Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JUAN B. BAÑEZ, JR.,
Petitioner,

-*versus*-

HON. CRISANTO C. CONCEPCION, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE RTC-BULACAN, MALOLOS CITY, AND THE ESTATE OF THE LATE RODRIGO GOMEZ, REPRESENTED BY ITS ADMINISTRATRIX, TSUI YUK YING,
Respondents.

G. R. No. 159508

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

29 AUG 2012

x----------x

D E C I S I O N

BERSAMIN, *J.*:

The petitioner has directly come to the Court *via* petition for *certiorari*[1] filed on September 4, 2003 to assail the orders dated March 24, 2003 (reversing an earlier order issued on February 18, 2003 granting his motion to dismiss on the ground of the action being already barred by prescription, and reinstating the action),[2] April 21, 2003 (denying his motion for reconsideration),[3] and August 19, 2003 (denying his second motion for reconsideration and ordering him to file his answer within 10 days from notice despite the principal defendant not having been yet validly served with summons and copy of the complaint),[4] all issued by the Regional Trial

---

1 *Rollo*, pp. 3-23.
2 Id., at 85-86.
3 A copy of the order was not attached to the records.
4 *Rollo*, p. 101.

Court (RTC), Branch 12, in Malolos City in Civil Case No. 722-M-2002,[5] an action for the recovery of ownership and possession. He alleges that respondent Presiding Judge thereby acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedents

The present controversy started almost four decades ago when Leodegario B. Ramos (Ramos), one of the defendants in Civil Case No. 722-M-2002, discovered that a parcel of land with an area of 1,233 square meters, more or less, which was a portion of a bigger tract of land with an area of 3,054 square meters, more or less, located in Meycauayan, Bulacan that he had adjudicated solely to himself upon his mother's death on November 16, 1982 had been earlier transferred by his mother to one Ricardo Asuncion, who had, in turn, sold it to the late Rodrigo Gomez.

On February 1, 1990, Ramos, alleging that Gomez had induced him to sell the 1,233 square meters to Gomez on the understanding that Gomez would settle Ramos' obligation to three other persons, commenced in the RTC in Valenzuela an action against Gomez, also known as Domingo Ng Lim, seeking the rescission of their contract of sale and the payment of damages, docketed as Civil Case No. 3287-V-90 entitled *Leodegario B. Ramos v. Rodrigo Gomez, a.k.a. Domingo Ng Lim.*[6]

On October 9, 1990, before the Valenzuela RTC could decide Civil Case No. 3287-V-90 on the merits, Ramos and Gomez entered into a compromise agreement.[7] The RTC approved their compromise agreement through its decision rendered on the same date.[8]

---

5 Entitled *Estate of the Late Rodrigo Gomez, represented by its Administratrix Tsui Yuk Ying v. Leodegario B. Ramos and Atty. Juan B. Bañez, Jr.*

6 *Rollo*, pp. 39-40.

7 Records, pp. 15-16.

8 Id. at 17-18.

The petitioner, being then the counsel of Ramos in Civil Case No. 3287-V-90, assisted Ramos in entering into the compromise agreement "to finally terminate this case." The terms and conditions of the compromise agreement were as follows:

> COME NOW, the Parties, assisted by their respective counsels, and before this Honorable Court, most respectfully submit this COMPROMISE AGREEMENT for approval, as to finally terminate this case, the terms and conditions of which being as follows:
>
> 1. That out of the total area of Three Thousand and Fifty Four (3,054) sq. m., more or less, covered by formerly O.C.T. No. P-2492 (M), Registry of Deeds of Bulacan, known as Lot No. 6821, Cad-337 Lot 4020-E, Csd-04-001618-D, and now by the Reconstituted Transfer Certificate of Title No. T-10179-P (M) defendant shall cause survey of said property, at its own expense, to segregate the area of One Thousand Two Hundred Thirty-Three, (1,233) sq. m. more or less, to take along lines two (2) to three (3), then to four (4) and up to five (5) of said plan, Csd-04-001618-D;
>
> 2. That upon completion of the technical survey and plan, defendant shall cause the registration of the Deed of Absolute Sale executed by plaintiff over the 1,233 sq. m. in his favor and that defendant shall deliver the survey and plan pertaining to the 1,821 sq, m. to the plaintiff with both parties defraying the cost of registration and titling over their respective shares;
>
> 3. That to carry out the foregoing, plaintiff shall entrust the Owner's Duplicate of said TCT No. T-10179-P (M), Registry of Deeds of Meycauayan, Bulacan, to the defendant, upon approval of this COMPROMISE AGREEMENT by the Court;
>
> 4. That upon the approval of this Compromise Agreement plaintiff shall execute a Deed of Absolute Sale in favor of defendant over the 1,233 sq. m. surveyed and segregated from the 1,821 sq. m. which should remain with the plaintiff and to be titled in his name;
>
> 5. That plaintiff obligates himself to return his loan obligation to the defendant, in the principal sum of ₱ 80,000.00 plus ₱ 20,000.00 for the use thereof, and an additional sum of ₱ 10,000.00 in the concept of attorney's fees, which sums shall be guaranteed by a post-dated check, in the amount of ₱ 110,000.00 in plaintiff's name with his prior endorsement, drawn and issued by plaintiff's counsel, for a period of Sixty (60) days from October 9, 1990;
>
> 6. That in the event the check issued pursuant to paragraph 5 hereof, is dishonored for any reason whatsoever, upon presentment for payment, then this Compromise Agreement, shall be considered null and void and of no effect whatsoever;
>
> 7. That upon faithful compliance with the terms and conditions of this COMPROMISE AGREEMENT and the Decision based thereon, the

