



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

HEIRS OF JOSE MALIT, SR.,
 namely: JOSE MALIT, JR.,
 EDILBERTO MALIT, LORETA
 MALIT-SUMAUANG, CECILIA
 MALIT-TIMBANG, MARIA LUZ
 MALIT-FELICE and TERESITA
 MALIT-PAULE,

Petitioners,

G.R. No. 205979

Present:

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., *JJ.*

- versus -

HEIRS OF JESUS MALIT, namely:
 ELSA MALIT-ALMERO, MYRNA
 MALIT-ALVAREZ, EDELWINA
 MALIT-CLARETE, ZENAIDA
 MALIT-GATDULA, ELISA
 MALIT-SONGCO, LILIAN M.
 MALIT, FELICIANA MALIT-
 PAULE, FELICIANO M. MALIT,
 AGUSTIN M. MALIT, DIOSDADO
 M. MALIT and ORLANDO M.
 MALIT; and MARIANITA D.
 ASUNCION,

Respondents.

Promulgated:

April 28, 2021

~~MISCDOCB-11~~

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DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules) filed by the Heirs of Jose Malit, Sr., namely: Jose Malit, Jr., Edilberto Malit, Loreta Malit-Sumauang,

¹ *Rollo*, pp. 3-30.

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Cecilia Malit-Timbang, Maria Luz Malit-Felice, and Teresita Malit-Paule (collectively, Heirs of Jose Malit, Sr.) assailing the Decision² dated May 24, 2012 and the Resolution³ dated February 27, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 115584. In the assailed issuances, the CA dismissed the Heirs of Jose Malit, Sr.'s Petition⁴ under Rule 65 of the Rules for being the wrong remedy to assail the Orders dated April 26, 2010⁵ and July 6, 2010⁶ of Branch 5, Regional Trial Court (RTC), Dinalupihan, Bataan which dismissed Civil Case No. DH-1171-08.

The Antecedents

The Heirs of Jose Malit, Sr. filed a Complaint⁷ for Partition and Damages (Complaint) against Elsa Malit-Almero, Myrna Malit-Alvarez, Edelwina Malit-Clarete, Zenaida Malit-Gatdula, Elisa Malit-Songco, Lilian M. Malit, Feliciano Malit-Paule, Feliciano M. Malit, Agustin M. Malit, Diosdado M. Malit, Orlando M. Malit, and Marianita D. Asuncion (collectively, Heirs of Jesus Malit) before the RTC.

Plaintiffs therein, the Heirs of Jose Malit, Sr., alleged as follows:

First, Jose Malit, Sr. and Jesus Malit are the sons of Andres Malit.⁸ *Second*, the Heirs of Jose Malit, Sr. and the Heirs of Jesus Malit are: (a) the respective children of Jose Sr. and Jesus; (b) first-degree cousins; and (c) co-owners of Lot 980, a 16.8-hectare parcel of land situated in Hermosa, Bataan (subject property).⁹ *Third*, the parties *orally agreed* that the Heirs of Jesus Malit would facilitate the subject property's titling and registration. After which, the parties would extrajudicially partition the subject property between and among them.¹⁰ *Fourth*, however, in contravention of the aforementioned oral agreement, the Heirs of Jesus Malit subdivided the subject property into nine lots and caused the issuance of individual Original Certificates of Title

² *Id.* at 31-38; penned by Associate Justice Danton Q. Bueser with Associate Justices Rosmari D. Carandang (now a member of the Court) and Ricardo R. Rosario (now a member of the Court), concurring.

³ *Id.* at 39-43.

⁴ *Id.* at 51-69.

⁵ *Id.* at 70-72; penned by Judge Manuel M. Tan.

⁶ *Id.* at 73.

⁷ *Id.* at 79-84.

⁸ *Id.* at 80.

⁹ *Id.* at 79-80.

¹⁰ *Id.* at 82.

