

THIRD DIVISION

[G.R. No. 166660, August 29, 2012]

DOROTEA CATAYAS, PETITIONER, VS. HON. COURT OF APPEALS, SPECIAL FORMER TWENTIETH (20TH) DIVISION, CEBU CITY, HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 58, NEGROS OCCIDENTAL, HON. PRESIDING JUDGE OF THE MUNICIPAL TRIAL COURT IN CITIES, ESCALANTE CITY, NEGROS OCCIDENTAL AND THE INTESTATE ESTATE OF JUAN CAMINOS, REPRESENTED BY FELOMLNO CAMINOS, PERLA V ARCA, CRISPINA ESPARCIA AND AMADO P ARRENO, JR., RESPONDENTS.

R E S O L U T I O N

MENDOZA, J.:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking the reversal of the April 30, 2004^[1] and October 25, 2004^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 83191, which denied petitioner Dorotea Catayas' (*Catayas*) second motion for extension of time to file petition. The October 25, 2004 Resolution denied her motion for reconsideration thereof.

The Facts:

Juan Caminos (*Caminos*) was the registered owner of several real properties located in Escalante City, Negros Occidental, specifically: Lot No. 3928 covered by Original Certificate of Title (*OCT*) No. N-993; Lot No. 2466, covered by OCT No. N-1008; and Lot No. 3924, covered by OCT No. N-991.

When Caminos died, the administrators of his estate filed with the Municipal Trial Court in Cities, Escalante City, Negros Occidental (*MTCC*) a complaint for ejectment against several individuals (*defendants*) who were occupying the above-stated real properties. One of the defendants was Catayas, who was occupying Lot No. 3928. For failure of the defendants to show their legal right to occupy the subject lot, the MTCC, on December 18, 2001, rendered a judgment^[3] ordering the defendants, including Catayas, to vacate the subject lot and to turn over the possession of the estate of Caminos to the administrators.

On appeal, the Regional Trial Court, Branch 58, San Carlos City, Negros Occidental (*RTC*), in its Decision,^[4] dated December 4, 2002, affirmed *in toto* the Decision of the MTCC.

On March 31, 2004, Catayas filed before the CA, a motion^[5] for extension of time to file a petition. In its Resolution, dated April 20, 2004, the CA granted the motion and gave Catayas a 15-day extension or until April 2, 2004 within which to file it.

On April 21, 2004, Catayas filed a *second* motion for extension of time to file the petition. This time, the CA, in its April 30, 2004 Resolution, denied the motion for being violative of Section 1, Rule 42 of the Rules of Court, which generally allowed only one extension, reasoning out that the right to appeal was a statutory right that must be exercised only in a manner provided by law. The CA observed that Catayas was represented by two counsels, thus, the inability of one counsel to do the pleadings within the time specified by law was not a compelling reason to grant another extension because Catayas had another counsel who could have completed and filed the petition.

Catayas filed a motion for reconsideration, but it was denied in the October 25, 2004 Resolution.^[6]

On February 1, 2005, Catayas filed this petition for *certiorari* contending that the CA acted with grave abuse of discretion when it denied the motion for second extension to file the petition for review. She asserts that the negligence of her counsel, who allowed the 15-day extension to lapse, should not bind her. She claims that she was neither a lawyer nor a law student; thus, she did not know how detrimental to her case was the failure of her counsel to file the petition within the time allowed by law.

In their memorandum,^[7] the private respondents moved for the dismissal of the Petition on the ground that Catayas was engaging in forum shopping. They claimed that Catayas had previously filed a petition for review under Rule 45 before this Court, docketed as G.R. No. 166396, questioning the same CA resolutions which was already denied by the Court in its Resolution, dated January 24, 2005.

The Court resolves to dismiss the petition.

"Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances, and must raise identical causes of actions, subject matter, and issues."^[8]

Forum shopping exists where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties representing the same interests in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.^[9]

In this case, Catayas clearly violated the rule on forum shopping when she filed this petition before the Court on February 1, 2005. A verification of the records would show that Catayas indeed filed a petition for review before this Court on January 18, 2005, as claimed by the private respondents, involving the same parties and questioning the same resolutions issued by the CA in CA-G.R. SP No. 83191. It further disclosed that the said petition, docketed as G.R. No. 166396, was denied by the Court in its January 24, 2005 Resolution,^[10] and became final and executory on