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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 12, 2014** *which reads as follows:*

"G.R. No. 184123 – SPS. NOLI DELA CRUZ AND MILA DELA CRUZ, SPS. THOMAS SEMINIANO AND NORA Z. SEMINIANO, SPS. EDDIE ESPINELLA AND EBONY Z. ESPINELLA, SPS. VERGIL ZEPIDA AND MELINDA D. ZEPIDA AND GAUVEN ZEPIDA AND NOVE A. ZEPIDA, *Petitioners, v.* FAUSTINO LUNA, represented by LEOPOLDO G. DELA CRUZ and THE COURT OF APPEALS (Former Eleventh Division), *Respondents.*

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court filed by the petitioners assailing the 31 January 2008 Decision[2] and 9 July 2008 Resolution[3] of the Eleventh Division of the Court of Appeals in CA-G.R. CV No. 86897, which modified the 2 December 2005 Decision of the Regional Trial Court of Manila (RTC Manila) which in turn granted the complaint for recovery of possession of 4.5798 and 14.6278 hectares, respectively, in favor of Faustino G. Luna (Luna).

The Court of Appeals found that there were two parcels of land involved in this case, the contested portion with an area of 13.75 hectares covered by Tax Declaration No. 5511 and the other portion with an area of 14.6278 hectares covered by Tax Declaration No. 1087 assailed by the spouses-petitioners as inexistent. It was ruled that the only parcel of land purchased by the mother of the spouses-petitioners was the 13.75-hectare portion and did not include the 14.6278-hectare land.

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1 *Rollo*, pp. 3-15.
2 Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring. Id. at 21-35.
3 Id. at 20.

Anent the 13.75-hectare portion, the Court of Appeals ruled that since 10 hectares of the land were already transferred to the Spouses Noli and Mila Dela Cruz (Spouses Dela Cruz), the only remaining portion ought to be determined in the partition was the remaining 3.75 hectares left by Caridad Francisco (Caridad) to her eleven heirs, including her husband Primo Zepida (Primo). Upon equal division, each heir is entitled only to 1/11 portion of the 3.75 hectares or to 0.3409 hectares each. Following this, it was ruled that Luna is entitled only to the three sold shares of 0.3409 hectares each from Primo, Virgel Zepida, and Gauven Zepida.

In this petition for *certiorari*, the spouses-petitioners raised the issue of whether the Court of Appeals gravely abused its discretion when it found that Luna is the legal possessor of an inexistent 14.6278-hectare parcel of land.

We dismiss the petition.

For a petition for *certiorari* under Rule 65 of the Rules of Court to prosper, the following requirements must be alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[4]

Other than compliance of the first requisite that the writ is directed against the Court of Appeals in the exercise of a judicial function, we find that the petition fails to fulfill the other two requirements necessary to grant a favorable ruling.

As to the second requisite, we find that the Court of Appeals did not gravely abuse its discretion when it ruled on the possession of the 14.6278-hectare parcel of land in favor of Luna.

Grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. Emphasis is on the burden on the spouses-petitioners to prove that there is a grave abuse of discretion and not merely reversible error.[5] There is none in this case.

4 *Tan v. Antazo*, G.R. No. 187208, 23 February 2011. 644 SCRA 337, 341-342.
5 *Id.* at 342 citing *Office of the Ombudsman v. Magno*, 592 Phil. 636, 652-653 (2008).

Luna, in his pleadings before the appellate court, advanced his argument that the total area of the property was in fact 31.9430 hectares, but was only reduced into 13.79 hectares to save payment of taxes from the government.[6] In deciding matters presented for resolution, the appellate court affirmed the trial court's finding that there are two portions of land involved in the case. However, it modified the decision of the trial court and decreased the share of Luna on the 13.75 hectares but awarded full possession of the 14.6278-hectare portion in his favor. The appellate court modified the ruling of the trial court and recomputed the portion of land to which each of the parties alleging ownership is entitled. At the same time, it also determined the possession of the other parcel of land which is the 14.6278-hectare portion.

From the foregoing, we see no arbitrariness or grave abuse of discretion on the part of the appellate court when it ruled in favor of Luna as it is well within its judicial power as an appellate court to review the errors of facts and law alleged in a petition for review under Rule 42. The determination of issue of possession of a property which was already established as existent by the trial court is a necessary consequence of the petition for review.

As to the third requisite, a writ of *certiorari* will only be issued if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law available to the spouses-petitioners. In this case, there is another remedy, which is by filing a Petition for Review on *Certiorari* under Rule 45.

Section 1, Rule 45 of the Rules of Court provides that:

> Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

The rule was emphasized in *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission,*[7] where the Court highlighted prior resort to appeal *via* Rule 45:

6 CA *rollo*, p. 41.
7 G.R. No. 155306, 28 August 2013.

> The proper remedy to obtain a reversal of judgment on the merits, final order or resolution, is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.

