

## FIRST DIVISION

[ G.R. No. 147205, March 10, 2004 ]

**HEIRS OF LOURDES POTENCIANO PADILLA REPRESENTED BY  
NICANOR P. PADILLA III, PETITIONERS, VS. COURT OF APPEALS  
AND ERNESTO S. AURE, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

Before the Court is a petition for review on *certiorari* assailing the Decision dated January 9, 2001 and the Resolution dated February 28, 2001 of the Court of Appeals in C.A.-G.R. SP No. 60636 which reversed the Decision and Resolution of the Office of the President rendered in OP Case No. 20-A-8913.

The antecedents follow.

At the core of the controversy is a parcel of land identified as Lot 9098, Cad. 455-D, situated at Brgy. Pulo, Cabuyao, Laguna, with an approximate area of 34,932 square meters. Dr. Conrado Potenciano was the recognized occupant of the property which, through the years and even long after his death in 1954, remained for tax purposes under his name.

In 1982, pending the settlement of Dr. Conrado Potenciano's estate before the Regional Trial Court of Manila, the judicial administrator, Victor Potenciano, sold the disputed property to spouses Chito and Nenita Coson. On November 12, 1989, the Cosons sold the lot to Catherine Tuazon, who, in turn, sold the same to E.S. Aure Lending Investor, Inc. (ESALI), represented by Ernesto S. Aure, respondent herein. All the deeds of sale covering these transactions uniformly provided that the vendor shall execute the final deed of sale after survey, segregation and filing of an application in the proper court for authority and approval of the final deed of sale.

On September 10, 1996, respondent Aure filed a free patent application for the said property with the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR), Los Baños, Laguna. He based his claim of ownership on a deed of sale dated September 11, 1996 executed by ESALI conveying the property to him.

Subsequently, the heirs of Lourdes Potenciano Padilla, petitioners herein who are the legal heirs of Dr. Conrado Potenciano, protested respondent's application. They claimed that the property has been adjudicated to them by virtue of an extra-judicial partition approved by the Regional Trial Court of Manila, Branch 4, sometime in 1986. Petitioners also manifested that on March 11, 1997, they applied for the original titling of the disputed lot before the Regional Trial Court of Biñan, Laguna, Branch 24.

After an investigation, finding the protest unfounded, DENR Regional Executive Director Antonio G. Principe issued an Order dated April 24, 1998, dismissing petitioners' protest, thus:

WHEREFORE, PREMISES CONSIDERED, [the] instant protest of Nicanor Padilla III, representing the Hrs. of Lourdes Potenciano Padilla, is hereby ordered dismissed for lack of merit. Eventually, the Office of the Community Environment and Natural Resources is hereby directed to proceed with the processing of the Free Patent Application No. 043404-132 of Ernesto S. Aure covering Lot 9098, Cad. 455-D situated at Brgy. Pulo, Cabuyao, Laguna.

SO ORDERED. [1]

On August 12, 1998, Regional Executive Director Principe issued a Resolution denying the Motion for Reconsideration of the said Order filed by petitioners.

Petitioners thereafter appealed the case to the Office of the DENR Secretary, which affirmed the assailed Order and Resolution. Thus, on April 30, 1999, then DENR Secretary Antonio H. Cerilles rendered a Decision that ruled:

WHEREFORE, in the light of all the foregoing, the appeal of the Heirs of Lourdes P. Padilla, represented by Nicanor Padilla III is hereby DISMISSED for lack of merit and the Order and Resolution, dated April 24, 1998 and August 12, 1998, respectively, are hereby AFFIRMED.

SO ORDERED. [2]

Petitioners filed a Motion for Reconsideration and the same was denied in an Order dated September 2, 1999, thus:

Viewed in the light of the foregoing, the instant motion for reconsideration should be, as it is hereby DISMISSED, and the Decision, dated April 30, 1999 is hereby AFFIRMED.

SO ORDERED. [3]

Petitioners thereafter sought relief from the Office of the President.

Departing from the preceding rulings, the Office of the President, through then Executive Secretary Ronaldo B. Zamora, reversed the Decision and Order of the DENR. The dispositive portion of its June 5, 2000 Decision states:

WHEREFORE, the appealed decision and order of the Department of Environment and Natural Resources dated April 30, 1999, and September 2, 1999, respectively, are hereby REVERSED and SET ASIDE. Accordingly, the protest filed by the heirs of Lourdes P. Padilla dated September 16, 1998 against FPA No. 043404-132 of Ernesto S. Aura is hereby *GIVEN DUE COURSE*.