> parties hereto shall have respectively waived, conceded and abandoned all claims and rights of action of whatever kind or nature, against each other over the subject property.
>
> WHEREFORE, premises considered, the parties hereto hereby jointly and severally pray before this Honorable Court to approve this COMPROMISE AGREEMENT and thereupon render its Decision based thereon terminating the case.

One of the stipulations of the compromise agreement was for Ramos to execute a deed of absolute sale in favor of Gomez respecting the parcel of land with an area of 1,233 square meters, and covered by Transfer Certificate of Title (TCT) No. T-13005 P(M) in the name of Ramos.[9] Another stipulation was for the petitioner to issue post-dated checks totaling ₱110,000.00 to guarantee the payment by Ramos of his monetary obligations towards Gomez as stated in the compromise agreement broken down as follows: (*a*) ₱80,000.00 as Ramos' loan obligation to Gomez; (*b*) ₱20,000.00 for the use of the loan; and (*c*) ₱10,000.00 as attorney's fees. Of these amounts, only ₱80,000.00 was ultimately paid to Gomez, because the petitioner's check dated April 23, 1991 for the balance of ₱30,000.00 was dishonored for insufficiency of funds.

Gomez meanwhile died on November 7, 1990. He was survived by his wife Tsui Yuk Ying and their minor children (collectively to be referred to as the Estate of Gomez). The Estate of Gomez sued Ramos and the petitioner *for specific performance* in the RTC in Caloocan City to recover the balance of ₱30,000.00 (Civil Case No. C-15750). On February 28, 1994, however, Civil Case No. C-15750 was amicably settled through a compromise agreement, whereby the petitioner directly bound himself to pay to the Estate of Gomez ₱10,000.00 on or before March 15, 1994; ₱10,000.00 on or before April 15, 1994; and ₱10,000.00 on or before May 15, 1994.

The Estate of Gomez performed the obligations of Gomez under the first paragraph of the compromise agreement of October 9, 1990 by causing

---

9 *Rollo*, p. 41.

the survey of the bigger tract of land containing an area of 3,054 square meters, more or less, in order to segregate the area of 1,233 square meters that should be transferred by Ramos to Gomez in accordance with Ramos' undertaking under the second paragraph of the compromise agreement of October 9, 1990. But Ramos failed to cause the registration of the deed of absolute sale pursuant to the second paragraph of the compromise agreement of October 9, 1990 despite the Estate of Gomez having already complied with Gomez's undertaking to deliver the approved survey plan and to shoulder the expenses for that purpose. Nor did Ramos deliver to the Estate of Gomez the owner's duplicate copy of TCT No. T-10179 P(M) of the Registry of Deeds of Meycauayan, Bulacan, as stipulated under the third paragraph of the compromise agreement of October 9, 1990. Instead, Ramos and the petitioner caused to be registered the 1,233 square meter portion in Ramos's name under TCT No. T-13005-P(M) of the Registry of Deeds of Meycauayan, Bulacan.

Accordingly, on July 6, 1995, the Estate of Gomez brought a complaint for specific performance against Ramos and the petitioner in the RTC in Valenzuela (Civil Case No. 4679-V-95)[10] in order to recover the 1,233 square meter lot. However, the Valenzuela RTC dismissed the complaint on April 1, 1996 upon the motion of Ramos and the petitioner on the ground of improper venue because the objective was to recover the ownership and possession of realty situated in Meycauayan, Bulacan, and because the proper recourse was to enforce the judgment by compromise Agreement rendered on October 9, 1990 through a motion for execution.

The Estate of Gomez appealed the order of dismissal to the Court of Appeals (CA), which ruled on July 24, 2001 to affirm the Valenzuela RTC and to dismiss the appeal (CA-G.R. CV No. 54231).

On September 20, 2002, the Estate of Gomez commenced Civil Case

---

[10] Id. at 71-76.

No. 722-M-2002 in the Valenzuela RTC, ostensibly to revive the judgment by compromise rendered on October 9, 1990 in Civil Case No. 3287-V-90, praying that Ramos be ordered to execute the deed of absolute sale covering the 1,233 square meter lot pursuant to the fourth stipulation of the compromise agreement of October 9, 1990. The petitioner was impleaded as a party-defendant because of his having guaranteed the performance by Ramos of his obligation and for having actively participated in the transaction.

On January 8, 2003, the petitioner moved for the dismissal of Civil Case No. 722-M-2002, alleging that the action was already barred by *res judicata* and by prescription; that he was not a real party-in-interest; and that the amount he had guaranteed with his personal check had already been paid by Ramos with his own money.[11]

Initially, on February 18, 2003,[12] the RTC granted the petitioner's motion to dismiss, finding that the right of action had already prescribed due to more than 12 years having elapsed from the approval of the compromise agreement on October 9, 1990, citing Article 1143 (3) of the *Civil Code* (which provides a 10-year period within which a right of action based upon a judgment must be brought from).

On March 24, 2003,[13] however, the RTC reversed itself upon motion of the Estate of Gomez and set aside its order of February 18, 2003. The RTC reinstated Civil Case No. 722-M-2002, holding that the filing of the complaint for specific performance on July 6, 1995 in the Valenzuela RTC (Civil Case No. 4679-V-95) had interrupted the prescriptive period pursuant to Article 1155 of the *Civil Code*.

---

11 Id. at 58-62.
12 Id. at 68-69.
13 Id. at 85-86.

The petitioner sought reconsideration, but the RTC denied his motion for that purpose on April 21, 2003.

On May 12, 2003, the petitioner filed a second motion for reconsideration, maintaining that the Estate of Gomez's right of action had already prescribed; and that the judgment by compromise of October 9, 1990 had already settled the entire controversy between the parties.

On August 19, 2003,[14] the RTC denied the second motion for reconsideration for lack of merit.

Hence, this special civil action for *certiorari* commenced on September 4, 2003 directly in this Court.

Issues

The petitioner insists that:

> xxx the lower court acted with grave abuse of discretion, amounting to lack of, or in excess of jurisdiction, when, after having correctly ordered the dismissal of the case below, on the ground of prescription under Art. 1144, par. 3, of the Civil Code, it reconsidered and set aside the same, on the factually baseless and legally untenable Motion for Reconsideration of Private Respondent, insisting, with grave abuse of discretion, if not bordering on ignorance of law, and too afraid to face reality, that it is Art. 1155 of the same code, as invoked by Private Respondents, that applies, and required herein petitioner to file his answer, despite petitioner's first Motion for Reconsideration, which it treated as a mere scrap of paper, yet, at the same [sic] again it insisted that Article 1155 of the Civil Code should apply, and, thereafter when, with like, if not greater grave abuse of discretion, amounting to lack, or in excess of jurisdiction, it again denied petitioner's Second Motion for Reconsideration for lack of merit, and giving petitioner a non-extendible period of ten [10] days from notice, to file his answer.[15]

In his reply to the Estate of Gomez's comment,[16] the petitioner elucidated as follows:

---

14 *Supra*, at note no. 3.
15 *Rollo*, p. 14.
16 Id. at 180-201.

