

FIRST DIVISION

[G.R. No. 166755, November 18, 2005]

ELMER F. CERVANTES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, HON. NORMA C. PERELLO, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY, BRANCH 276, AND PILAR S. ANTONIO (FORMERLY PILAR A. CERVANTES), RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition under Rule 45 of the Rules of Court assails the November 22, 2004 Resolution^[1] of the Court of Appeals in CA-G.R. SP No. 87330 outrightly dismissing petitioner's petition for certiorari for insufficiency in form and substance; and the January 13, 2005 Resolution^[2] denying the motion for reconsideration.

On December 6, 1995, petitioner filed a petition for annulment of marriage and custody of minor children before the Regional Trial Court of Muntinlupa City, Branch 276, docketed as Civil Case No. 95-194.^[3]

On December 13, 1996, the trial court resolved to grant the annulment of the marriage based on private respondent's psychological incapacity, award to petitioner the custody of the minor children, and order the liquidation of the conjugal properties.^[4]

Private respondent filed a Motion for Reconsideration/New Trial and to Admit Answer which the trial court granted in an order dated February 12, 1997. In addition, private respondent was awarded visitation rights over the minor children.^[5]

Petitioner moved to reconsider the February 12, 1997 Order which was granted by the trial court in the Order of October 10, 1997. The trial court set aside the February 12, 1997 Order and affirmed the December 13, 1996 Resolution granting the annulment of the marriage and directed the parties to submit an inventory of their conjugal assets.^[6]

Thereafter, private respondent submitted an inventory of conjugal assets which included their Ayala Alabang Village house and lot. Petitioner manifested that the conjugal abode be adjudicated in his favor considering that he was awarded the custody of the children while private respondent was adjudged to be the party in bad faith.^[7]

On August 4, 1999, the trial court ordered that the conjugal properties which include the conjugal abode, certificate of stock and motor vehicle, should be sold and the proceeds thereof be divided equally between the parties.^[8]

On October 20, 1999, respondent filed a motion for execution of the August 4, 1999 resolution,^[9] while on November 18, 1999, petitioner prayed for its reconsideration. On March 15, 2000, the trial court declared that the August 4, 1999 resolution has become final. A writ of execution was accordingly issued on March 17, 2000.^[10]

Petitioner thus filed a petition for certiorari before the Court of Appeals seeking to annul the August 4, 1999 Resolution and the March 17, 2000 Writ of Execution.^[11]

The Court of Appeals dismissed the petition and held that the August 4, 1999 Resolution of the trial court had long become final and executory for failure of petitioner to file a timely motion for reconsideration or appeal. It also denied petitioner's motion for reconsideration.^[12]

Petitioner then elevated the case to the Supreme Court, which was docketed as G.R. No. 144810. However, in a Resolution dated June 9, 2003, the Third Division of the Supreme Court denied the petition for lack of merit.^[13]

On September 22, 2003, petitioner filed a motion for the forfeiture of the share of the private respondent in the net profits of the conjugal properties in favor of the common children and to adjudicate the Ayala Alabang residence to him pursuant to Articles 40, 43 (2), 50 and 129 (9) of the Family Code,^[14] which the trial court denied in an Order dated August 2, 2004.^[15] It held that the order dated August 4, 1999 directing the equal division of the conjugal properties cannot be superseded inasmuch as the same had already become final, affirmed by the Court of Appeals, and the Supreme Court, without violating the fundamental rules of procedure.^[16]

Thereafter, petitioner filed a Manifestation and Motion clarifying that what he filed on September 22, 2003 was a motion to forfeit the share of the private respondent in the net profits of the conjugal properties and not a motion to amend an order, and praying that the same motion be resolved by the trial court.^[17]

On August 27, 2004, the trial court resolved petitioner's manifestation and motion as follows:

This is a MANIFESTATION AND MOTION, which is unopposed.

Evaluating the same, the Court did not find merit on the motion, considering that the DECISION by this Court has long become final and executory, and this Court has lost jurisdiction over the case. If it is the intention of the movant to forfeit the declared share of the Plaintiff in the conjugal assets, he should file a new complaint for that purpose.

To grant the requested forfeiture thru this motion would in effect reopen the case and the DECISION, which has long become final and executory.

Therefore, the motion is denied.

It is SO ORDERED.^[18]

Instead of filing a motion for reconsideration, petitioner filed a petition for certiorari with the Court of Appeals which rendered the assailed November 22, 2004 Resolution, to wit:

No motion for reconsideration to the assailed August 27, 2004 Order was filed by petitioner before resorting to this petition. Furthermore, no explanation had been alleged to show that the assailed August 27, 2004 Order is a final order as opposed to a mere interlocutory order. There is no allegation and justification on why the filing of a motion for reconsideration was dispensed with.

WHEREFORE, premises considered, being insufficient in form and substance, this petition is hereby DISMISSED outright.

SO ORDERED.^[19]

Petitioner's motion for reconsideration was denied, hence, this petition for review.

Petitioner contends that filing a motion for reconsideration before recourse to the special civil action of certiorari would be futile because the trial court had already ordered the execution of the judgment, citing the case of *Guevarra v. Court of Appeals*.^[20] He claims that the trial court was amply given opportunity to correct itself when he filed the Manifestation and Motion clarifying the August 2, 2004 Order.

The petition lacks merit.

Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied)

As held in *Flores v. Sangguniang Panlalawigan of Pampanga*,^[21] the "**plain**" and "**adequate remedy**" referred to in the foregoing Rule is a **motion for reconsideration** of the assailed Order or Resolution, the filing of which is an indispensable condition to the filing of a special civil action for certiorari,^[22] subject to certain exceptions, to wit: