Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **April 20, 2015** *which reads as follows:*

"G.R. No. 156409 – *NALVIN PERIÑA, Petitioner, v. HON. COURT OF APPEALS AND VICENTE PERIÑA, Respondents.*

Petitioner Nalvin Periña (Nalvin) has directly filed a petition for *certiorari* in this Court to annul the resolution promulgated in CA-G.R. CV No. 67488 on October 1, 2002,[1] whereby the Court of Appeals (CA) denied his motion for reconsideration of the decision promulgated on November 29, 2001[2] that affirmed with modifications the judgment rendered by the Regional Trial Court (RTC) in Tabaco, Albay in Civil Case No. T-1640 declaring respondent Vicente Periña (Vicente) as the owner of a portion of the contested lot.[3] Nalvin alleges that the CA thereby committed grave abuse of its discretion amounting to lack or excess of jurisdiction

It appears that Nalvin filed an action for quieting of title in the RTC in order to assert his ownership of Lot 5370-C located in Tiwi, Albay against Vicente. As summed up by the CA, the allegations of the complaint and the answer are as follows:

> In his Complaint filed on May 17, 1993, plaintiff-appellant claimed that he is the registered owner and peaceful possessor of a parcel of land designated as Lot No. 5370-C, Csd-05-007740, including the improvements thereon, containing an area of Five Thousand Eight Hundred Twenty Eight (5,828) square meters located in Tiwi, Albay,

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1 *Rollo*, pp. 97-98; penned by Associate Justice Portia Aliño-Hormachuelos (retired), concurred in by Associate Justices Sergio L. Pestaño (retired) and Amelita G. Tolentino (retired).

2 Id. At 78-87; penned by Associate Justice Portia Aliño-Hormachuelos (retired), concurred in by Associate Justices Eriberto U. Rosario, Jr. (retired) and Amelita G. Tolentino (retired).

3 Id. at 32-39.

> evidenced by OCT No. P-26050 registered in his name, having purchased the same in 1986 from Cristito Climacosa through a Deed of Sale dated September 26, 1986 (Exh. "A", Record, p. 110); that Climacosa acquired the same from Benjamin Moran on March 8, 1986 evidenced by a Deed of Absolute Sale (Exh. "B", Record, p. 111); that defendant Vicente Periña encroached on approximately One Hundred Fifty (150.0) square meters of his land and constructed a house thereon; that plaintiff advised the defendant not to continue with the construction but defendant did not heed his advice and continued constructing the house. Plaintiff brought the matter to the barangay captain but no settlement was reached. The barangay captain issued an endorsement to bring the matter to the court and a certification to file action.
>
> On the other hand defendant-appellee, appellant's uncle, alleged that the lot in question which is about One Hundred Fifty Two (152.0) square meters is a portion of Lot 5370 which had been sold to him by the original owner Benjamin Moran in two parts: (1) an area of Seventy Five (75.0) square meters on December 16, 1983 as evidenced by a Deed of Absolute Sale of the same date (Exh. "2", Record, p. 167) and (2) an area of Eighty Two (82.5) square meters on January 25, 1988 likewise evidenced by a Deed of Sale (Exh. "3", Record, p. 168); that defendant constructed his house on the property from 1983 to 1984 and plaintiff did not protest at that time because he had not bought it yet from Cristito Climacosa.
>
> Defendant-appellee filed a third-party Complaint against Benjamin Moran but the same was dismissed when the latter died (Record, p. 135).[4]

After trial, the RTC declared Vicente as the rightful owner of the contested portion of Lot 5370 based on its finding that Benjamin Moran (Benjamin) had sold 75 square meters of Lot 5370 to Vicente in 1983, who had registered the sale; that in 1986, Benjamin had also sold Lot 5370 to Cristito Climacosa, who had in turn sold the lot to Nalvin's wife, Virginia Castillo (Virginia); that the subsequent sale to Virginia was not registered; that at the time of the purchase of the property by Virginia, Vicente was already in possession of both the 75 square-meter portion and the 82 square-meter portion of Lot 5370; that Vicente subsequently purchased the 82 square-meter portion in 1988 and registered the sale; and that Benjamin had sold to the Republic of the Philippines 360 square meters of Lot 5370 for a road widening project.

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[4] Id. at 79-80.