> [1] Whether or not, the Honorable public respondent Judge gravely abused his discretion, amounting to lack of, or in excess of jurisdiction, when, after ordered the dismissal of Civil Case No. 722-M-2002, as prescription has set in, under Art. 1143 of the Civil Code, he set aside and reconsidered his said Order, on motion of plaintiff, by thereafter denied petitioner's Motion for Reconsideration, and Second Motion for Reconsideration, insisting, despite his being presumed to know the law, that the said action is not barred by prescription, under Art. 1145 of the Civil Code;
>
> [2] Whether or not, the present pending action, Civil Case No. 722-M-2002, before Branch 12 of the Regional Trial Court of Malolos, Bulacan, is barred, and should be ordered be dismissed, on the ground of prescription, under the law and the rules, and applicable jurisprudence.
>
> [3] Whether or not, the same action may be dismissed on other valid grounds.[17]

The petitioner submits that Civil Case No. 722-M-2002 was one for the revival of the judgment upon a compromise agreement rendered in Civil Case No. 3287-V-90 that attained finality on October 9, 1990; that considering that an action for revival must be filed within 10 years from the date of finality, pursuant to Article 1144 of the *Civil Code*,[18] in relation to Section 6, Rule 39 of the *Rules of Court*,[19] Civil Case No. 722-M-2002 was already barred by prescription, having been filed beyond the 10-year prescriptive period; that the RTC gravely abused its discretion in reinstating the complaint despite prescription having already set in; that the dismissal of Civil Case No. 722-M-2002 was proper also because the judgment had already been fully satisfied; that the claim relative to the 1,233 square meter lot under the compromise agreement had been waived, abandoned, or otherwise extinguished on account of the failure of the Estate of Gomez's counsel to move for the issuance of a writ of execution; and that the Estate

---

[17] Id. at 190-191.

[18] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1)Upon a written contract;

2)Upon an obligation created by law;

3)Upon a judgment. (n)

[19] Section 6. *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

of Gomez could not rely upon the pendency and effects of the appeal from the action for specific performance after its dismissal had been affirmed by the CA on grounds of improper venue, the plaintiff's lack of personality, and improper remedy (due to the proper remedy being by execution of the judgment).

The Estate of Gomez countered that the filing on July 6, 1995 of the action for specific performance in the RTC in Valenzuela stopped the running of the prescriptive period; that the period commenced to run again after the CA dismissed that action on July 24, 2001; that the total elapsed period was only five years and 11 months; and that the action for the revival of judgment filed on September 20, 2002 was within the period of 10 years to enforce a final and executory judgment by action.

Ruling

We dismiss the petition for *certiorari*.

The orders that the petitioner seeks to challenge and to annul are the orders denying his motion to dismiss. It is settled, however, that an order denying a motion to dismiss, being merely interlocutory, cannot be the basis of a petition for *certiorari*. An interlocutory order is not the proper subject of a *certiorari* challenge by virtue of its not terminating the proceedings in which it is issued. To allow such order to be the subject of review by *certiorari* not only delays the administration of justice, but also unduly burdens the courts.[20]

But a petition for *certiorari* may be filed to assail an interlocutory order if it is issued without jurisdiction, or with excess of jurisdiction, or in

---

[20] *Atienza v. Court of Appeals*, G.R. No. 85455, June 2, 1994, 232 SCRA 737, 744; *Day v. RTC of Zamboanga City, Br. XIII*, G..R. No. 79119, November 22, 1990, 191 SCRA 610; *Prudential Bank and Trust Co. v. Macadaez*, 105 Phil. 791 (1959); *People v. Court of Appeals*, L-51635, December 14, 1982, 119 SCRA 162, 173.

grave abuse of discretion amounting to lack or excess of jurisdiction. This is because as to such order there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Rule 65 of the *Rules of Court* expressly recognizes the exception by providing as follows:

> 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, or 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. (1a)

The exception does not apply to this challenge. The petitioner has not demonstrated how the assailed orders could have been issued without jurisdiction, or with excess of jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction. Nor has he convinced us that he had no plain, speedy, and adequate remedy in the ordinary course of law. In fact and in law, he has, like filing his answer and going to pre-trial and trial. In the end, should he still have the need to seek the review of the decision of the RTC, he could also even appeal the denial of the motion to dismiss. That, in reality, was his proper remedy in the ordinary course of law.

Yet another reason to dismiss the petition for *certiorari* exists. Although the Court, the CA and the RTC have concurrence of jurisdiction to issue writs of *certiorari*, the petitioner had no unrestrained freedom to choose which among the several courts might his petition for *certiorari* be filed in. In other words, he must observe the hierarchy of courts, the policy in relation to which has been explicitly defined in Section 4 of Rule 65 concerning the petitions for the extraordinary writs of *certiorari*, prohibition

and *mandamus*, to wit:

> Section 4. *When and where petition filed.* - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.
>
> **The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (4a)[21] (Emphasis supplied)

Accordingly, his direct filing of the petition for *certiorari* in this Court instead of in the CA should be disallowed considering that he did not present in the petition any special and compelling reasons to support his choice of this Court as the forum.