The pronouncement in *Balayan v. Acorda*[8] as cited in *Malayang Manggagawa* made it clear that if appeal is available, a petition for *certiorari* will not be allowed even if grave abuse of discretion is alleged:

> It bears emphasis that the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for a lapsed or lost appeal. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

Time and again we rule that the filing of a petition for *certiorari* under Rule 65 from the judgment of the Court of Appeals is an improper remedy.[9] Further, pursuant to Supreme Court Circular No. 2-90,[10] an appeal taken to either the Supreme Court or to the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

Failing to satisfy the requisites to justify its issuance, the petition for the special writ of *certiorari* must fail.

In the case at bar, even if we disregard the procedural error, we here rule as we did time and again that factual findings of the lower courts deserve respect and will not be disturbed on appeal.

The case of *Bernales v. Heirs of Julian Sambaan,*[11] bears the rationale:

> Conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. The fact that the [Court of Appeals] adopted the findings of fact of the trial court makes the same binding upon this court.

8 523 Phil. 305, 309 (2006).
9 *Tan v. Antazo*, supra note 4 at 341-342.
10 *Guidelines to be observed in Appeals to the Court of Appeals and to the Supreme Court.* Promulgated 9 March 1990.
11 G.R. No. 163271, 15 January 2010, 610 SCRA 90, 104-105.

The scenario takes a different note when there is a divergence between the factual assessments of the trial court and the appellate court.[12] In the same case of *Bernales v. Heirs of Julian Sambaan* citing *Philippine Airlines, Inc. v. Court of Appeals,*[13] it was held that:

> [F]actual findings of the CA which are supported by substantial evidence are binding, final and conclusive upon the Supreme Court. A departure from this rule may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record.[14]

Upon review of the records, what is apparent is the finding that the contested 14-hectare land is in existence.

In its decision, the trial court recognized the existence of two portions of land by indentifying the parcels of land belonging to Caridad as evidenced by the Tax Declaration Nos. 5511 and 1087 totaling to 28.3778 hectares, then divided the same by the number of heirs under the rules of succession. Thus:

> Perusal of the two (2) Deeds of Absolute Sale both executed by Primo Zepida on March 21, 1990 (Exhs. "C" and "E") and one on September 25, 1992 (Exh. "6") shows that the total areas disposed of were 10,000 hectares and 31.9430 hectares respectively, while the total area of the properties covered by Tax Declaration Nos. 5511 and 1087 (13.75 hectares and 14.6278 hectares, respectively) have a total of 28.3778 hectares only. x x x.
>
> Caridad Francisco has 10 children namely: Orielle, Hazel, Nora, Virgel, Gauden, Yvonne, Daina, Wilbur, Mila and Nila (Exhs. "8" to "16") and the surviving spouse Primo Zepida as her compulsory heirs after her death. Under the principle of compulsory succession whether testamentary or intestate, the legitime of the compulsory heirs can never be impaired hence, the dispositions made by Primo Zepida is only valid to the extent of his share which is 2.5798 hectares. x x x.[15]

Upon appeal, the appellate court arrived at the same conclusion that there are two portions of the contested land, although it awarded possession of the bigger of the two portions in favor of Luna. The *fallo* reads:

> Plaintiff-appellant Faustino Luna is hereby **DECLARED** legally entitled to possession of the 14.6278 hectares of land covered by Tax Declaration No. 1087.[16]

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12 One of the noted exceptions to the rule proscribing questions of fact is when the findings of facts are conflicting. *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 6 June 2011, 650 SCRA 656, 664-665.

13 341 Phil. 624, 629 (1997).

14 *Bernales v. Heirs of Julian Sambaan,* supra note 11 at 105.

15 CA *rollo,* p. 175.

16 *Rollo,* p. 34.

The rule is that the Court resolves only issues relating to errors of law allegedly committed by the Court of Appeals in the exercise of its appellate jurisdiction over the decision of the trial court and does not include review of findings of facts which are already deemed conclusive. To stress further, the Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. Absent any clear showing that the lower courts overlooked, misunderstood or misapplied some facts or circumstances of weight or substance, the findings of facts subsist.[17]

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision and Resolution of the Court of Appeals dated 31 January 2008 and 9 July 2008 are hereby **AFFIRMED**.

SO ORDERED." **SERENO, C.J.**, on official travel; **DEL CASTILLO, J.,** acting member per S.O. No. 1862 dated November 4, 2014. **BERSAMIN, J.,** on official travel; **VELASCO, JR., J.,** acting member per S.O. No. 1870 dated November 4, 2014.

Very truly yours,

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17 *Riano*, Civil Procedure, Volume 1, The Bar Lecture Series, p. 606, (2010) citing *Meneses v. Venturozo*, G.R. No. 172196, 19 October 2011, 659 SCRA 577, 585; *Sps. Surtida v. Rural Bank of Malinao (Albay), Inc.*, 540 Phil. 502, 510-511 (2006).