

## THIRD DIVISION

[ G.R. NO. 153537, May 05, 2006 ]

**YOLANDA R. BALAYAN, ASSISTED BY HER HUSBAND JUAN UNARI, AND FLORDELIZA JIMENEZ, PETITIONERS, VS. MIGUEL ACORDA, RESPONDENT.**

### DECISION

**TINGA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 16, 2002 Order of the Regional Trial Court (RTC), Branch 18, Ilagan, Isabela in Civil Case No. 1168. The assailed Order denied petitioners' motion for reconsideration of the RTC's Order dated November 22, 2001, which gave due course to respondent's petition for *certiorari*.

The instant petition originated from two separate complaints for *accion publiciana* filed by petitioners Yolanda R. Balayan and Flordeliza Jimenez with the Municipal Circuit Trial Court (MCTC) of Gamu-Burgos. Petitioner Balayan's complaint was docketed as Civil Case No. 757-96 while that of petitioner Jimenez was docketed as Civil Case No. 758-96. Named as defendant in both complaints was respondent Miguel Acorda. Subject of Civil Case No. 757-96 was a parcel of land situated at Barangay Upi, Gamu, Isabela, known as Lot 1 of subdivision plan Psd-2-02-017333 and registered as TCT No. T-233887 in the name of Spouses Yolanda Balayan and Juan Urani. Subject of Civil Case No. 758-96 was a parcel of land adjacent to Lot 1, known as Lot 2 of subdivision plan Psd-2-02-017333 and registered as TCT No. T-151149 in the name of petitioner Jimenez. Both complaints alleged that respondent entered into the subject parcels of land sometime in January 1996 and planted agricultural crops thereon. Respondent allegedly refused to heed petitioners' demand to vacate, prompting the latter to file the aforementioned civil cases.

Respondent denied the allegations and claimed that he was the actual owner of the lots, having been in possession thereof as early as 1987 when he bought the same from a certain Lucia Rosete. Respondent alleged that petitioners' titles were spurious and, thus, sued for quieting of title by way of a counterclaim.

After joinder of issues and the completion of a relocation survey, petitioners moved for a summary judgment, which the MCTC granted.

On November 9, 1998, the MCTC rendered separate judgments in Civil Cases Nos. 757-96 and 758-96 in favor of both petitioners by ordering respondent to vacate the properties in question.

On January 25, 1999, petitioners jointly moved for the issuance of execution orders in the two civil cases as the period of appeal had elapsed without respondent filing an appeal. On May 25, 2000, the MCTC issued an order directing the issuance of a

writ of execution. On October 19, 2000, the MCTC issued the writ of execution in both civil cases.

On February 12, 2001, respondent filed a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure with the RTC, Ilagan, Isabela. The petition, docketed as Civil Case No. 1168, prayed for the annulment of the May 25, 2000 MCTC order for the issuance of a writ of execution. In support of his petition for *certiorari*, respondent claimed that he had no knowledge of the November 9, 1998 Decision in Civil Case Nos. 757-96 and 758-96 until January 22, 1999. Respondent claimed that he forthwith filed a notice of appeal in both civil cases, which petitioners countered by filing a motion to dismiss the notice of appeal. According to respondent, without first ruling on his notice of appeal or on petitioners' motion to dismiss, MCTC Judge Angerico B. Ramirez issued the assailed order directing the issuance of a writ of execution. Respondent further alleged that despite the issuance of the writ of execution on October 19, 2000 and its implementation on December 16, 2000, no sheriff's return was issued and could be found in the case records.

Petitioners filed an answer to the petition for *certiorari*, arguing, among others, that the petition was filed beyond the reglementary period of sixty (60) days from the receipt of the assailed order. On this score, the RTC dismissed respondent's petition in an Order issued on July 6, 2001. The RTC, however, indicated in the same Order that the failure of MCTC Judge Ramirez to resolve respondent's notices of appeal and petitioners' motion to dismiss the notices of appeal constituted a "patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law."<sup>[1]</sup>

Relying upon said pronouncement, respondent moved for the reconsideration of the July 6, 2001 Order on the ground that the May 25, 2000 Order may be assailed anytime as it was void for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Respondent also argued that the petition for *certiorari* was filed within the reglementary sixty (60)-day period reckoned from the implementation of the writ of execution on December 16, 2000.

In an Order issued on November 22, 2001, the RTC granted respondent's motion for reconsideration and nullified the May 25, 2000 Order of MCTC Judge Ramirez and all processes issued pursuant thereto. Thereafter, petitioners sought the reconsideration of the November 22, 2001 Order but the RTC denied the same for lack of merit when it issued the assailed Order dated May 16, 2002.

Hence, the instant petition, mainly raising the issue of whether the RTC correctly gave due course to respondent's petition for *certiorari*, which sought to nullify the May 25, 2000 Order of MCTC Judge Ramirez. Citing Section 4, Rule 65 of the 1997 Rules of Civil Procedure,<sup>[2]</sup> petitioners contend that the RTC erred in giving due course to respondent's petition for *certiorari* which was filed out of time.

The petition is meritorious.

It bears emphasis that the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be