

## THIRD DIVISION

[ G.R. No. 155454, December 10, 2008 ]

**EDUARDO COLMENARES AND EPIFANIA COLMENARES,  
PETITIONERS, VS. HEIRS OF ROSARIO VDA. DE GONZALES,  
NAMELY: HOMERO S. GONZALES, VIOLETA GALVEZ, FLORENCIA  
BELO, IMELDA CANCIO AND LETICIA DE PADUA; AND HEIRS OF  
HOMERO GONZALES, NAMELY: AIDA CRUZ GONZALES, DIANA  
GONZALES AND DANIEL GONZALES, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Resolutions<sup>[1]</sup> dated June 21, 2002 and September 3, 2002, respectively, of the Court of Appeals (CA) which denied due course to petitioner-spouses Eduardo and Epifania Colmenares' petition for *certiorari*.

The brief antecedents.

Rosario Vda. de Gonzales and Homero S. Gonzales (original plaintiffs in the Municipal Trial Court [MTC]), substituted by their respective sets of heirs, namely, respondents Homero Gonzales, Violeta Galvez, Florencia Belo, Imelda Cancio and Leticia de Padua for Rosario; and respondents Aida Cruz, Diana and Daniel, all surnamed Gonzales, for Homero, filed a Complaint for ejectment against Eduardo and Epifania.

Original plaintiffs were co-owners of lots denominated as Lots 209-A, 210 and 10186-B situated at Poblacion, Talisay, Cebu. From 1946, Rosario, as lessor, and Arturo Colmenares, on behalf of the Colmenares family, as lessee, entered into an oral contract of lease. Arturo introduced major improvements on the subject lots to operate a beach resort thereon with Eduardo as local manager thereof. The lease did not have a fixed period and only stipulated payment of P150.00 as monthly rent. The rent was increased to P350.00 in August 1982, and further increased to P1,000.00 from September 1982 until August 1991.

Parenthetically, upon Arturo's death on June 12, 1962, Eduardo took over the family business, and failed to pay rent from February 1, 1967 to April 30, 1968 due to various financial difficulties. This failure to pay rent resulted in the filing of an ejectment case against petitioners docketed as Civil Case No. 140, wherein judgment was rendered ordering Eduardo to vacate the subject lots and pay unpaid rentals and attorney's fees.

Posthaste, upon learning of the court decision on his return to Cebu, Eduardo settled and paid the back rentals to Rosario. Thereafter, the parties agreed to maintain the standing lease agreement.

Subsequently, the parties agreed on the rent increases which rent, at its maximum, as previously stated, was pegged at P1,000.00. At some point, there were discussions between the parties on the possibility of an outright sale of the subject lots. However, no agreement was reached by the parties.

Respondents sent Eduardo demand letters, the last of which was dated June 14, 1983, although the latter continuously paid the P1,000.00 monthly rent. These payments were received by respondents. Thus, Eduardo was surprised at the filing of the ejectment case against him.

Respondents alleged in their complaint that the lease agreement was on a month-to-month basis which terminated upon Arturo's death. Thus, respondents asked petitioners to vacate the subject lots and remove the improvements introduced thereon. Petitioners' refusal to comply with respondents' demands constrained the latter to file the case against the former.

During pre-trial, the parties submitted the following issues for resolution:

1. Whether [petitioners] can be ejected from the land owned by [respondents];
2. Whether [petitioners] are builders in good faith; and
3. Whether P5,000.00 per month is a reasonable amount for the use of the subject [lots].

After trial, the MTC rendered a decision finding that: (1) there is an oral contract of lease between the parties, Rosario and Arturo, the latter on behalf of the Colmenares family, for an indefinite period conditioned solely on the Colmenares family's continuous payment of monthly rentals; (2) the Colmenares family, including herein petitioners, are not builders in good faith, and, as such, they should demolish and remove the improvements upon termination of the lease without reimbursement for their expenses; and (3) the belated imposition of a P5,000.00 monthly rental for the subject lots is inequitable, considering the original state of the subject lots at the constitution of the lease, and the substantial investments poured therein by the Colmenares family. The MTC fixed the period of the lease at twenty (20) years reckoned from the date of the decision in 1981, and set the rent at P1,500.00 per month, with a possible ten percent (10%) increase each year.

Dissatisfied, respondents appealed the decision of the MTC to the Regional Trial Court (RTC), Branch 15, Cebu City. The RTC affirmed the MTC finding that the Colmenares family, including herein petitioners, may not be ejected by respondents from the subject lots because of the existing lease agreement between the parties. However, the RTC reduced the twenty (20)-year lease period fixed by the MTC to ten (10) years and increased the monthly rent to P5,000.00.

Petitioners and respondent-heirs of Homero S. Gonzales respectively filed a motion for reconsideration with the RTC, whereas respondents heirs of Rosario Vda. de Gonzales directly filed a petition for review of the RTC decision with the CA. In this regard, the RTC issued an Order dated July 13, 1994, subsequently reiterated in a December 14, 1995 Order, holding in abeyance the resolution of petitioners' Motion

for Reconsideration until receipt of the CA decision on respondent-heirs of Rosario Vda. de Gonzales' appeal. However, it appears that the CA denied respondent-heirs of Rosario's appeal, a decision which attained finality by November 21, 1997.<sup>[2]</sup>

Meanwhile, on January 24, 1996, the RTC issued the following Order:

It appearing that the Court of Appeals has given due course to the petition for *certiorari* from the decision of this Court, the court is left with no other choice but to suspend this proceedings to await the decision of the Court of Appeals thereon. And if the Court of Appeals will affirm the decision, then execution will follow. And if the Court of Appeals reverses the decision of this Court, then there is no more decision to talk about. Further proceedings in this case are hereby suspended accordingly.

Later on, respondents filed a motion for issuance of a writ of execution which the MTC granted in light of the latest RTC Order and the dismissal by the CA of respondent-heirs of Rosario Vda. de Gonzales' appeal, to wit:

With the finality of the decision of the Court of Appeals, and the remand of the records of the case to this Court, which, in effect, is an order or directive by the RTC to this Court to execute its judgment, this Court finds no more legal impediment for the issuance of the writ of execution prayed for.

WHEREFORE, the motion for issuance of [a] writ of execution is granted.

<sup>[3]</sup>

From this MTC Order, petitioners directly filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion in the MTC's issuance of a writ of execution. The CA issued the herein assailed Resolutions denying due course to petitioners' petition for (1) violation of the hierarchy of courts in bypassing the RTC's *certiorari* jurisdiction over the MTC and directly invoking that of the CA, and (2) non-compliance with the rules on verification and certification of non-forum shopping when Epifania failed to sign thereon.

Hence, this appeal by *certiorari*.

Upon order of this Court, respondents were required to file a Comment on the petition. All the respondents, except Aida Gonzales, filed their Comment on April 9, 2003. In our Resolution dated July 7, 2003, we ordered petitioners to submit to this Court the address of respondent Aida or the name of her counsel.

Aida's counsel of record in the proceedings below, Atty. Manuel G. Maranga, filed an Explanation and Compliance stating that he did not receive a copy of the instant petition. Counsel explained that he had lost contact with Aida and diligent efforts to contact the latter proved futile. Paragraph 4 of the Explanation and Compliance filed by Atty. Maranga, reads:

4. That the last time undersigned counsel saw respondent Aida Gonzales was when he filed on July 1994 on behalf of the Heirs of Homero S. Gonzales, deceased spouse of respondent Aida Gonzales, a Motion for Reconsideration of the decision of the trial court in Civil Case No. CEB 11290 (hereto attached as Annex "A"),

which until now has not been resolved, thereby making undersigned counsel believe that the case has been settled during these past many years. As a matter of fact, upon EARNEST inquiry by undersigned counsel, it was gathered by him that the property in question had already been allegedly bought from the Gonzaleses et al., except respondent Aida Gonzales, by a certain "BEBOT" known to be MRS. ALEGRE, daughter of Arturo Colmenares, former occupant of the property in question and niece of petitioner Eduardo Colmenares and that by virtue of said alleged purchase by BEBOT, said Eduardo Colmenares has no more interest in the property in question.<sup>[4]</sup>

We required petitioners to send a copy of the petition to Atty. Maranga. Petitioners, to date, have yet to comply with the foregoing resolution. Meanwhile, petitioners' counsel of record, Atty. Rex J.M.A. Fernandez, when asked to show cause why he should not be disciplinarily dealt with, or held in contempt, for failure to comply with our resolution, filed an Explanation narrating the falling out he had with petitioners, specifically Eduardo, in 2002. Eduardo allegedly told Atty. Fernandez that he was terminating the services of the latter. Thus, Atty. Fernandez presumed that Eduardo himself would notify this Court of the fact of termination, since Eduardo had done so before the lower courts in other cases where Atty. Fernandez had represented him. We accepted Atty. Fernandez' explanation as satisfactory, and we required petitioners to inform this Court of the name and address of their new counsel. Petitioners again failed to comply with the order.

Notwithstanding petitioners' obvious lack of interest in pursuing their case, we shall resolve it now.

At the outset, we note that petitioners raised extraneous issues which were not touched upon by the CA in denying due course to their petition. In any event, petitioners posit the following issues for our resolution, to wit:

1. Whether the decision of the Municipal Trial Court dated September 27, 1991, as modified by the decision of the Regional Trial Court dated June 13, 1994, became final and executory.
2. Whether the decision of the Municipal Trial Court dated September 27, 1991, as modified by the decision of the Regional Trial Court date June 13, 1994, can be executed after the period of ten (10) years from the date the decision was rendered.
3. Whether the levy on the property of petitioners is valid.
4. Whether verification of a pleading is jurisdictional.

We detect petitioners' clever but transparent ploy to circumvent the rule on hierarchy of courts and have us settle factual issues that were not passed upon by the lower courts because of petitioners' fatal procedural lapses. In the same vein, we unmask petitioners' vain attempt to lend merit to their petition by raising ostensibly substantial issues which, likewise, were never touched upon by the appellate court. It is on the basis of these submissions that petitioners' arguments glaringly assail the MTC's supposedly erroneous ruling.