

SECOND DIVISION

[G.R. No. 161645, July 30, 2004]

SPS. ANTONIO AND BELINDA GATCHALIAN, LIWAYWAY V. GATCHALIAN, REPRESENTING THE ESTATE OF LEONOR VALONDO, PETITIONERS, VS. THE HON. COURT OF APPEALS SIXTH DIVISION, D. VIDALLON-MAGTOLIS, CHAIRMAN, R.A. SALAZAR-FERNANDO AND E.F. SUNDIAM, MEMBERS AND SPS. EDGAR AND AGNES MERCADO, RESPONDENTS.

R E S O L U T I O N

TINGA, J,:

This is a *Rule 65* petition for certiorari relating to the Court of Appeals *Decision*^[1] dated April 23, 2003 denying petitioner's petition^[2] for injunction with prayer for issuance of writ of preliminary injunction and temporary restraining Order and *Resolution*^[3] dated November 10, 2003 denying their *Motion for Reconsideration*.^[4] Petitioners filed the aforesaid petition before the Court of Appeals in view of two conflicting decisions of the Regional Trial Court of Manila in Civil Case No. 93-27726 and Civil Case No. 93-67377, involving the ownership and possession of a piece of property and the house built thereon, originally belonging to one Leonor Valondo.

It appears that during the lifetime of Leonor Valondo, she had three foster children, namely Ana Lisa,^[5] Michael^[6] and Ella, all surnamed Valondo.^[7] They all lived together on the subject property in Tondo, Manila. The land was covered by Transfer Certificate of Title (TCT) No. 109253 in Leonor's name.

Leonor died on November 21, 1989. Upon her death, Ana Lisa executed an affidavit of adjudication^[8] consolidating the property in her name, as there were allegedly no other compulsory heirs.

On the other hand, the siblings^[9] of Leonor Valondo, through their sister herein petitioner Liwayway Valondo Gatchalian, filed a petition for issuance of letters of administration over the Estate of Leonor Valondo. On August 6, 1990, the Regional Trial Court of Manila, Branch 8, granted the petition and letters of administration were issued to petitioner Liwayway.^[10] Liwayway demanded that spouses Ana Lisa Valondo and Gerardo Cena surrender the properties, real and personal, of the Estate. Apparently, their demand went unheeded. The spouses Cena moved out of the house in Tondo, Manila but did not hand over its possession of the property to the Estate. Instead, the Cena spouses leased the house to one Carol Ubaldo.

On October 20, 1992, the spouses Cena succeeded in registering the land in Ana Lisa's name without the knowledge of Liwayway and the other legal heirs, the brothers of Leonor. Transfer Certificate of Title (TCT) No. 207366 was issued in Ana Lisa's name. The spouses Cena later decided to sell the property to herein private

respondents, spouses Edgar^[11] and Agnes Mercado. After conducting an ocular inspection of the property, the Mercado spouses found out that it was occupied by Antonio and Belinda Gatchalian (nephew and niece-in-law of the deceased Leonor Valondo), while a portion thereof was rented out to a certain Ubaldo. According to Liwayway, she herself informed the Mercados that the property was under her administration.^[12] Before the consummation of the sale, petitioner filed an adverse claim over the property. The adverse claim, as well as a notice of *lis pendens*, was annotated on the back of Ana Lisa's TCT.^[13]

However, petitioner Belinda Gatchalian withdrew the notice of *lis pendens*. Hence, on February 1, 1993, the Cena spouses sold the subject property to the Mercado spouses, who were able to register the property in their names in TCT No. 208949. The Mercados prepared and served a notice to vacate upon petitioners Gatchalian spouses who occupied one-half of the property.

On August 31, 1993, the Mercado spouses filed against the Gatchalian spouses a case for recovery of possession and ownership with damages and issuance of writ of possession before the Regional Trial Court of Manila, Branch 29, docketed as Civil Case No. 93-67377. On February 26, 1999, Branch 29 ruled in favor of the Mercado spouses, ordering the Gatchalian spouses to vacate the property and turn over the possession thereof to the spouses Mercado and to pay rentals and damages.^[14] Branch 29 found that the Mercado spouses were purchasers in good faith, there being no defect in their title as well as that of the previous owner, Ana Lisa Valondo Cena. Petitioners admitted that they had no title to the property and were occupying it only "under color of title" as nephew and niece and heirs of the late Leonor Valondo. Petitioners appealed the decision to the Court of Appeals, where it was docketed as CA-G.R. CV No. 67122. However, petitioners failed to file their appellant's brief so their appeal was considered abandoned and the case dismissed on May 4, 2001. The decision became final and executory and Entry of Judgment was made on June 6, 2001.

Meanwhile, on September 24, 1993, or just over a month from the filing by the spouses Mercado of their case for recovery of ownership and possession of the subject property, the Estate of Leonor Valondo, through petitioner Liwayway, filed a case for reconveyance of title and damages before the Regional Trial Court of Manila, Branch 26. Named defendants were the spouses Ana Lisa and Gerardo Cena, the spouses Edgardo and Agnes Mercado, and the Registry of Deeds of Manila. The complaint was docketed as Civil Case No. 93-67726. On March 17, 1999, Branch 26 rendered its decision.^[15] It found that defendant Ana Lisa Cena is not the true and genuine legal heir of the late Leonor Valondo, as she was only a ward or foster child. Hence, the Affidavit of Adjudication as sole heir she executed was an absolute nullity and the transfer of title from the late Leonor Valondo to her was also null and void. The spouses Edgardo and Agnes Mercado were buyers in bad faith since it had been shown that they had previous knowledge of the defect of the title of their vendor Ana Lisa Cena. Branch 26 declared petitioner Estate of Leonor Valondo to be the lawful owner of the subject property and ordered cancellation of the titles in the name of respondent spouses Mercado and payment of damages. Respondent spouses appealed the decision to the Court of Appeals. The appeal, docketed as CA-G.R. CV No. 69186, was declared submitted for decision on February 14, 2002 and is still pending before the First Division.^[16]

The Mercados moved to execute the decision in Civil Case No. 93-67377. This was granted and writ of execution issued on June 28, 2002.^[17] On July 1, 2002, a Sheriff's Notice to Vacate and Notice of Levy and Sale was served upon petitioners.^[18] The petitioners failed to vacate the premises and to pay the rental fees and damages; hence, the personal properties of the petitioners were attached and were set for public auction on July 9, 2002.^[19]

Petitioners moved to quash the writ of execution but this was denied on July 5, 2002.^[20]

Thereafter, petitioners then filed the petition for injunction before the Court of Appeals on July 9, 2002 to enjoin the execution.^[21] The appellate court, in the assailed *Decision* of April 23, 2003, dismissed the petition for lack of merit.^[22]

According to the Court of Appeals, a writ of injunction cannot enjoin the final and executory judgment rendered in Civil Case No. 93-67377. The said judgment had long become final and executory on June 6, 2001 and a corresponding entry of judgment had already issued thereon, the Mercados' ownership of the property and the directive for petitioners to surrender possession thereof had become final and could no longer be questioned. It had become *res judicata*. As it had become final and executory, respondents, as the prevailing party, could have it executed as a matter of right and the issuance of the writ of execution becomes a ministerial duty of the court.

Petitioners moved for reconsideration but it was denied for lack of merit on November 10, 2003.^[23] Hence, petitioners filed this *Petition for Certiorari*.

Petitioners now allege that the Court of Appeals committed grave abuse of discretion in denying the petition for injunction. Essentially they argue that there is a need to issue the injunction because of the pendency of the appeal in CA-G.R. CV No. 69186 (Civil Case No. 93-67726). Allegedly, there is still a question as to the ownership of the subject property. They do not agree that the issue of ownership had been settled in Civil Case No. 93-67377. Rather, they claim that the issue of ownership was not discussed or touched directly in Civil Case No. 93-67377 filed by the Mercado spouses. The dispositive portion of the decision spoke only of turning over possession of the property and did not make a pronouncement as to the issue of ownership. On the other hand, the decision in Civil Case No. 93-67726 discussed the issue of ownership more substantially and directly. Petitioners' superior right of ownership over the property was purportedly clearly established in Civil Case No. 93-67726.

We dismiss the petition.

Petitioners pursued the wrong mode of appeal in filing this *Petition for Certiorari*. As they are questioning a decision of the Court of Appeals which finally disposed of their Petition for Injunction, they should have filed a petition for review and not a petition for certiorari. We have time and again stated that certiorari is not available where the proper remedy is an appeal in due course.^[24] In this case, such remedy has lapsed for the failure of petitioners to take the appeal within the reglementary period.