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the

---

[21] This rule has been amended, first by A.M. No. 00-2-03-SC (*Re*: *Amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure*) to specify that the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed (effective September 1, 2000); and by A.M. No. 07-7-12-SC, to add the last paragraph reading: "In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction" (effective December 27, 2007).

policy. This was why the Court stressed in *Vergara, Sr. v. Suelto*:[22]

> xxx. **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.** (Emphasis supplied)

In *People v. Cuaresma*,[23] the Court has also amplified the need for strict adherence to the policy of hierarchy of courts. There, noting "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land," the Court has cautioned lawyers and litigants against taking a direct resort to the highest tribunal, *viz*:

> xxx. **This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive.** It is shared by this Court with Regional Trial Courts x x x, which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x, although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed.** There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of**

---

[22] No. L-74766, December 21, 1987, 156 SCRA 753, 766.

[23] G..R. No. 67787, April 18, 1989, 172 SCRA 415, 423-425; see also *Santiago v. Vasquez*, G..R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

> **extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.** Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra*— resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court corresponding jurisdiction, would have had to be filed with it.
>
> xxxx
>
> **The Court therefore closes this decision with the declaration for the information and evidence of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.** (Emphasis supplied)

There being no special, important or compelling reason that justified the direct filing of the petition for *certiorari* in this Court in violation of the policy on hierarchy of courts, its outright dismissal is unavoidable.

Still, even granting that the petition for *certiorari* might be directly filed in this Court, its dismissal must also follow because its consideration and resolution would unavoidably demand the consideration and evaluation of evidentiary matters. The Court is not a trier of facts, and cannot accept the petition for *certiorari* for that reason.

Although commenced ostensibly for the recovery of possession and ownership of real property, Civil Case No. 722-M-2002 was really an action to revive the judgment by compromise dated October 9, 1990 because the ultimate outcome would be no other than to order the execution of the judgment by compromise. Indeed, it has been held that "there is no substantial difference between an action expressly called one for revival of judgment and an action for recovery of property under a right adjudged

under and evidenced by a final judgment."[24] In addition, the parties themselves have treated the complaint in Civil Case No. 722-M-2002 as one for revival. Accordingly, the parties should be fully heard on their respective claims like in any other independent action.

The petitioner's defense of prescription to bar Civil Case No. 722-M-2002 presents another evidentiary concern. Article 1144 of the *Civil Code* requires, indeed, that an action to revive a judgment must be brought before it is barred by prescription, which was ten years from the accrual of the right of action.[25] It is clear, however, that such a defense could not be determined in the hearing of the petitioner's motion to dismiss considering that the complaint did not show on its face that the period to bring the action to revive had already lapsed. An allegation of prescription, as the Court put it in *Pineda v. Heirs of Eliseo Guevara*,[26] "can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed, [o]therwise, the issue of prescription is one involving evidentiary matters requiring a full blown trial on the merits and cannot be determined in a mere motion to dismiss."

At any rate, the mere lapse of the period *per se* did not render the judgment stale within the context of the law on prescription, for events that effectively suspended the running of the period of limitation might have intervened. In other words, the Estate of Gomez was not precluded from showing such events, if any. The Court recognized this possibility of suspension in *Lancita v. Magbanua*:[27]

> In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not

---

[24] *Hizon v. Escocio*, 103 Phil. 1106 (1958).

[25] Article 1144 of the *Civil Code* states:

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment. (n)

[26] G..R. No. 143188, February 14, 2007, 515 SCRA 627, 637.

[27] G..R. No. L-15467, January 31, 1963, 7 SCRA 42, 46.

> be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a *supersedeas*, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*.

Verily, the need to prove the existence or non-existence of significant matters, like supervening events, in order to show either that Civil Case No. 722-M-2002 was barred by prescription or not was present and undeniable. Moreover, the petitioner himself raised factual issues in his motion to dismiss, like his averment of full payment or discharge of the obligation of Ramos and the waiver or abandonment of rights under the compromise agreement. The proof thereon cannot be received in *certiorari* proceedings before the Court, but should be established in the RTC.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari*; and **DIRECTS** the petitioner to pay the cost of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice