



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

ISABEL N. GUZMAN,  
 Petitioner,

G.R. No. 172588

Present:

- versus -

CARPIO, J., *Chairperson*,  
 BRION,  
 DEL CASTILLO,  
 VILLARAMA, JR.,\* and  
 PERLAS-BERNABE, JJ.

ANIANO N. GUZMAN and  
 PRIMITIVA G. MONTEALTO,  
 Respondents.

Promulgated:

MAR 13 2013

*[Handwritten signature]*

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**DECISION**

BRION, J.:

We resolve the petition for review on *certiorari*,<sup>1</sup> filed by petitioner Isabel N. Guzman, assailing the February 3, 2006 decision<sup>2</sup> and the April 17, 2006 resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 90799. The CA decision dismissed the petitioner's petition for *certiorari* for being the wrong mode of appeal and for lack of merit. The CA resolution denied the petitioner's motion for reconsideration for lack of merit.

**THE FACTUAL ANTECEDENTS**

On June 15, 2000, the petitioner filed with the Municipal Trial Court (MTC) of Tuguegarao City, Cagayan, Branch 4, a complaint for ejectment against her children, respondents Aniano N. Guzman and Primitiva G. Montealto.<sup>4</sup> The petitioner alleged that she and Arnold N. Guzman owned the 6/7<sup>th</sup> and 1/7<sup>th</sup> portions, respectively, of a 1,446-square meter parcel of land, known as Lot No. 2419-B, in Tuguegarao City, Cagayan, under Transfer Certificate of Title No. T-74707;<sup>5</sup> the respondents occupied the

\* Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1426 dated March 8, 2013.

<sup>1</sup> Under Rule 45 of the Rules of Court; *rollo*, pp. 9-31.

<sup>2</sup> Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa; *id.* at 36-44.

<sup>3</sup> *Id.* at 46.

<sup>4</sup> Docketed as Civil Case No. 2095; records pp. 1-3.

<sup>5</sup> *Id.* at 4-5.

*[Handwritten mark]*

land by tolerance; the respondents did not comply with her January 17, 2000 written demand to vacate the property;<sup>6</sup> and subsequent *barangay* conciliation proceedings failed to settle the differences between them.<sup>7</sup>

In their answer,<sup>8</sup> the respondents countered that the petitioner transferred, in a December 28, 1996 document,<sup>9</sup> all her property rights in the disputed property, except her usufructuary right, in favor of her children, and that the petitioner engaged in forum shopping since she already raised the issue of ownership in a petition for cancellation of adverse claim against the respondents, pending with Branch 4 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan.<sup>10</sup>

### **THE MTC's RULING**

In a November 27, 2002 decision,<sup>11</sup> the MTC found the petitioner to be the lawful owner of the land with a right to its possession since the respondents had no vested right to the land since they are merely the petitioner's children to whom no ownership or possessory rights have passed. It held that the petitioner committed no forum shopping since she asserted ownership only to establish her right of possession, and the lower courts can *provisionally* resolve the issue of ownership to determine who has the better right of possession. The MTC directed the respondents to vacate the land and surrender possession to the petitioner, and to pay ₱5,000.00 as monthly rental from January 2000 until possession is surrendered, plus ₱15,000.00 as moral and exemplary damages.

The respondents appealed to the RTC of Tuguegarao City, Cagayan, Branch 1.<sup>12</sup> They argued that: (a) the MTC had no jurisdiction over the case; (b) the petitioner has no cause of action against the respondents; (c) the petitioner engaged in forum shopping; and (d) the MTC erred in deciding the case in the petitioner's favor.<sup>13</sup>

### **THE RTC's RULING**

In its May 19, 2005 decision,<sup>14</sup> the RTC rejected the respondents' arguments, finding that the MTC has jurisdiction over ejectment cases under

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 172-177.

<sup>9</sup> *Id.* at 179-180.

<sup>10</sup> *Id.* at 183-184.

<sup>11</sup> *Id.* at 244-246.

<sup>12</sup> Docketed as Civil Case No. 6117; *id.* at 270.

<sup>13</sup> *Id.* at 277-278.

<sup>14</sup> *Id.* at 311-315.

Section 33(2) of Batas Pambansa Bilang 129;<sup>15</sup> the petitioner has a valid cause of action against the respondents since the complaint alleged the petitioner's ownership, the respondents' possession by tolerance, and the respondents' refusal to vacate upon the petitioner's demand; and, the petitioner did not engage in forum shopping since the petition for the cancellation of adverse claim has a cause of action totally different from that of ejectment.

The RTC, however, still ruled for the respondents and set aside the MTC ruling. It took into account the petitioner's transfer of rights in the respondents' favor which, it held, could not be unilaterally revoked without a court action. It also noted that the petitioner failed to allege and prove that earnest efforts at a compromise have been exerted prior to the filing of the complaint.<sup>16</sup> Thus, the RTC ordered the petitioner to pay the respondents ₱25,000.00 as attorney's fees and ₱25,000.00 as litigation expenses.

On June 16, 2005, the petitioner received a copy of the RTC decision.<sup>17</sup> On June 30, 2005, the petitioner filed her **first motion for reconsideration**.<sup>18</sup> In its July 6, 2005 order,<sup>19</sup> the RTC denied the petitioner's motion for reconsideration for lack of the required notice of hearing.<sup>20</sup>

On July 14, 2005, the petitioner filed a **second motion for reconsideration**.<sup>21</sup> In its July 15, 2005 order,<sup>22</sup> the RTC denied the second motion for reconsideration for having been filed out of time.

On July 20, 2005, the petitioner filed a **third motion for reconsideration**.<sup>23</sup> In its July 22, 2005 order,<sup>24</sup> the RTC denied the third motion for reconsideration with finality.

On August 8, 2005, the petitioner filed a Rule 65 petition for *certiorari* with the CA, alleging that the RTC committed a grave abuse of discretion: (a) in deciding the case based on matters not raised as issues on appeal; (b) in finding that the transfer of rights could not be unilaterally revoked without a court action; (c) in holding that the petitioner failed to prove that earnest efforts at a compromise have been exerted prior to the

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<sup>15</sup> The Judiciary Reorganization Act of 1980.

<sup>16</sup> Pursuant to Article 151 of the Family Code.

<sup>17</sup> Records, p. 315 (back page).

<sup>18</sup> *Id.* at 318-321.

<sup>19</sup> *Id.* at 327.

<sup>20</sup> Under Sections 4 and 5, Rule 15 of the Rules of Court.

<sup>21</sup> Records, pp. 330-333.

<sup>22</sup> *Id.* at 350-351.

<sup>23</sup> *Id.* at 352-353.

<sup>24</sup> *Id.* at 357. The petitioner received a copy of the July 22, 2005 order on July 29, 2005; *id.* at 357 (back page).

filing of the complaint; and (d) in denying the petitioner's motion for reconsideration on a mere technicality.

### **THE CA's RULING**

In its February 3, 2006 decision,<sup>25</sup> the CA dismissed the petition. The CA noted that a Rule 42 petition for review, not a Rule 65 petition for *certiorari*, was the proper remedy to assail an RTC decision rendered in the exercise of its appellate jurisdiction. It found that the petitioner lost her chance to appeal when she filed a second motion for reconsideration, a prohibited pleading under Section 5, Rule 37 of the Rules of Court. The CA also held that the petitioner cannot validly claim that the respondents occupied the properties through mere tolerance since they were co-owners of the property as compulsory heirs of Alfonso Guzman, the original owner.

When the CA denied<sup>26</sup> the motion for reconsideration<sup>27</sup> that followed, the petitioner filed the present Rule 45 petition.

### **THE PETITION**

The petitioner justifies the filing of a Rule 65 petition for *certiorari* with the CA by claiming that the RTC judge acted with grave abuse of discretion in passing on issues not raised in the appeal and in not relaxing the rule on the required notice of hearing on motions. She further argues that the CA's finding of co-ownership is bereft of factual and legal basis.

### **THE CASE FOR THE RESPONDENTS**

The respondents submit that the proper remedy for appealing a decision of the RTC, exercising appellate jurisdiction, is a Rule 42 petition for review, and that a Rule 65 petition for *certiorari* is not a substitute for a lost appeal.

### **THE ISSUE**

The case presents to us the issue of whether the CA committed a reversible error in dismissing the petitioner's petition for *certiorari*.

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<sup>25</sup> *Supra* note 2.

<sup>26</sup> *Supra* note 3.

<sup>27</sup> *CA rollo*, pp. 122-131.

## THE COURT’S RULING

**The petition lacks merit.**

### *The petitioner availed of the wrong remedy*

The petitioner’s resort to a Rule 65 petition for *certiorari* to assail the RTC decision and orders is misplaced. When the RTC issued its decision and orders, it did so in the exercise of its appellate jurisdiction; the proper remedy therefrom is a Rule 42 petition for review.<sup>28</sup> Instead, the petitioner filed a second motion for reconsideration and thereby lost her right to appeal; a second motion for reconsideration being a prohibited pleading pursuant to Section 5, Rule 37 of the Rules of Court.<sup>29</sup> The petitioner’s subsequent motions for reconsideration should be considered as mere scraps of paper, not having been filed at all, and unable to toll the reglementary period for an appeal.

The RTC decision became final and executory after fifteen (15) days from receipt of the denial of the first motion for reconsideration. It is elementary that once a decision becomes final and executory, it is “immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.”<sup>30</sup> Thus, the RTC decision, even if allegedly erroneous, can no longer be modified.

Apparently, to resurrect her lost appeal, the petitioner filed a Rule 65 petition for *certiorari*, imputing grave abuse of discretion on the RTC for deciding the case against her. *Certiorari*, by its very nature, is proper only when appeal is not available to the aggrieved party; the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.<sup>31</sup> It

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<sup>28</sup> Section 1. *How appeal taken; time for filing.* – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals xxx. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner’s motion for new trial or reconsideration filed in due time after judgment. [italics supplied]

<sup>29</sup> Section 5. *Second motion for new trial.* xxx  
xxxx

No party shall be allowed a second motion for reconsideration of a judgment or final order. [italics supplied]

<sup>30</sup> *Land Bank of the Philippines v. Suntay*, G.R. No. 188376, December 14, 2011, 662 SCRA 614, 643. See *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2001).

