

SECOND DIVISION

[G.R. NO. 164934, August 14, 2007]

HEIRS OF FLORENCIO ADOLFO, PETITIONERS, VS. VICTORIA P. CABRAL, GREGORIA ADOLFO AND GREGORIO LAZARO, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

For review are the Resolutions,^[1] dated May 18, 2004^[2] and August 17, 2004^[3] of the Court of Appeals in CA-G.R. SP No. 83438, affirming the Order ^[4] dated November 20, 2003 of the Provincial Agrarian Reform Adjudicator (PARAD) of Malolos City in DCN R-03-02-0242'03. The PARAD had denied petitioners' motion to dismiss and upheld the jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB) to hear and decide the petition for the cancellation of emancipation patents and torrens titles.

The present controversy involves two parcels of land consisting of 29,759 square meters and 957 square meters, respectively, situated in Barangay Iba (now Pantok), Meycauayan, Bulacan.

Petitioners are the heirs of the late Florencio Adolfo, Sr. They alleged that the parcels were included in the Operation Land Transfer program under Presidential Decree (P.D.) No. 27.^[5] Thus, their father applied with the Ministry of Agrarian Reform (now Department of Agrarian Reform) for the purchase of these parcels. On April 25, 1988, he was issued Emancipation Patents (EPs) Nos. A-117858 and A-117859-H, which became the basis for the issuance of Transfer Certificates of Titles (TCTs) Nos. EP-003(M) and EP-004(M) on October 24, 1989.^[6]

Petitioners added that in 1999, they applied with the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 15, for the issuance of new owner's duplicate copies of TCT Nos. EP-003(M) and EP-004(M) after the same were lost. The trial court granted their petition and ordered the Register of Deeds of Meycauayan, Bulacan, to issue new owner's duplicate copies of the certificates of titles.^[7]

On their part, respondent Victoria P. Cabral alleged that she is the lawful and registered owner of the lands covered by petitioners' emancipation patents and certificates of titles as evidenced by Original Certificate of Title (OCT) No. 0-1670 [now OCT No. 0-220(M)] of the Registry of Deeds of Meycauayan, Bulacan, issued on January 6, 1960.^[8] She also averred that petitioners' emancipation patents should be cancelled since (1) these covered non- agricultural lands outside the coverage of P.D. No. 27; (2) these were issued without due notice and hearing; and (3) no Certificates of Land Transfer (CLTs) were previously issued.

On August 26, 2003,^[9] respondent Cabral filed with the DARAB, Region III, Branch II, Malolos City, Bulacan, a petition for the cancellation of petitioners' emancipation patents and torrens titles and the revival of OCT No. 0-1670 [now OCT No. 0-220(M)]. Petitioners moved to dismiss the petition due to (1) lack of jurisdiction, (2) lack of legal personality to sue, and (3) prescription.

On November 20, 2003, the PARAD denied the motion and upheld the DARAB's jurisdiction to determine and adjudicate cases involving the issuance, correction and cancellation of emancipation patents.^[10] Petitioners moved for reconsideration but it was denied.

Petitioners then filed a petition for certiorari and prohibition with the Court of Appeals. On May 18, 2004, the appellate court dismissed the petition due to petitioners' failure to exhaust administrative remedies since the orders of the PARAD should have been elevated for review to the DARAB. The appellate court also ruled that petitioners erred in availing of certiorari and prohibition under Rule 65 of the Rules of Court instead of a petition for review under Rule 43. The Court of Appeals ruled, thus:

WHEREFORE, this petition for certiorari and prohibition, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, must be as it [is] hereby **DENIED DUE COURSE**, and consequently **DISMISSED**.

SO ORDERED.^[11]

Meanwhile, the PARAD rendered a Decision ^[12] on June 18, 2004, canceling petitioners' emancipation patents and ordering the Registry of Deeds of Meycauayan, Bulacan, to revive respondent Cabral's OCT No. 0-1670 [now OCT No. 0-220(M)]. That decision is on appeal with the DARAB.

In the instant petition, petitioners raise the following issues:

I.

[WHETHER] THE COURT [A *QUO*] COMMITTED A SERIOUS MISTAKE OR ERROR IN [RULING] THAT IN CASE OF DENIAL OF A MOTION TO DISMISS BASED ON "LACK OF JURISDICTION", THE PROPER REMEDY IS RULE 43 AND NOT RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE[.]

II.

[WHETHER] THE COURT A *QUO* FAILED TO DETERMINE THE ISSUE [ON] THE "LACK OF JURISDICTION" OF [THE] DARAB, TO HEAR, TRY AND DECIDE CASES INVOLVING CANCELLATION OF TORRENS TITLE DULY ISSUED BY THE REGISTER OF DEEDS FOLLOWING P.D. 1529 [SINCE] THE SAME IS WITHIN [THE] EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURTS.^[13]

Simply stated, the issues are: (1) Is Rule 65 the proper remedy in this case where the motion to dismiss on the ground of lack of jurisdiction is denied? and (2) Does the DARAB have jurisdiction to hear and decide cases for the cancellation of

emancipation patents and certificates of titles?

Petitioners contend that where a party assails the jurisdiction of the lower tribunal, the proper remedy is Rule 65 and not Rule 43 of the Rules of Court. They also argue that an action for cancellation of a certificate of title falls within the exclusive jurisdiction of the RTC pursuant to Section 19 of Batas Pambansa Blg. 129.^[14] They also contend that the jurisdiction of the DARAB is limited to agrarian disputes and agrarian reform under Section 50 of Republic Act No. 6657.^[15] They cite the case of *Llonillo v. Cruz*,^[16] where the Court of Appeals ruled that the DARAB has no jurisdiction to cancel a certificate of title duly issued in accordance with P.D. No. 1529.^[17]

Respondent Cabral counters that an order denying a motion to dismiss cannot be the subject of a petition for certiorari under Rule 65. The proper remedy is to file an answer to the petition, proceed to trial, and await judgment before making an appeal to the DARAB which has the exclusive appellate jurisdiction to review the orders of the adjudicators. She also contends that the cancellation of emancipation patents is an agrarian matter over which the DARAB has jurisdiction.

After a thorough consideration of the contentions of the parties, we hold that the petition lacks merit.

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits.^[18] Thus, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is not intended to correct every controversial interlocutory ruling.^[19] It is a remedy designed to correct errors of jurisdiction and not errors of judgment.^[20] Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[21]

The petition for certiorari and prohibition filed by petitioners with the Court of Appeals was not the proper remedy to assail the PARAD's denial of their motion to dismiss. The denial was merely an interlocutory order. Even assuming that certiorari was the proper remedy, the PARAD did not commit grave abuse of discretion in denying petitioners' motion. It is a well settled rule that after the trial court denies a motion to dismiss the complaint, the defendant should file an answer, proceed to trial and await judgment before interposing an appeal.^[22]

On the issue of jurisdiction, basic is the rule that it is conferred by law and determined by the material averments in the complaint as well as the character of the relief sought.^[23] Defenses resorted to in the answer or motion to dismiss are disregarded, otherwise the question of jurisdiction would depend entirely upon the whim of the defendant.^[24]

Specific and general provisions of Rep. Act No. 6657 and its implementing rules and procedure address the issue of jurisdiction. Section 50 of Rep. Act No. 6657 confers