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SECOND DIVISION

[G.R. No. 124516, April 24, 1998]

NICOLAS CARAAN, PETITIONER, VS. COURT OF APPEALS, SECRETARY OF AGRARIAN REFORM, AND SPOUSES MACARIO AGUILA AND LEONOR LARA, RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

The pertinent facts are as follows:[1]

Petitioner's father, Miroy Caraan, was the tenant of private respondent's grandparents on a parcel of land consisting of a riceland and an orchard. When their grandparents died, private respondents inherited the properties. Miroy also died. His son, petitioner herein (about 90 years old),[2] is occupying a portion of the orchard for his residence, planted several fruit-bearing trees thereon and claims to have tilled the riceland by virtue of an agreement between private respondents and one Benjamin Ricablanca whom petitioner said was his co-tenant.[3]

Later, private respondents asked petitioner to vacate the area he is occupying as residence.[4] When the latter refused to vacate the premises the former sued him for ejectment and damages before the Metropolitan Trial Court (MTC).[5] In his answer, petitioner said that he is willing to vacate the disputed property provided he is reimbursed for the necessary expenses he incurred in maintaining and preserving it for years.[6] Apprehensive that there might be an agrarian dispute, the trial court referred the case to the Department of Agrarian Reform (DAR) pursuant to Presidential Decree (P.D.) 316.[7] The DAR Hearing Officer conducted an ocular inspection of the property and the parties submitted their affidavits and other documents in support of their claims. After hearing, the Hearing Officer certified the case "proper for trial" ruling that no tenancy relationship existed because the land was a residential lot and not an orchard, that petitioner was a mere sub-lessee of Ricablanca and that there was no clear proof of any sharing in the produce.

Not satisfied, petitioner filed a petition for a new hearing with the DAR. When his petition was denied,[8] he filed a motion for reconsideration. Meantime, the ejectment case was set for preliminary conference but later the trial court granted petitioner's motion to defer the ejectment case pending the resolution of his motion for reconsideration in the DAR. In May of 1995, the DAR denied the motion and ordered the return of the records to the MTC for proper proceedings. Petitioner went to the Court of Appeals but to no avail.[9] Hence, this petition under Rule 65 whereby petitioner imputes grave abuse of discretion to respondent court in affirming the DAR's finding that there was no tenancy relationship between the parties. Petitioner prays in his petition (a) that the case be remanded to the DAR for further hearing, (b) that he be restored to his landholding pending this case and (c)

if restoration is not possible that he be allowed to exercise his right of redemption.[10] As required, petitioner submitted his Memorandum through a court appointed *counsel de officio*.[11] Private respondents filed a motion that their Comment dated September 9, 1996 be considered as their Memorandum.[12]

It is significant to note that while the petition is denominated as one for *certiorari* under Rule 65 of the Rules of Court, the errors assigned are more properly addressed in a petition for review under Rule 45.[13] By adopting the improper remedy, the petition should have been outrightly dismissed. Moreover, the alleged erroneous appreciation of facts by respondent court is not an abuse of discretion but a mere error of judgment which cannot be assailed through a petition under Rule 65.[14] Also, a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*.[15] Nonetheless, in the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of the case on the merits.

When the trial court referred the ejectment case to the DAR, it only acted in accordance with the requirement of P.D. 316 - before it was expressly repealed by R.A. 6657 - that the Secretary of Agrarian Reform or his authorized representative shall make a "preliminary determination of the (agrarian) relationship between the parties". The same decree further provides that:

> "If the Secretary finds that the case is ***proper for the court***, x x x, he shall so certify and such court, x x x may assume jurisdiction over the dispute or controversy."[16] (Underscoring ours).

The determination by the DAR concerning the tenancy relationship between the parties is only preliminary. After making its determination, the DAR can issue the appropriate certification for court action. There is nothing in the decree which vested in the Secretary the final authority to rule on the existence or non-existence of a tenancy relationship whenever a case is referred to it by the courts pursuant to P.D. 316. The DAR's preliminary determination, in the exercise of its adjudicatory powers, does not even foreclose a further examination by the courts nor is the latter bound by the former's initial appreciation of the relationship between the parties as provided in P.D. 1038.[17] Moreover, with the express repeal of P.Ds. 316 and 1038 by Section 76 of R.A. 6657,[18] the reference to the DAR became unnecessary, as the trial court may now proceed to hear the case. The reference requirement under the decree is merely a procedural matter, the repeal of which did not cause any prejudice to petitioner. Besides, there is nothing in the decree which says that if the DAR determines the existence of a tenancy relationship, an ejectment case cannot prosper.

In addition, the ejectment case is the proper forum for the full ventilation of the tenancy issue. Although rulings of the DAR may be assailed before the higher appellate courts (CA or SC), a definite resolution by this court at this time, that petitioner is indeed a tenant of private respondents - as petitioner wants this court to do - would render nugatory the ejectment case still pending in the trial court. In the same vein, a reversal by this court of the "preliminary determination" by the DAR would result in an absurd and circuitous scenario where the findings of this Court on an incidental matter of the case may be reviewed and probably reversed by the trial court since whatever is the outcome hereof, the case will still be