SO ORDERED. [4]

From the aforesaid Decision, respondent filed a Motion for Reconsideration, which the same office denied in a Resolution dated July 25, 2000.<sup>[5]</sup>

Under Rule 43 of the 1997 Rules of Civil Procedure, respondent had until August 19, 2000 to appeal from the aforesaid decision and resolution. However, instead of perfecting an appeal, he opted to file with the Court of Appeals on September 8, 2000 a special civil action for *certiorari*. In that petition, docketed as CA-G.R. SP No. 60636, respondent alleged that the Office of the President committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled on the validity of the sale executed by the judicial administrator of the late Dr. Conrado Potenciano, and in declaring that the case should be tried before the land registration court in order to settle the question of ownership.<sup>[6]</sup>

On January 9, 2001, the Court of Appeals rendered a Decision reversing the Decision and Resolution of the Office of the President, thus:

WHEREFORE, premises considered, the Decision and Resolution of public respondent, dated 5 June 2000 and 25 July 2000, respectively, are hereby REVERSED and SET ASIDE. In lieu thereof, the Decision and Order of the Department of Environment and Natural Resources, dated 30 April 1999 and 2 September 1999, respectively, are hereby AFFIRMED and REINSTATED.

SO ORDERED.<sup>[7]</sup>

Petitioners moved to reconsider. However, the Court of Appeals maintained its Decision in a Resolution dated February 28, 2001.<sup>[8]</sup>

Hence, the instant petition anchored on the following assigned errors:

#### I

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI AS A SPECIAL CIVIL ACTION [,] [THE SAME] HAVING BEEN RESORTED TO AS A SUBSTITUTE FOR A LOST APPEAL AND [IT] BEING AN ERRONEOUS REMEDY.

#### II

THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN RESOLVING A PETITION [FOR] CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE AS THOUGH IT WAS AN ORDINARY APPEAL UNDER RULE 43.

#### III

GRANTING IN GRATIA ARGUMENTI THAT THE PETITION IS PROPER AND COULD BE VALIDLY ENTERTAINED, THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERRORS IN ASCRIBING THE FALSE ENTRIES OF THE RESPONDENT IN HIS FREE PATENT APPLICATION AS "MINISCULE

INACCURACY"; IN FINDING THE PETITIONERS TO HAVE GIVEN THE RESPONDENT A REASON TO BELIEVE THAT PETITIONERS HAVE TRANSFERRED VALID TITLE TO HIM; AND IN FINDING THE PETITIONERS, BY LACHES, TO HAVE WAIVED THEIR OPPOSITION TO THE FREE PATENT APPLICATION.<sup>[9]</sup>

The main question being raised by petitioners is whether or not the Court of Appeals erred in giving due course to and in granting the petition for *certiorari* filed by respondent.

Petitioners contend that the Court of Appeals erred in entertaining the special civil action for *certiorari* filed by respondent under Rule 65 of the Rules of Court, the same being actually a substitute for lost appeal. Records show that respondent received the Resolution of the Office of the President denying the motion for reconsideration on August 4, 2000. The 15-day reglementary period to appeal under Rule 43 of the Rules of Court, therefore, lapsed on August 19, 2000. On September 8, 2000, more than a month after receipt of the Resolution denying the motion for reconsideration, respondent filed with the Court of Appeals a petition for *certiorari* to nullify the Decision and Resolution issued by the Office of the President. Petitioners, therefore, argue that the Court of Appeals erred in taking cognizance of the petition filed before it, as it was an obvious move to revive a lost appeal.

The petition is meritorious.

The availability to respondent of the remedy of a petition for review under Rule 43 of the Rules of Court to appeal the Decision and Resolution of the Office of the President effectively foreclosed his right to resort to a special civil action for *certiorari*.<sup>[10]</sup> 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.<sup>[11]</sup> It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. To reiterate, a petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of jurisdiction. The two remedies are distinct, mutually exclusive and not alternative or successive.<sup>[12]</sup>

Admittedly, there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal. It is to be noted, however, that the long line of decisions denying the special civil action for *certiorari*, either before appeal was availed of or in instances where the appeal period had lapsed, far outnumbers the instances where *certiorari* was given due course. The few significant exceptions were: when public welfare and the advancement of public policy dictates, or when the broader interests of justice so require, or when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority.<sup>[13]</sup>

In the instant case, there was no urgency or need for respondent to resort to the extraordinary remedy of *certiorari*. The records are bereft of any showing that petitioners misled, prevented, or obstructed respondent from pursuing an appeal.