(OCT) under their (Heirs of Jesus Malit) names only.¹¹ *Fifth*, the Heirs of Jesus Malit have refused to honor the oral agreement.¹²

In their Answer with Affirmative Defense,¹³ the Heirs of Jesus Malit sought to dismiss the Complaint on the following grounds: “(a) lack of cause of action and/or the cause of action is barred by prior judgment; (b) forum-shopping; and (c) that [a] condition precedent for filing the claim has not been complied with[.]”¹⁴

Ruling of RTC

In an Order¹⁵ dated April 26, 2010, the RTC dismissed the Complaint. It explained as follows: *first*, the issue presented by the Heirs of Jose Malit, Sr. was already settled in a prior judgment in Civil Case No. 4816 (cancellation of title and reversion of subject property) which had already become final and executory.¹⁶ *Second*, the subject property, which was previously acquired by the Heirs of Jesus Malit through a free patent, cannot be the subject of a partition.¹⁷ Thus, the defendants (Heirs of Jesus Malit) did not commit acts that may have given rise to a cause of action for partition.¹⁸ *Third*, the rule is that all plaintiffs must sign the certification against forum shopping accompanying their initiatory pleading. However, only Loreta Malit-Sumauang signed the Complaint’s verification/certification.¹⁹ *Fourth*, there was no showing that the parties, being members of the same family, exerted earnest efforts to compromise the matter prior to the filing of the Complaint. This violated the condition precedent requirement enunciated in Article 222 of the Civil Code of the Philippines.²⁰

The RTC also denied²¹ the Heirs of Jose Malit, Sr.’s subsequent motion for reconsideration.

¹¹ *Id.*

¹² *Id.* at 83.

¹³ *Id.* at 94-98.

¹⁴ *Id.* at 94.

¹⁵ *Id.* at 70-72.

¹⁶ *Id.* at 70.

¹⁷ *Id.* at 70-71.

¹⁸ *Id.* at 71.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Order dated July 6, 2010 of Branch 5, Regional Trial Court (RTC), Dinalupihan, Bataan, *id.* at 73.

Aggrieved, the Heirs of Jose Malit, Sr. filed a Rule 65 petition before the CA assailing the RTC's order of dismissal. Alleging that the RTC committed grave abuse, they sought to annul and set aside the Order dated April 26, 2010 which dismissed Civil Case No. DH-1171-08 due to lack of cause of action, forum shopping, and noncompliance with a condition precedent.²²

Ruling of the CA

In the assailed Decision, the CA dismissed the Heirs of Jose Malit, Sr.'s petition.

It ruled that the RTC's dismissal was a final order and not interlocutory. Thus, the proper remedy to assail it would have been through an *appeal*, not a *certiorari* petition.²³ The availability of the remedy of appeal proscribes the filing of a *certiorari* petition. The remedies are mutually exclusive.²⁴

In any case, the CA noted that the Heirs of Jose Malit, Sr. received the RTC Order denying their Motion for Reconsideration²⁵ on July 6, 2010.²⁶ Still, they filed their CA petition only on August 26, 2010.²⁷ Thus, even if the CA treats their petition as an ordinary appeal in the interest of justice, their chosen recourse was filed out of time or beyond the 15-day reglementary period to appeal,²⁸ rendering the assailed RTC order final and executory.²⁹ Furthermore, their allegations attribute merely errors of judgment, not acts of grave abuse.³⁰ This shows that they filed the petition to substitute a lost appeal.³¹

²² *Id.* at 52.

²³ *Id.* at 33.

²⁴ *Id.* at 34.

²⁵ *Id.* at 74-78.

²⁶ *Id.* at 35.

²⁷ *Id.* at 34.

²⁸ *Id.* at 34-35.

²⁹ *Id.* at 35.

³⁰ *Id.* at 37.

³¹ *Id.* at 36.

On Motion for Reconsideration,³² the Heirs of Jose Malit, Sr. insisted that the assailed order of dismissal was *without prejudice*.³³ Thus, the remedy of appeal was not available to them.³⁴ Granting *arguendo* that their *certiorari* petition was not the proper remedy, procedural “rule[s] should not be strictly enforced x x x because their petition is genuinely meritorious.”³⁵

However, in denying the motion, the CA maintained that the RTC’s assailed order finally disposed of Civil Case No. DH-1171-08. Thus, the ruling was appealable³⁶ and may not be the subject of *certiorari*. At any rate, whether the RTC’s dismissal was with or without prejudice, it is clear that the Heirs of Jose Malit, Sr. sought redress from the CA belatedly. Thus, the right to appeal had become unavailable.³⁷ “[A]n order dismissing a case without prejudice is *a final order if no appeal therefrom is timely filed* x x x a party who wishes to reinstate the case has no other remedy but to file a new complaint.”³⁸ However, at the time of its resolution, the aggrieved parties have not yet refiled their complaint.³⁹

Hence, the Heirs of Jose Malit, Sr. filed the present petition.

Issue

The sole issue in the present case is whether the CA erred in dismissing the Heirs of Jose Malit, Sr.’s petition for being the wrong remedy or, in any case, being filed out of time.

The Court’s Ruling

The petition lacks merit.

³² *Id.* at 44-50.

³³ *Id.* at 45.

³⁴ *Id.*

³⁵ *Id.* at 46.

³⁶ *Id.* at 42.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

*Nature of the RTC's order
of dismissal*

A complaint's dismissal shall not bar the plaintiff from refileing the same action or claim, except when his claim was dismissed for being barred by a *prior judgment* or *prescription, extinguished*, or rendered *unenforceable* under the provisions of the statute of frauds.⁴⁰

To recall, the RTC dismissed the Complaint in Civil Case No. DH-1171-08 for: (1) being barred by a prior judgment (Civil Case No. 4816); (2) failure to state a cause of action (*i.e.*, for partition); (3) lack of a verification/certification against forum shopping; and (4) failure to comply with a condition precedent (*i.e.*, earnest efforts to arrive at a compromise among family members).

Among the grounds cited, the RTC's termination of the Heirs of Jose Malit, Sr.'s Complaint *in view of the prior judgment in Civil Case No. 4816* made the dismissal one *with prejudice*, as provided under the Rules. While a dismissal of this nature prohibits the refileing of the case, the Rules, nonetheless, accords the aggrieved party the right to appeal therefrom.⁴¹

The availability of appeal as a remedy to a dismissal *with prejudice* disqualifies the aggrieved party from availing of *certiorari* proceedings, these two being mutually exclusive.⁴² It is already settled

⁴⁰ Section 1, Rule 16 of the 1997 Rules of Civil Procedure provides:

SECTION 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

x x x

(j) That a condition precedent for filing the claim has not been complied with.

⁴¹ Section 1, Rule 16 of the 1997 Rules of Civil Procedure provides:

SEC. 5. *Effect of dismissal.* — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of section 1 hereof shall bar the refileing of the same action or claim.

⁴² Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or

that the proper recourse from the trial court's order of dismissal *with prejudice* is an ordinary appeal under Rule 41 of the Rules.⁴³

Thus, the CA correctly dismissed the Heirs of Jose Malit, Sr.'s petition for *certiorari* for being the wrong remedy.

Reglementary periods to appeal and file a petition for certiorari

Verily, courts have on occasion relaxed the application of procedural rules. However, the CA also found that the Heirs of Jose Malit, Sr. filed their petition 51 days⁴⁴ after receipt of the RTC Order denying their Motion for Reconsideration. Thus, even if the CA would relax the rules and treat their *certiorari* petition as an ordinary appeal, it would still be infirm for being filed beyond the 15-day appeal period.⁴⁵

In these lights, the Court echoes the CA's observation: that the Heirs of Jose Malit, Sr. filed a Rule 65 petition as an afterthought, having already lost their right to appeal. Certainly, the flawed manner with which they invoked their chosen remedy does not warrant a relaxation of procedural rules.

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.

x x x x (Italics supplied.)

See also *Butuan Dev't. Corp. v. Court of Appeals, et al.*, 808 Phil. 443 (2017).

⁴³ See *HGL Dev't. Corp. v. Judge Penuela, et al.*, 786 Phil. 329, 372-373 (2016).

⁴⁴ Based on the assailed CA Decision, the Heirs of Malit, Sr. received the RTC's Order denying their Motion for Reconsideration on July 6, 2010, and filed their Petition for *Certiorari* on August 26, 2010.

⁴⁵ Section 3, Rule 41 of the Rules of Court provides:

SEC. 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from. (*A.M. No. 01-1-03-SC, June 19, 2001.*)


The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.


WHEREFORE, the instant petition is **DENIED**. The Decision dated May 24, 2012 and Resolution dated February 27, 2013 of the Court of Appeals in CA-G.R. SP No. 115584 are **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

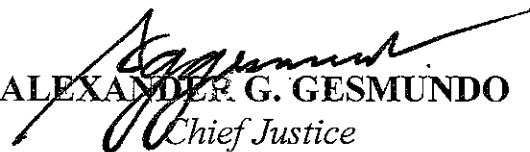
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


ALEXANDER G. GESMUNDO
Chief Justice

