

SECOND DIVISION

[G.R. No. 168863, June 23, 2009]

HI-YIELD REALTY, INCORPORATED, PETITIONER, VS. HON. COURT OF APPEALS, HON. CESAR O. UNTALAN, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC-MAKATI, BRANCH 142, HONORIO TORRES & SONS, INC., AND ROBERTO H. TORRES, RESPONDENTS.

DECISION

QUISUMBING, J.:

This is a special civil action for certiorari seeking to nullify and set aside the Decision^[1] dated March 10, 2005 and Resolution^[2] dated May 26, 2005 of the Court of Appeals in CA-G.R. SP. No. 83919. The appellate court had dismissed the petition for certiorari and prohibition filed by petitioner and denied its reconsideration.

The antecedent facts of the case are undisputed.

On July 31, 2003, Roberto H. Torres (Roberto), for and on behalf of Honorio Torres & Sons, Inc. (HTSI), filed a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale^[3] over two parcels of land located in Marikina and Quezon City. The suit was filed against Leonora, Ma. Theresa, Glenn and Stephanie, all surnamed Torres, the Register of Deeds of Marikina and Quezon City, and petitioner Hi-Yield Realty, Inc. (Hi-Yield). It was docketed as Civil Case No. 03-892 with Branch 148 of the Regional Trial Court (RTC) of Makati City.

On September 15, 2003, petitioner moved to dismiss the petition on grounds of improper venue and payment of insufficient docket fees. The RTC denied said motion in an Order^[4] dated January 22, 2004. The trial court held that the case was, in nature, a real action in the form of a derivative suit cognizable by a special commercial court pursuant to Administrative Matter No. 00-11-03-SC.^[5] Petitioner sought reconsideration, but its motion was denied in an Order^[6] dated April 27, 2004.

Thereafter, petitioner filed a petition for certiorari and prohibition before the Court of Appeals. In a Decision dated March 10, 2005, the appellate court agreed with the RTC that the case was a derivative suit. It further ruled that the prayer for annulment of mortgage and foreclosure proceedings was merely incidental to the main action. The dispositive portion of said decision reads:

WHEREFORE, premises considered, this Petition is hereby **DISMISSED**. However, public respondent is hereby **DIRECTED** to instruct his Clerk of Court to compute the proper docket fees and thereafter, to order the private respondent to pay the same **IMMEDIATELY**.

SO ORDERED.^[7]

Petitioner's motion for reconsideration^[8] was denied in a Resolution dated May 26, 2005.

Hence, this petition which raises the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING THE CASE AGAINST HI-YIELD FOR IMPROPER VENUE DESPITE FINDINGS BY THE TRIAL COURT THAT THE ACTION IS A REAL ACTION.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT AS AGAINST HI-YIELD EVEN IF THE JOINDER OF PARTIES IN THE COMPLAINT VIOLATED THE RULES ON VENUE.

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ANNULMENT OF REAL ESTATE MORTGAGE AND FORECLOSURE SALE IN THE COMPLAINT IS MERELY INCIDENTAL [TO] THE DERIVATIVE SUIT.^[9]

The pivotal issues for resolution are as follows: (1) whether venue was properly laid; (2) whether there was proper joinder of parties; and (3) whether the action to annul the real estate mortgage and foreclosure sale is a mere incident of the derivative suit.

Petitioner imputes grave abuse of discretion on the Court of Appeals for not dismissing the case against it even as the trial court found the same to be a real action. It explains that the rule on venue under the Rules of Court prevails over the rule prescribing the venue for intra-corporate controversies; hence, HTSI erred when it filed its suit only in Makati when the lands subjects of the case are in Marikina and Quezon City. Further, petitioner argues that the appellate court erred in ruling that the action is mainly a derivative suit and the annulment of real estate mortgage and foreclosure sale is merely incidental thereto. It points out that the caption of the case, substance of the allegations, and relief prayed for revealed that the main thrust of the action is to recover the lands. Lastly, petitioner asserts that it should be dropped as a party to the case for it has been wrongly impleaded as a non-stockholder defendant in the intra-corporate dispute.

On the other hand, respondents maintain that the action is primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands. They postulate that the nullification of the mortgage and foreclosure sale would just be a logical consequence of a decision adverse to said officers and stockholders.

After careful consideration, we are in agreement that the petition must be dismissed.

A petition for certiorari is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.^[10]

Petitioner sought a review of the trial court's Orders dated January 22, 2004 and April 27, 2004 via a petition for certiorari before the Court of Appeals. In rendering the assailed decision and resolution, the Court of Appeals was acting under its concurrent jurisdiction to entertain petitions for certiorari under paragraph 2,^[11] Section 4 of Rule 65 of the Rules of Court. Thus, if erroneous, the decision and resolution of the appellate court should properly be assailed by means of a petition for review on certiorari under Rule 45 of the Rules of Court. The distinction is clear: a petition for certiorari seeks to correct errors of jurisdiction while a petition for review on certiorari seeks to correct errors of judgment committed by the court *a quo*.^[12] Indeed, this Court has often reminded members of the bench and bar that a special civil action for certiorari under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.^[13] In the case at hand, petitioner impetuously filed a petition for certiorari before us when a petition for review was available as a speedy and adequate remedy. Notably, petitioner filed the present petition 58^[14] days after it received a copy of the assailed resolution dated May 26, 2005. To our mind, this belated action evidences petitioner's effort to substitute for a lost appeal this petition for certiorari.

For the extraordinary remedy of certiorari to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.^[15] We find no grave abuse of discretion on the part of the appellate court in this case.

Simply, the resolution of the issues posed by petitioner rests on a determination of the nature of the petition filed by respondents in the RTC. Both the RTC and Court of Appeals ruled that the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale.

A derivative action is a suit by a shareholder to enforce a corporate cause of action.^[16] Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation