

FIRST DIVISION

[G.R. NO. 143312, August 12, 2005]

RICARDO S. SILVERIO, JR., ESSES DEVELOPMENT CORPORATION, AND TRI-STAR FARMS, INC., PETITIONERS, VS. FILIPINO BUSINESS CONSULTANTS, INC., RESPONDENT.

DECISION

CARPIO, J.:

The Case

Before us is a petition for review of the Order of the Regional Trial Court, Fourth Judicial Region, Branch XI, Balayan, Batangas ("RTC Balayan") dated 26 May 2000.

[1] The order suspended the enforcement of the writ of possession that the RTC Balayan had previously issued in favor of petitioners Ricardo S. Silverio, Jr. ("Silverio, Jr."), Esses Development Corporation ("Esses") and Tri-Star Farms, Inc. ("Tri-Star"). Filipino Business Consultants, Inc. ("FBCI"), now Filipino Vastland Company, Inc. sought to suspend the writ of possession on the ground of a supervening event. FBCI claimed that it had just acquired all the stocks of Esses and Tri-Star. As the new owner of Esses and Tri-Star, FBCI asserted its right of possession to the disputed property. Petitioners Silverio, Jr., Esses and Tri-Star question the RTC Balayan's suspension of the writ of possession and its jurisdiction to hold hearings on the supervening event.

The Antecedent Facts

The parties are wrangling over possession of a 62 hectare-land in Calatagan, Batangas ("Calatagan Property"). Silverio, Jr. is the President of Esses and Tri-Star. Esses and Tri-Star were in possession of the Calatagan Property, covered by TCT No. T-55200 and registered in the names of Esses and Tri-Star.

On 22 September 1995, Esses and Tri-Star executed a Deed of Sale with Assumption of Mortgage in favor of FBCI. Esses and Tri-Star failed to redeem the Calatagan Property.

On 27 May 1997, FBCI filed a Petition for Consolidation of Title of the Calatagan Property with the RTC Balayan.[2]

FBCI obtained a judgment by default. Subsequently, TCT No. T-55200 in the names of Esses and Tri-Star was cancelled and TCT No. T-77656 was issued in FBCI's name. On 20 April 1998, the RTC Balayan issued a writ of possession in FBCI's favor. FBCI then entered the Calatagan Property.

When Silverio, Jr., Esses and Tri-Star learned of the judgment by default and writ of possession, they filed a petition for relief from judgment and the recall of the writ of

possession. Silverio, Jr., Esses and Tri-Star alleged that the judgment by default is void because the RTC Balayan did not acquire jurisdiction over them. FBCI allegedly forged the service of summons on them.

On 28 December 1998, the RTC Balayan nullified and set aside the judgment by default and the writ of possession. The RTC Balayan found that the summons and the complaint were not served on Silverio, Jr., Esses and Tri-Star. The RTC Balayan directed the service of summons anew on Silverio, Jr., Esses and Tri-Star.

The RTC Balayan denied FBCI's motion for reconsideration of the order. FBCI then filed a petition for certiorari with the Court of Appeals questioning the RTC Balayan's 28 December 1998 Order.^[3] On 28 April 2000, the Court of Appeals denied FBCI's petition. The Court of Appeals also denied FBCI's motion for reconsideration. On 13 August 2001, the Supreme Court denied FBCI's petition.

On 14 April 1999, the RTC Balayan modified its 28 December 1998 Order by upholding FBCI's possession of the Calatagan Property. The RTC Balayan ruled that FBCI could not be deprived of possession of the Calatagan Property because FBCI made substantial improvements on it. Possession could revert to Silverio, Jr., Esses and Tri-Star only if they reimburse FBCI. The RTC Balayan gave Silverio, Jr., Esses and Tri-Star 15 days to file their responsive pleadings.

Silverio, Jr., Esses and Tri-Star moved for the partial reconsideration of the 14 April 1999 Order. Silverio, Jr., Esses and Tri-Star argued that since the judgment by default was nullified, they should be restored to their possession of the Calatagan Property. FBCI did not file any opposition to the motion.

On 9 November 1999, the RTC Balayan reversed its 14 April 1999 Order by holding that Silverio, Jr., Esses and Tri-Star had no duty to reimburse FBCI. The RTC Balayan pointed out that FBCI offered no evidence to substantiate its claim for expenses. The 9 November 1999 Order also restored possession of the Calatagan Property to Silverio, Jr., Esses and Tri-Star pursuant to Rule 39, Section 5 of the 1997 Rules of Civil Procedure. This provision provides for restitution in case of reversal of an executed judgment. On 7 January 2000, the RTC Balayan denied FBCI's motion for reconsideration.

On 8 May 2000, the RTC Balayan issued the writ of possession to Silverio, Jr., Esses and Tri-Star.

On 12 May 2000, FBCI filed with the RTC Balayan a Manifestation and Motion to Recall Writ of Possession on the ground that the decision of the Court of Appeals in CA-G.R. SP No. 56924 was not yet final and FBCI's motion for reconsideration was still pending. The RTC Balayan set the hearing on 26 May 2000.

On 23 May 2000, FBCI filed with the RTC Balayan an Urgent Ex-Parte Motion to Suspend Enforcement of Writ of Possession. FBCI pointed out that it is now the new owner of Esses and Tri-Star having purchased the "substantial and controlling shares of stocks"^[4] of the two corporations.

On the 26 May 2000 hearing, FBCI reiterated its claim of a supervening event, its ownership of Esses and Tri-Star. FBCI informed the RTC Balayan that a new board of

directors for Esses and Tri-Star had been convened following the resignation of the members of the board of directors. The previous actions of the former board of directors have been abandoned and the services of Atty. Vicente B. Chuidian, the counsel of petitioners Silverio, Jr., Esses and Tri-Star, have been terminated.

On the same day, the RTC Balayan issued the order suspending the writ of possession it had earlier issued to Silverio, Jr., Esses and Tri-Star. The RTC Balayan reasoned that it would violate the law on forum shopping if it executed the writ while FBCI's motion for reconsideration of the Court of Appeals' decision and urgent motion to suspend the issuance of the writ of possession remained pending with the Court of Appeals. The RTC Balayan noted that because of FBCI's strong resistance, Silverio, Jr., Esses and Tri-Star have still to take possession of the Calatagan Property. More than ten days had already passed from the time that the RTC Balayan had issued the writ of possession. FBCI had barricaded the Calatagan Property, threatening bloodshed if possession will be taken away from it. The RTC Balayan believed that if it would not restrain Silverio, Jr., Esses and Tri-Star from taking possession of the Calatagan Property, a violent confrontation between the parties might erupt as reported in the Tempo newspaper in its 26 May 2000 issue. Without issuing a restraining order, the RTC Balayan suspended the writ by requesting the counsel of Silverio, Jr., Esses and Tri-Star to allow the court to study the voluminous records of the case, which are to be presented at the hearing on 16 June 2000. The hearing would determine the existence of a supervening event.

On 15 June 2000, the RTC Balayan issued an Order cancelling the 16 June 2000 hearing so that the Court of Appeals could resolve the issue regarding the existence of a supervening event. However, the RTC Balayan declared that the suspension of the writ of possession would be lifted on 17 June 2000.

On 8 August 2000, Silverio, Jr., Esses and Tri-Star filed a complaint for annulment of contracts with damages with the Regional Trial Court of Las Piñas City, Branch 275 ("RTC Las Piñas").^[5]

Issues

Silverio, Jr., Esses and Tri-Star argue that:

I

An *ex parte* motion cannot legally constitute an initiatory basis for the RTC Balayan to conduct additional hearings in order to validate certain new allegations. Neither can said *ex parte* motion be the basis for the suspension of a writ of possession being implemented.

II

When the RTC Balayan suspended the writ of possession, it was barred from hearing intra-corporate disputes. And though Congress has now amended our law on the matter, the RTC still cannot proceed because of due process and *res judicata* reasons.

III

A final and executory judgment cannot be enjoined except by an appropriate petition for relief, a direct attack in another action or a collateral act in another action.

IV

Respondent FBCI is asking for a suspension of the writ of possession while at the same time threatening violence if the writ of possession were to be implemented. The RTC Balayan had no lawful basis to suspend the writ under these admitted circumstances.

V

Respondent has not directly answered petitioners' legal theory. The petition is founded on admitted facts upon which relief is sought under Rule 45. Respondent has altered these facts - presenting its so called "counterstatements of facts and issues" - which involve questions of fact that are still *litis pendentia* at the RTC Balayan. And which even involve an attempt to vary *res judicata*.

VI

Contrary to respondent's claims, that the RTC order of 15 June 2000 has rendered this case "moot and academic" - quite on the contrary - said order calls upon the Supreme Court to decide whether or not, the RTC Balayan may continue to conduct its hearings on suspending the writ of possession.

VII

Respondent's theory that an order suspending a writ of possession is interlocutory in nature, and therefore inappealable, is not supported by jurisprudence.

VIII

Respondent's views on when suspending a writ of execution is appropriate - would "make the exception as rule." And respondent's reliance on *Flores vs. CA, et al.* is totally misplaced. In the *Flores* case, the party being dispossessed was a judgment creditor, who was admitted by the adverse party to be the owner.

IX

The question of *jus possessionis* on the Calatagan Property is already *res judicata* while the question of *jus possidendi* is still under *litis pendentia*. For that reason, respondent has lost all his legal options in retaining the property procured under a "faked service" of summons.

X

Respondents arguments in his 11-06-01 Memo - on (a) "forum shopping", (b) "petitioners" lack of capacity to sue", (c) "service of summons already served" (d) "no intra-corporate dispute" and (e) "the relief herein preempted by events" - are ratiocinations of miniscule weight, meriting only the slightest comment.^[6]

FBCI raises the following issues:

1. Whether the present case has been rendered moot and academic by the Order of the RTC Balayan dated 15 June 2000 and the filing of an action with the Regional Trial Court of Las Piñas City;
2. Whether the present appeal should be dismissed on the ground of forum shopping;
3. Whether the RTC Balayan had the authority to suspend enforcement of the writ of possession and to conduct hearings on a new set of facts;
4. Whether the present case involves an intra-corporate controversy;
5. Whether appeal by certiorari under Rule 45 is the proper remedy under the given facts of the case.^[7]

The Ruling of the Court

The petition has merit.

Procedural Issues

Before resolving the threshold issue, which is the existence of a supervening event, we first address the following procedural issues: (1) whether appeal is the proper remedy against an order suspending the execution of a writ of possession; (2) whether the issue of possession was mooted by the 15 June 2000 Order of the RTC Balayan; and (3) whether the filing of a civil case with the RTC Las Piñas constitutes forum shopping.

First, interlocutory orders are those that determine incidental matters that do not touch on the merits of the case or put an end to the proceedings.^[8] The proper remedy to question an improvident interlocutory order is a petition for certiorari under Rule 65, not Rule 45.^[9] A petition for review under Rule 45 is the proper mode of redress to question final judgments.^[10]

An order staying the execution of the writ of possession is an interlocutory order.^[11] Clearly, this order cannot be appealed. A petition for certiorari was therefore the correct remedy. Moreover, Silverio, Jr., Esses and Tri-Star pointed out that the RTC Balayan acted on an *ex-parte* motion to suspend the writ of possession, which is a litigious matter, without complying with the rules on notice and hearing. Silverio, Jr., Esses and Tri-Star also assail the RTC Balayan's impending move to accept FBCI's evidence on its subsequent ownership of Esses and Tri-Star. In effect, Silverio, Jr., Esses and Tri-Star accuse the RTC Balayan of acting without or in excess of