<sup>31</sup> *Philippine Amusement and Gaming Corporation v. Court of Appeals*, G.R. No. 185668, December 13, 2011, 662 SCRA 294, 304; and *Catindig v. Vda. De Meneses*, G.R. Nos. 165851 and 168875, February 2, 2011, 641 SCRA 350, 363.

cannot substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.<sup>32</sup>

***No grave abuse of discretion***

In any case, even granting that the petition can be properly filed under Rule 65 of the Rules of Court, we hold that it was bound to fail.

It should be noted that as a legal recourse, *certiorari* is a limited form of review.<sup>33</sup> It is restricted to resolving errors of jurisdiction and grave abuse of discretion, not errors of judgment.<sup>34</sup> Indeed, as long as the lower courts act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.<sup>35</sup>

In this case, the imputed errors pertained to the RTC's appreciation of matters not raised as errors on appeal, specifically, the transfer of rights and subsequent unilateral revocation, and the strictly enforced rule on notice of hearing. These matters involve only the RTC's appreciation of facts and its application of the law; the errors raised do not involve the RTC's jurisdiction, but merely amount to a claim of erroneous exercise of judgment.

Besides, the RTC acted within its jurisdiction in considering the matter of the petitioner's transfer of rights, even if it had not been raised as an error. Under Section 18, Rule 70 of the Rules of Court,<sup>36</sup> the RTC is mandated to decide the appeal based on the entire record of the MTC proceedings and such pleadings submitted by the parties or required by the RTC. Nonetheless, even without this provision, an appellate court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case, or is closely related to an error properly assigned, or upon which the determination of the question raised by error properly

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<sup>32</sup> *Teh v. Tan*, G.R. No. 181956, November 22, 2010, 635 SCRA 593, 604.

<sup>33</sup> *Home Development Mutual Fund (HDMF) v. See*, G.R. No. 170292, June 22, 2011, 652 SCRA 478, 488; and *Heirs of Lourdes Padilla v. Court of Appeals*, 469 Phil. 196, 204 (2004).

<sup>34</sup> *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*, G.R. No. 152092, August 4, 2010, 626 SCRA 702, 732; and *Apostol v. Court of Appeals*, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92.

<sup>35</sup> *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*, *supra*, at 732.

<sup>36</sup> Section 18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.* – xxx The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court. [italics supplied]

assigned is dependent.<sup>37</sup> The matter of the petitioner's transfer of rights, which was in the records of the case, was the basis for the RTC's decision.

The RTC did not also commit a grave abuse of discretion in strictly enforcing the requirement of notice of hearing. The requirement of notice of hearing is an integral component of procedural due process that seeks to avoid "surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court."<sup>38</sup> Given the purpose of the requirement, a motion unaccompanied by a notice of hearing is considered a mere scrap of paper that does not toll the running of the period to appeal. This requirement of notice of hearing equally applies to the petitioner's motion for reconsideration.<sup>39</sup> The petitioner's alleged absence of counsel is not a valid excuse or reason for non-compliance with the rules.

#### *A final point*

Ejectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved, hence, it is a special civil action with a special procedure. The only issue to be resolved in ejectment cases is the question of entitlement to the physical or material possession of the premises or possession *de facto*. Thus, any ruling on the question of ownership is only provisional, made solely for the purpose of determining who is entitled to possession *de facto*.<sup>40</sup> Accordingly, any ruling on the validity of the petitioner's transfer of rights is provisional and should be resolved in a proper proceeding.

**WHEREFORE**, we hereby **DENY** the appeal. The February 3, 2006 decision and the April 17, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 90799 are **AFFIRMED**. Costs against petitioner Isabel N. Guzman.

**SO ORDERED.**

  
**ARTURO D. BRION**  
Associate Justice

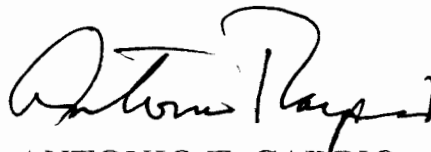
<sup>37</sup> *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007, 541 SCRA 479, 503.

<sup>38</sup> *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173 (2005).

<sup>39</sup> *Sembrano v. Judge Ramirez*, 248 Phil. 260, 266-267 (1988).

<sup>40</sup> *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183-184 (2001).

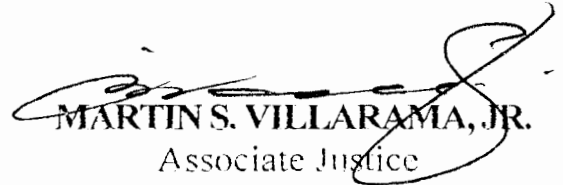
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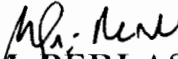
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

#### ATTESTATION

I attest 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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

#### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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