner's demand; and, the petitioner did not engage in forum shopping since the petition for the cancellation of adverse claim has a cause of action totally different from that of ejectment.

The RTC, however, still ruled for the respondents and set aside the MTC ruling. It took into account the petitioner's transfer of rights in the respondents' favor which, it held, could not be unilaterally revoked without a court action. It also noted that the petitioner failed to allege and prove that earnest efforts at a compromise have been exerted prior to the filing of the complaint.<sup>[16]</sup> Thus, the RTC ordered the petitioner to pay the respondents P25,000.00 as attorney's fees and P25,000.00 as litigation expenses.

On June 16, 2005, the petitioner received a copy of the RTC decision.<sup>[17]</sup> On June 30, 2005, the petitioner filed her **first motion for reconsideration**.<sup>[18]</sup> In its July 6, 2005 order,<sup>[19]</sup> the RTC denied the petitioner's motion for reconsideration for lack of the required notice of hearing.<sup>[20]</sup>

On July 14, 2005, the petitioner filed a **second motion for reconsideration**.<sup>[21]</sup> In its July 15, 2005 order,<sup>[22]</sup> the RTC denied the second motion for reconsideration for having been filed out of time.

On July 20, 2005, the petitioner filed a **third motion for reconsideration**.<sup>[23]</sup> In its July 22, 2005 order,<sup>[24]</sup> the RTC denied the third motion for reconsideration with finality.

On August 8, 2005, the petitioner filed a Rule 65 petition for *certiorari* with the CA, alleging that the RTC committed a grave abuse of discretion: (a) in deciding the case based on matters not raised as issues on appeal; (b) in finding that the transfer of rights could not be unilaterally revoked without a court action; (c) in holding that the petitioner failed to prove that earnest efforts at a compromise have been exerted prior to the filing of the complaint; and (d) in denying the petitioner's motion for reconsideration on a mere technicality.

## **THE CA's RULING**

In its February 3, 2006 decision,<sup>[25]</sup> the CA dismissed the petition. The CA noted that a Rule 42 petition for review, not a Rule 65 petition for *certiorari*, was the proper remedy to assail an RTC decision rendered in the exercise of its appellate jurisdiction. It found that the petitioner lost her chance to appeal when she filed a second motion for reconsideration, a prohibited pleading under Section 5, Rule 37 of the Rules of Court. The CA also held that the petitioner cannot validly claim that the respondents occupied the properties through mere tolerance since they were co-owners of the property as compulsory heirs of Alfonso Guzman, the original owner.

When the CA denied<sup>[26]</sup> the motion for reconsideration<sup>[27]</sup> that followed, the petitioner filed the present Rule 45 petition.

## **THE PETITION**

The petitioner justifies the filing of a Rule 65 petition for *certiorari* with the CA by claiming that the RTC judge acted with grave abuse of discretion in passing on issues not raised in the appeal and in not relaxing the rule on the required notice of hearing on motions. She further argues that the CA's finding of co-ownership is bereft of factual and legal basis.

## **THE CASE FOR THE RESPONDENTS**

The respondents submit that the proper remedy for appealing a decision of the RTC, exercising appellate jurisdiction, is a Rule 42 petition for review, and that a Rule 65 petition for *certiorari* is not a substitute for a lost appeal.

## **THE ISSUE**

The case presents to us the issue of whether the CA committed a reversible error in dismissing the petitioner's petition for *certiorari*.

## **THE COURT's RULING**

**The petition lacks merit.**

***The petitioner availed of the wrong remedy***

The petitioner's resort to a Rule 65 petition for *certiorari* to assail the RTC decision and orders is misplaced. When the RTC issued its decision and orders, it did so in the exercise of its appellate jurisdiction; the proper remedy therefrom is a Rule 42 petition for review.<sup>[28]</sup> Instead, the petitioner filed a second motion for reconsideration and thereby lost her right to appeal; a second motion for reconsideration being a prohibited pleading pursuant to Section 5, Rule 37 of the Rules of Court.<sup>[29]</sup> The petitioner's subsequent motions for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal.

The RTC decision became final and executory after fifteen (15) days from receipt of the denial of the first motion for reconsideration. It is elementary that once a