

FIRST DIVISION

[G.R. No. 154462, January 19, 2011]

**SPOUSES RUBEN AND MYRNA LEYNES, PETITIONERS, VS.
FORMER TENTH DIVISION OF THE COURT OF APPEALS,
REGIONAL TRIAL COURT, BRANCH 21, BANSALAN, DAVAO DEL
SUR, MUNICIPAL CIRCUIT TRIAL COURT, BRANCH 1, BANSALAN,
DAVAO DEL SUR, AND SPOUSES GUALBERTO & RENE CABAUG-
SUPERALES, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the (1) Resolution^[1] dated December 20, 2001 of the Court of Appeals in CA-G.R. SP No. 4420-UDK, dismissing the Petition for *Certiorari* with prayer for a temporary restraining order (TRO) and preliminary injunction of petitioners spouses Ruben and Myrna Leynes (spouses Leynes); and (2) Resolution dated May 7, 2002 of the appellate court in the same case, denying the spouses Leynes' Motion for Reconsideration.

This case originated from a Complaint^[2] for forcible entry, damages, and attorney's fees filed by respondents spouses Gualberto and Rene Cabahug Superales (spouses Superales) against the spouses Leynes before the Municipal Circuit Trial Court (MCTC), Branch 1 of Bansalan-Magsaysay, Davao del Sur, and docketed as Civil Case No. 471 (2000)-B. The Complaint alleged the following material facts:

3. That the [spouses Superales] were the actual occupants and possessors, being lawful owners of that certain parcel of a residential lot within the Nebraska Subd., Bansalan, Davao del Sur, known as Lot No. 2423-B-5-K-2, Psd-11-050478, being a portion of lot 2423-B-5-K, Psd-11-008104, covered by Transfer Certificate of Title No. T-41240, containing an area of Three Hundred Thirty Six (336) Square Meters, more or less, and registered in the name of Rene Cabahug Superales, in the Register of Deeds for the Province of Davao del Sur;

x x x x

4. That sometime in February 2000, the [spouses Leynes] through force, stealth and strategy encroached upon and occupied a portion of the [spouses Superales'] titled property consisting of 76 square meters, more or less, dispossessed the [spouses Superales] and constructed therein a comfort room as an extension of their house without first obtaining the required building permit from the Municipal Engineer's Office, of Bansalan, Davao del Sur;

5. That the [spouses Superales] promptly called the attention of the [spouses Leynes] and protested their intrusion into their property but notwithstanding their protestations the [spouses Leynes] continued on their construction and occupation of a portion of the [spouses Superales'] property;

6. That the [spouses Superales] reported to the Barangay Captain of Brgy. Poblacion, Bansalan, Davao del Sur, the [spouses Leynes'] encroachment on their titled property and the illegal construction being made on a portion of their property and their complaint was docketed as Brgy. Case No. 1649;

7. That Amicable Settlement of the dispute was however, repudiated by the [spouses Leynes] when they refused to recognize the relocation survey conducted on the property of the [spouses Superales] and prevented the [spouses Superales'] surveyor from planting monuments on the boundary between the [spouses Superales] and the [spouses Leynes'] lot;

x x x x

8. That as per relocation survey conducted, the [spouses Leynes] have encroached and occupied a total of Seventy Six (76) Square Meters, of the [spouses Superales'] titled property, thereby reducing the area of the [spouses Superales'] lot from 336 Square Meters, more or less to 260 Square Meters, more or less;

x x x x

9. That the [spouses Superales] also complained to the Municipal Engineer's Office in order to stop the illegal construction undertaken by the [spouses Leynes], but [spouses Superales'] complaint fell on deaf ears as no action has been taken by the Municipal Engineer's Office on the said illegal construction;

x x x x

10. That the [spouses Leynes] have unlawfully occupied and are continuously occupying illegally a portion of the [spouses Superales'] property consisting of 76 Square Meters, thereby denying the [spouses Superales] the use and enjoyment of the said property being unlawfully withheld by the [spouses Leynes];

11. That the [spouses Superales] must be promptly restored to the full and peaceful possession of the portion of 76 Square Meters, of their property taken forcibly and illegally by the [spouses Leynes], by ordering the [spouses Leynes] to remove and/or demolish their construction and improvements erected on the lot of the [spouses Superales], and should they fail or refuse to do so, [spouses Superales] be given the authority to cause the removal of the [spouses Leynes'] improvements at the expense of the [spouses Superales];

12. That in the meantime that the [spouses Leynes] are occupying a portion of the [spouses Superales'] property, [spouses Leynes] be made to pay the [spouses Superales] the amount of P500.00 per month as reasonable rental for the property until they shall have restored the property to the full and peaceful possession of the [spouses Superales].

[3]

Summons together with a copy of the aforementioned Complaint was served on the spouses Leynes on May 10, 2000, giving them ten (10) days from receipt within which to file their answer pursuant to Section 6 of the Rules on Summary Procedure. The 10-day period for the filing of the spouses Leynes' answer prescribed on May 20, 2000, a Saturday.

The spouses Leynes filed their Answer with Counterclaim on May 22, 2000, and their Motion to Admit Belatedly Filed Answer with attached Answer with Counterclaim the day after, on May 23, 2000. The spouses Leynes explained that they were not able to file their Answer with Counterclaim on May 20, 2000, even though there were court employees on duty that Saturday, because they had to serve first a copy of said pleading on the spouses Superales' counsel, whose office was located in Davao City. Davao City is approximately one-hour ride by bus from Digos City. The spouses Leynes added that they were not even sure if the office of the spouses Superales' counsel was open on Saturdays.[4]

The spouses Superales opposed the spouses Leynes' Motion to Admit Belatedly Filed Answer contending that the answer should have been filed within 10 days from receipt of a copy of the complaint; and the spouses Leynes' motion to admit is in the nature of a motion for extension of time to file an answer, which is a prohibited pleading in summary proceedings. The spouses Superales further pointed out that the spouses Leynes' motion to admit was not set for hearing and was, thus, a *pro forma* motion which should be denied outright.

The spouses Superales subsequently filed an *Ex Parte* Motion for Judgment on May 23, 2000, in which they prayed that since the spouses Leynes failed to file their answer to the Complaint within the prescribed period, then judgment could now be rendered based on the evidence and allegations contained in the Complaint.

On May 29, 2000, the MCTC rendered its Judgment denying the spouses Leynes' Motion to Admit Belatedly Filed Answer and resolving Civil Case No. 471 (2000)-B entirely in the spouses Superales' favor. Said MCTC judgment reads:

This treats the *ex-parte* motion for judgment filed by Atty. Rogelio E. Sarsaba, counsel for the [spouses Superales] alleging in substance that the last day of filing of answer for the [spouses Leynes] was on May 20, 2000 and [the spouses Leynes] did not file any. Be it noted on such date although it was Saturday the Court was opened and Court personnel, Benedicta Abagon and Anastacia Vale were present at that time to receive cases and motions filed in Court. On May 22, 2000 [spouses Leynes] filed [their] answer which answer was filed out of the time prescribed by law. Under Section 7 of Rule 70, 1997 Rules of Civil

Procedure, the law provides: "Should the defendants fail to answer the complaint within the period above provided, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. The Court, may in its discretion reduce the amount of damages and attorneys fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of Section 3 (c), Rule 9 if there are two or more defendants."

From the foregoing facts, the [spouses Leynes] really failed to answer the complaint within the period prescribed by law, which period under the rules cannot be extended.

WHEREFORE, the ex-parte motion for judgment filed by the [spouses Superales] is hereby APPROVED, AND judgment is hereby rendered ordering the [spouses Leynes]:

1. To remove their construction and/or improvements on the 76 square meters lot belonging to the [spouses Superales] and surrendered (sic) the same area promptly and peacefully to the [spouses Superales];
2. To pay the [spouses Superales] the amount of P500.00 per month as reasonable rentals of the 76 square meters lot occupied by the [spouses Leynes] from February 2000 until the said area shall have been delivered to the full possession and control of [the spouses Superales] in the concept of damages;
3. To pay the [spouses Superales] the sum of P4,000.00 as reimbursement for the cost of the survey and the relocation of [the spouses Superales'] property; and
4. To pay the [spouses Superales] the sum of P15,000.00 as reimbursement for attorney fees.^[5]

Aggrieved, the spouses Leynes appealed the foregoing MCTC Judgment to the Regional Trial Court (RTC), Branch 21 of Bansalan, Davao del Sur. Their appeal was docketed as Civil Case No. XXI-228 (00). In its Decision dated July 9, 2001, the RTC affirmed the appealed MCTC Judgment, ruling thus:

The lower court was right when it did not allow or entertain the belatedly filed Answer with Counterclaim of the [spouses Leynes]. The "Motion to Admit Belated Answer" partakes of a motion for extension of time to file pleading which is not allowed as explicitly provided in Section 19 of the 1991 Revised Rules on Summary Procedure. Since the law on this matter is unambiguous, unequivocal, its application is imperative.

Wherefore, the judgment rendered by the Municipal Circuit Trial Court is

hereby affirmed, with the sole modification that the amount of monthly rental for the Seventy-Six (76) square meter-lot be reduced from P500.00 to P200.00.^[6]

The spouses Leynes filed with the RTC a Motion for Reconsideration in which they sought the recall of the Decision dated July 9, 2001 and the remand of the case to the MCTC for trial on the merits. However, the RTC, in a Resolution also "strangely" dated July 9, 2001, refused to reconsider its earlier decision. The RTC stressed that:

This case falls under the "Rules on Summary Procedure". As such, the answer should be filed within ten (10) days from the service of summons and must be served on the plaintiff.

The [spouses Leynes], in filing a "Motion to Admit Belated Answer" in effect admitted that their Answer was filed out of time. Having made that admission, they may no longer be heard to claim otherwise.

Wherefore, premises considered, the motion for reconsideration is hereby denied.^[7]

On October 11, 2001, the spouses Superales filed with the RTC a Motion for Execution pursuant to Rule 70, Section 21 of the Revised Rules of Court^[8] which provides for the immediate execution of the RTC judgment against the defendant notwithstanding further appeal of the same before the Court of Appeals or the Supreme Court. Expectedly, the spouses Leynes opposed the spouses Superales' Motion for Execution.

The spouses Leynes then filed a Petition for *Certiorari* with Prayer for the Issuance of Temporary Restraining Order and Preliminary Injunction with the Court of Appeals on November 17, 2001. The petition was docketed as CA-G.R. SP No. 4420-UDK.

In its Resolution dated December 20, 2001, the Court of Appeals dismissed the spouses Leynes' petition outright for being the wrong remedy and for failure to state the material dates. The appellate court explicated that:

(1) It is a wrong remedy. Under the heading "Timeliness Of This Petition" [spouses Leynes] alleged that the petition is directed against "the decision of the Regional Trial Court, Branch 21 in Bansalan, Davao del Sur in the exercise of its appellate jurisdiction. This case originated from the Municipal Circuit Trial Court, Branch 1, Bansalan-Magsaysay, Davao del Sur (docketed as Civil Case No. 471 ^[2000]-B where, herein Respondents, Spouses Gualberto and Rene Superales filed a Complaint for Forcible Entry against Petitioners, Spouses Ruben and Myrna Leynes." If that be so, then the correct and appropriate mode of review should be appeal by way of a petition for review under Rule 42 of the 1997 Rules. Under paragraph 4 of Supreme Court Circular No. 2-90, an appeal taken to either the Supreme Court or the Court of Appeals by the