

THIRD DIVISION

[G.R. NO. 156542, June 26, 2007]

CANDELARIA Q. DAYOT, PETITIONER, VS. SHELL CHEMICAL COMPANY, (PHILS.), INC., RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Assailed in the Petition for Review on *Certiorari* before the Court is the July 30, 2002 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 70696 nullifying the January 8, 2002 Amended Order,^[2] January 10, 2002 Alias Writ of Possession,^[3] January 10, 2002 Notice to Vacate^[4] and April 12, 2002 Order,^[5] which were all issued by the Regional Trial Court (RTC) of Iloilo, Branch 29; and the CA December 23, 2002 Resolution^[6] denying herein petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On April 20, 1982, Panay Railways, Inc. (PRI) executed a real estate mortgage contract over six parcels of land located in Lapuz District, Iloilo City in favor of Traders Royal Bank (TRB) for purposes of securing its loan obligations to TRB.^[7] The subject properties are denominated as follows: **Lot No. 3834**, covered by Transfer Certificate of Title (TCT) No. T-45727; **Lot No. 1-A**, covered by TCT No. T-45728; and **Lot Nos. 6153**, 6156, 6158 and 6159, all covered by TCT No. T-58200. PRI failed to pay its loan. As a consequence, the mortgaged properties were foreclosed and sold at public auction to TRB as the highest bidder. PRI failed to redeem the foreclosed properties. Hence, TRB consolidated its ownership over the subject parcels of land and, thereafter, certificates of title were issued in its name, to wit: TCT No. T-84233, which canceled TCT No. T-45728; TCT No. T-84234, which canceled TCT No. T-45727; and TCT Nos. T-84235, T-84236, T-84237 and T-84238, all of which canceled TCT No. T-58200.

Thereafter, TRB filed a Petition for Writ of Possession with the RTC of Iloilo City, docketed as LRC CAD. REC. NO. 1 ILOILO CITY and LRC CAD. REC. NO. 9616 ILOILO CITY.^[8] In its Order dated October 22, 1990, the trial court granted the petition and ordered the issuance of a writ of possession in favor of TRB.^[9] However, the writ was not fully implemented.

On November 20, 1990, TRB sold to spouses Edmundo and Candelaria Dayot (Spouses Dayot), by virtue of a Deed of Absolute Sale, five parcels of land which are portions of Lots 3834, 1-A and 6153.

Subsequently, on February 5, 1991, Candelaria Dayot (petitioner) filed a Supplemental Pleading before the RTC of Iloilo City, praying that she, being the transferee of all the rights and interests of TRB over the parcels of land subject of

the Petition for Writ of Possession filed by the latter, be substituted as the new petitioner in LRC CAD. REC. NOS. 1 and 9616, and that an alias writ of possession be issued in her favor. The trial court granted petitioner's prayer in its Order dated March 12, 1991.^[10] On April 1, 1991, the RTC issued an Alias Writ of Possession in favor of herein petitioner.^[11]

On August 24, 1994, the spouses Dayot filed with the RTC of Iloilo City, a complaint for Recovery of Ownership and Possession, Annulment of Documents, Cancellation of Titles, Reconveyance and Damages against TRB, Petron Corporation (Petron) and herein respondent Shell Chemical Company (Phil.), Inc. (Shell), praying that Shell be directed to vacate the portion of Lot No. 6153 which it actually possesses and for both Petron and Shell to surrender ownership and possession of portions of parcels of lands covered separately by TCT Nos. T-47484 and T-94116. The case was docketed as Civil Case No. 21957.^[12]

On August 21, 1997, while Civil Case No. 21957 was pending resolution, herein petitioner filed in LRC CAD. REC. NOS. 1 and 9616 an Amended Supplemental Motion for the Issuance of Writ of Possession, praying that Shell be ejected from the portion of Lot 6153 which it actually possesses.

Shell lodged an Opposition to petitioner's Amended Supplemental Motion arguing, among others, that petitioner is guilty of forum shopping as it seeks the same relief being sought in Civil Case No. 21957 and that the parcels of land sold to petitioner do not include the portion of Lot 6153 being possessed by Shell.^[13]

On May 7, 1999, the RTC of Iloilo, Branch 30 issued an Order denying herein petitioner's Motion for the Issuance of a Writ of Possession, insofar as Shell is concerned.^[14]

Despite the issuance of the above-mentioned Order, petitioner filed two successive motions praying for the issuance of an alias writ of possession. Shell opposed these motions.

Subsequently, the petition for the issuance of a writ of possession was re-raffled to Branch 29 of the RTC of Iloilo, as the presiding judge of Branch 30 inhibited himself from hearing the case.

On January 8, 2002, Branch 29 promulgated an Amended Order, the dispositive portion of which reads:

Wherefore, let an Alias Writ of Possession issue on the affected portions of Lots 3834, 1-A and 6153, all situated in the City of Iloilo, with a total land area of 14,940 sq. meters occupied by Shell and 17,000 sq. meters occupied by Petron and to place and install petitioner Candelaria Dayot in possession thereof.

Mr. Redentor Rodriguez, Sheriff IV of this Court is hereby directed to implement this order.

SO ORDERED.^[15]

On January 10, 2002, the Branch Clerk of Court of RTC Iloilo, Branch 29, issued an Alias Writ of Possession.

On even date, the Sheriff served upon Shell a Notice to Vacate.

Thereafter, Shell and Petron moved for the reconsideration of the January 8, 2002 Order of the RTC but the trial court denied it via its Order dated April 12, 2002.

Shell then filed a petition for *certiorari* and prohibition with the CA praying for the nullification of the January 8, 2002 and April 12, 2002 Orders of RTC Iloilo, Branch 29, as well as the Alias Writ of Possession and Notice to Vacate both dated January 10, 2002. The petition also sought to permanently enjoin the RTC from enforcing the assailed orders and processes and from acting and conducting further proceedings in the subject case.

On July 30, 2002, the CA promulgated its presently assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Petition is GRANTED and the questioned four (4) rulings of the court a quo are hereby declared NULL and VOID. No costs.

SO ORDERED.^[16]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution dated December 23, 2002.

Hence, herein petition for review on *certiorari*, anchored on the following grounds:

1. THAT RESPONDENT IS BARRED FROM FILING THE PETITION FOR CERTIORARI WITH THE COURT OF APPEALS, ASSAILING THE AMENDED ORDER DATED JANUARY 8, 2002 OF HON. RENE B. HONRADO, PRESIDING JUDGE, REGIONAL TRIAL COURT, ILOILO CITY, BRANCH 29, AFTER RESPONDENT LOST ITS RIGHT TO APPEAL BECAUSE A SPECIAL CIVIL ACTION FOR CERTIORARI IS NOT AND CANNOT BE A SUBSTITUTE FOR A LOST OR EXPIRED APPEAL THUS, THE DECISION PROMULGATED JULY 30, 2002 AND THE RESOLUTION PROMULGATED DECEMBER 23, 2002 OF THE HONORABLE COURT OF APPEALS WERE ISSUED CONTRARY TO PREVAILING JURISPRUDENCE AND THAT SAID COURT DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT AND THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.
2. THAT PETITIONER IS ENTITLED TO THE POSSESSION OF THE ENTIRE LOTS 3834, 1-A, 6153, 6156, 6158 AND 6159 INCLUDING THE AREA OF 14,940 SQ. METERS OCCUPIED BY RESPONDENT WHICH AREAS ARE PORTIONS OF LOTS 6153, 3834 AND 1-A, OCCUPATION THEREOF BY RESPONDENT BEING THAT OF MERE INTRUDER OR TRESSPASSER.^[17]

In her first assigned error, petitioner argues that respondent should have been barred from filing a special civil action for *certiorari* before the CA because this recourse is available only when there is no speedy and adequate remedy in the course of law. Petitioner further argues that respondent should have appealed the Amended Order of the RTC dated April 12, 2002, but it did not. Petitioner avers that respondent can no longer resort to the filing of a petition for *certiorari* because this remedy is not a substitute for a lost appeal.

Anent the second assigned error, petitioner claims that she is not guilty of forum shopping, as Civil Case No. 21957 involves the issue of ownership while the present case is for the recovery of possession; and that the subject matter of the present case is different from that of Civil Case No. 21957. Even granting that the same parcels of land are involved in these cases, petitioner argues that a writ of possession can still be validly issued and implemented in consonance with the rule that proceedings incident to extra-judicial foreclosure of mortgages to resolve the possession of third-party claimants may proceed independently of the action which said claimants may bring to enforce or protect their claim of ownership over the property.

Lastly, petitioner asserts that respondent's TCT No. T-47484 refers to a lot which is different from those being contested in the instant case.

In its Comment, respondent contends that it did not err in resorting to the remedy of filing a petition for *certiorari* with the CA. It argues that even when appeal is available as a proper remedy, the Supreme Court will allow a writ of *certiorari* if the petition appears to be genuinely meritorious or if filed on the basis of a patent, capricious and whimsical exercise of discretion by a trial judge, or when an appeal will not promptly relieve petitioner from the injurious effects of the disputed orders; that the Amended Order of the RTC dated January 8, 2002 collaterally attacked respondent's title over the disputed property; that petitioner is not a buyer in good faith; that, as a transferee, petitioner merely acquired the rights and interests that TRB had by reason of the foreclosure of the mortgage made in its favor; that the contested Alias Writ of Execution is barred by *res judicata* and *litis pendentia*; and that respondent has the right to possess the disputed property as it has satisfactorily shown that it is the registered owner of and has title over the subject property.

The Court finds the petition bereft of merit.

It bears to emphasize at the outset that the present petition for review arose by reason of the special civil action for *certiorari* filed by respondent Shell with the CA questioning the January 8, 2002 Amended Order, Alias Writ of Possession, Notice to Vacate and the April 12, 2002 Order issued by the RTC of Iloilo, Branch 29. Accordingly, any discussions on the issues raised as well as rulings by this Court in the present petition apply only insofar as the claim of respondent Shell is concerned.

As to the first assigned error, it is true that as a rule while *certiorari* as a remedy may not be used as a substitute for an appeal, especially for a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious.^[18] It has been held that where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in

exempting a particular case from the operation of the rules.^[19] The Court has given due course to petitions for *certiorari* although appeal is the proper remedy where the equities of the case warranted such action, mindful that dismissals based on technicalities are looked upon with disfavor.^[20]

In the present case, the Court finds no error on the part of the CA in giving due course to the petition for *certiorari* filed by respondent as its case is genuinely meritorious for reasons that will be discussed forthwith.

As to the second assigned error, the Court agrees with petitioner that she is not guilty of forum shopping.

There is forum shopping when a party avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.^[21]

The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.^[22] In other words, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.^[23]

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.^[24]

On the other hand, the elements of *res judicata*, also known as "bar by prior judgment," are: (1) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.^[25]

It bears to note that the proceedings conducted subsequent to the filing of a petition for the issuance of a writ of possession are *ex parte* and summary in nature. The order for the issuance of the writ is simply an incident in the transfer of title in the name of the petitioner.^[26] Hence, such order cannot be said to be a judgment on the merits, *i.e.*, one rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case. Thus, in the present case, any order or decision of the RTC in LRC CAD. REC. NOS. 1 and 9616 cannot be considered as determinative of the merits of Civil Case No. 21957.

Moreover, the aforementioned cases cannot be said to be identical as the basic issue in LRC CAD. REC. NOS. 1 and 9616 is possession while in Civil Case No. 21957 the issue raised is essentially that of ownership of the disputed lots.

Based on the foregoing, there can be no *litis pendentia* or *res judicata*. Since neither *litis pendentia* nor *res judicata* exists in the instant case, petitioner may not be held