

THIRD DIVISION

[G.R. No. 124320, March 02, 1999]

HEIRS OF GUIDO YAPTINCHAY AND ISABEL YAPTINCHAY, NAMELY: LETICIA ENCISO-GADINGAN, EMILIO ENCISO, AURORA ENCISO, AND NORBERTO ENCISO, REPRESENTED BY LETICIA ENCISO-GADINGAN, ATTORNEY-IN-FACT, PETITIONERS, VS. HON. ROY S. DEL ROSARIO, PRESIDING JUDGE, RTC, BRANCH 21, IMUS, CAVITE; THE REGISTER OF DEEDS FOR TRECE MARTIRES CITY, GEORGE T. CHUA, SPS. ALFONSO NG AND ANNABELLE CHUA, SPS. ROSENDO L. DY AND DIANA DY, SPS. ALEXANDER NG AND CRISTINA NG, SPS. SAMUEL MADRID AND BELEN MADRID, SPS. JOSE MADRID AND BERNARDA MADRID, SPS. DAVID MADRID AND VIOLETA MADRID, JONATHAN NG, SPS. VICTORIANO CHAN, JR. AND CARMELITA CHAN, SPS. MARIE TES C. LEE AND GREGORIE W.C. LEE, JACINTO C. NG, JR., SPS. ADELAIDO S. DE GUZMAN AND ROSITA C. DE GUZMAN, SPS. RICARDO G. ONG AND JULIE LIM-IT, SPS. MISAEL ADELAIDA P. SOLIMAN AND FERDINAND SOLIMAN, SPS. MYLENE T. LIM AND ARTHUR LIM, EVELYN K. CHUA, GOLDEN BAY REALTY AND DEVELOPMENT CORPORATION, RESPONDENTS.

DECISION

PURISIMA, J.:

At bar is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assailing the Orders dated October 25, 1995 and February 23, 1996, respectively, of Branch 21 of the Regional Trial Court in Imus, Cavite ("RTC").

The facts that matter are, as follows:

Petitioners claim that they are the legal heirs of the late Guido and Isabel Yaptinchay, the owners-claimants of Lot No. 1131 with an area of 520,638 and Lot No. 1132 with an area of 96,235 square meters, more or less situated in Bancal, Carmona, Cavite.

On March 17, 1994, petitioners executed an Extra-Judicial Settlement of the estate of the deceased Guido and Isabel Yaptinchay.

On August 26, 1994, petitioners discovered that a portion, if not all, of the aforesaid properties were titled in the name of respondent Golden Bay Realty and Development Corporation ("Golden Bay") under Transfer Certificate of Title Nos. ("TCT") 225254 and 225255. With the discovery of what happened to subject parcels of land, petitioners filed a complaint for ANNULMENT and/or DECLARATION OF NULLITY OF TCT NO. 493363, 493364, 493665, 493366, 493367; and its Derivatives; As Alternative Reconveyance of Realty WITH A PRAYER FOR A WRIT OF

PRELIMINARY INJUNCTION and/or RESTRAINING ORDER WITH DAMAGES, docketed as RTC BCV-94-127 before Branch 21 of the Regional Trial Court in Imus, Cavite.

Upon learning that "Golden Bay" sold portions of the parcels of land in question, petitioners filed with the "RTC" an Amended Complaint to implead new and additional defendants and to mention the TCTs to be annulled. But the respondent court dismissed the Amended Complaint.

Petitioners moved for reconsideration of the Order dismissing the Amended Complaint. The motion was granted by the RTC in an Order^[1] dated July 7, 1995, which further allowed the herein petitioners to file a Second Amended Complaint,^[2] which they promptly did.

On August 12, 1995, the private respondents presented a Motion to Dismiss^[3] on the grounds that the complaint failed to state a cause of action, that plaintiffs did not have a right of action, that they have not established their status as heirs, that the land being claimed is different from that of the defendants, and that plaintiffs' claim was barred by laches. The said Motion to Dismiss was granted by the respondent court in its Order^[4] dated October 25, 1995, holding that petitioners "have not shown any proof or even a semblance of it - except the allegations that they are the legal heirs of the above-named Yaptinchays - that they have been declared the legal heirs of the deceased couple."

Petitioners interposed a Motion for Reconsideration^[5] but to no avail. The same was denied by the RTC in its Order^[6] of February 23, 1996.

Undaunted, petitioners have come before this Court to seek relief from respondent court's Orders under attack.

Petitioners contend that the respondent court acted with grave abuse of discretion in ruling that the issue of heirship should first be determined before trial of the case could proceed. It is petitioners' submission that the respondent court should have proceeded with the trial and simultaneously resolved the issue of heirship in the same case.

The petition is not impressed with merit.

To begin with, petitioners' Petition for *Certiorari* before this Court is an improper recourse. Their proper remedy should have been an appeal. An order of dismissal, be it right or wrong, is a final order, which is subject to appeal and not a proper subject of *certiorari*^[7]. Where appeal is available as a remedy, *certiorari* will not lie^[8].

Neither did the respondent court commit grave abuse of discretion in issuing the questioned Order dismissing the Second Amended Complaint of petitioners, as it aptly ratiocinated and ruled:

"But the plaintiffs who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it - except the allegations that they are the legal heirs of the aforementioned