

THIRD DIVISION

[G.R. NO. 152827, February 06, 2007]

GERARDO MENDOZA, TRINIA AND IYLENE ALL SURNAMED MENDOZA, PETITIONERS, VS. SOLEDAD SALINAS, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Assailed in the present Petition for Review on *Certiorari* is the Order dated April 2, 2002 issued by the Regional Trial Court (RTC) of Olongapo City, Branch 72, acting as Land Registration Court, in LRC Case No. N-04-0-97, granting respondent's prayer for the issuance of a writ of possession in her favor.^[1]

The assailed Order was issued by the RTC after it rendered a favorable judgment on respondent's application for registration in its Decision dated November 3, 1998, and Original Certificate of Title (OCT) No. P-10053 was issued in her name covering a parcel of land described as follows:

A parcel of land (Plan Psu-224228, LR Case No. N-04-0-97, LRA Record No. N-68955), situated in the Barrio of Barretto, Municipality of Olongapo, Province of Zambales, Island of Luzon, Bounded on the NW., points 1-3 by Road (6.00 m. wide) (unimproved); on the NE., points 3-4 by Public Land claimed by C. Panaligan; on the E., SE., and SW., points 4-19 by Makinaya River (10.00 m. wide); on the SW., points 19-29 by Public Land; and on the NW., points 29-1 by Road (6.00 m. wide) unimproved. Beginning at a point marked "1" on plan, being S.84 deg. 47'E., 2644.65 m. from B.L.B.M. 2, Barrio of Matain, Subic, Zambales, thence

x x x x

beginning; containing an area of TWENTY THOUSAND ONE HUNDRED FORTY NINE (20, 149) SQUARE METERS, more or less. x x x^[2]

Petitioners opposed respondent's application for the issuance of a writ of possession claiming that they were not oppositors/parties to the registration case and they have been in actual physical possession of the property since 1964. The RTC, however, rejected their arguments and granted respondent's application for the issuance of a writ of possession per herein assailed Order.

Hence, the present petition.

Petitioners set forth the lone assignment of error that the RTC erred in issuing the writ of possession and acted with grave abuse of discretion amounting to lack and excess of jurisdiction.^[3] Petitioners reiterate their argument that they cannot be

ousted of their possession of the property, having been in actual possession of the property since 1964, as evidenced by petitioner Gerardo C. Mendoza's Sales Application made in January 1986 over the following property:

A parcel of land situated at Burgos St., Bo. Barretto, O.C. Bounded on the North., by Benjamin Salinas; South., by Gloria Montemayor; East., by Benjamin Salinas & Conrado Pilapil and West., Burgos St. situated in Bo. Barretto, Olongapo City, Zambales, and containing an area of 932 square meters x x x.^[4]

and a Declaration of Real Property for the years 1976 and 1985,^[5] among others.

Respondent counters that the present petition should be dismissed, arguing that the petition should have been initially with the Court of Appeals, based on the principle of hierarchy of courts, and that the general order of default on October 8, 1998 issued by the RTC binds them and personal notice was not necessary.

The petition must be granted.

On the procedural issue, it should be pointed out that what petitioners filed with the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court of Court, and not a special civil action for *certiorari* under Rule 65. The principle of hierarchy of courts does not find any application in this case. Under Section 2(c), Rule 41 of the Rules of Court, it is provided that in all cases where only questions of law are raised, the appeal from a decision or order of the RTC shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45, Section 1 of which provides:

SECTION 1. *Filing of petition with Supreme Court.* - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.^[6]

The substantive issue posed for resolution in the present case pertains to the propriety of the issuance of the writ of possession by the RTC. This, obviously, is a question of law; consequently, direct resort to this Court is proper.

There is no question that the writ of possession granted in this case was made by the RTC acting as a land registration court, after finality of its Decision dated November 3, 1998 and the corresponding OCT No. P-10053 was issued in the name of respondent. As the soundness of the order granting the writ of possession is a