Opining that the two lots rightfully belonged to Vicente, albeit erroneously included in the sale to Virginia and in subsequent titling; and observing that Virginia had lacked in prudence in examining the property at the time of her purchase from Benjamin, the RTC decreed:

> WHEREFORE, after a careful deliberation of the evidence presented and the applicable laws and jurisprudence, judgment is hereby rendered against the plaintiff, Nalvin Periña and in favor of the defendant, Vicente Periña, declaring the latter as the true and absolute owner of Lot 5370-P with an area of 157.5 sq. meters.
>
> Costs against the plaintiff.
>
> SO ORDERED.[5]

Hence, Nalvin appealed, but the CA affirmed the RTC's judgment through the decision of November 29, 2001,[6] but ordered the area owned by Vicente recomputed in order to exclude the portion conveyed to the Republic of the Philippines for the road-widening project, *viz.*:

> WHEREFORE, upon the premises, the judgment appealed from is **AFFIRMED** with the **MODIFICATION** that the area owned by the defendant-appellee must be recomputed so as to deduct that which was conveyed to the DPWH for the road-widening project.
>
> SO ORDERED.[7]

The CA pointed out that what had really transpired was a double sale, with Benjamin selling the same property to Vicente and Virginia; and that with Virginia's failure to register the sale, the ownership of the lot pertained to Vicente as the first buyer who had possessed the land in good faith.

After his motion for reconsideration was denied through the assailed resolution of October 1, 2002,[8] Nalvin filed his petition for *certiorari* imputing grave abuse of discretion against the CA, averring thusly:

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5 Id. at 39.
6 Supra note 2.
7 *Rollo*, p. 87.
8 Supra note 1.

I. PUBLIC RESPONDENT HONORABLE COURT OF APPEALS, SPECIAL 17TH DIVISION HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR [W]ITH GRAVE ABUSE OF DISCRETION BY APPLYING [THE] SECOND PARAGRAPH OF ARTICLE 1544 OF THE CIVIL CODE IN FAVOR OF PRIVATE RESPONDENT; AND

II. PUBLIC RESPONDENT HONORABLE COURT OF APPEALS, SPECIAL 17TH DIVISION WITH DUE RESPECT, HAS ACTED WITHOUT OR IN EXCESS OF ITS OR HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY DENYING PETITIONER'S MOTION FOR RECONSIDERATION. BY HOLDING THAT PRIVATE RESPONDENT IS A BUYER IN GOOD FAITH DESPITE THE ADMISSION ON RECORD OF PRIVATE RESPONDENT'S FULL KNOWLEDGE OF THE SAME (sic) OF BENJAMIN MORAN TO CRISTITO CLIMACOSA AND SALE OF SAME PORTION OF THE PETITIONER.[9]

Ruling of the Court

The petition for *certiorari* is dismissed for utter lack of merit.

Firstly, Nalvin came to the Court via an improper remedy. The special civil action for *certiorari* is available to a litigant only in cases when a 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.[10] Accordingly, *certiorari* is not a mode of appeal, and cannot be a substitute for appeal. It will not lie where remedies like appeal are available under the law,[11] considering its nature as an extraordinary remedy that is available only where such other remedies in the ordinary course of law not available.

Yet, Nalvin insists that what he is assailing on *certiorari* due to its being issued with grave abuse of discretion is the resolution promulgated on October 1, 2002 denying his motion for reconsideration, which was not appealable. Thus, he avers, *certiorari* is the proper recourse for him.

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9 Id. at 10.

10 Section 1, Rule 65 of the *Rules of Court*.

11 *Philippine Tourism Authority v. Philippine Golf Development & Equipment, Inc.*, G.R. No. 176628, March 19, 2012, 668 SCRA 406, 413-414.

The insistence of Nalvin cannot sway the Court. Assuming that the resolution denying his motion for reconsideration was his target, appeal, not *certiorari*, remained his proper recourse. It cannot be denied that the resolution related to the reconsideration of the judgment that disposed of the case on the merits. Appeal of the denial of a motion for reconsideration is proscribed only when the motion for reconsideration is brought against an interlocutory order, not when the motion for reconsideration is filed against a judgment or final order.[12]

In fine, Nalvin should have appealed by petition for review on *certiorari* the decision of the CA promulgated on November 29, 2001 as well as the resolution promulgated on October 1, 2002. Such appeal was available to him. In filing the petition for *certiorari* instead, he opted for the wrong remedy, considering that the petition for *certiorari*, being an extraordinary remedy, should prosper only when there was no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

In addition, Nalvin has not competently established how the CA gravely abused its discretion. On the contrary, the CA did not act whimsically, or arbitrarily, or despotically in denying his motion for reconsideration because such denial was legally and factually correct.

And, secondly, Nalvin's petition for *certiorari* cannot be liberally treated as a petition for review under Rule 45 of the *Rules of Court*. The two are different from each other in many aspects. The most basic procedural difference is that the latter is to be filed only within 15 days from notice of the judgment or final order subject of the appeal,[13] while the former is to be brought within 60 days from notice of the judgment or of the denial of the motion for reconsideration.[14] Moreover, the latter is brought only upon questions of law,[15] but the former is commenced to correct an error of jurisdiction (*i.e.*, either the lack or excess of jurisdiction, or the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent court or officer exercising judicial or quasi-judicial power).[16] And, as we earlier pointed out, the latter, being a mode of appeal, is not replaceable by the former, an original action.

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[12] *Mendiola v. Court of Appeals*, G.R. No. 159746, July 18, 2012, 677 SCRA 27, 39, citing *Quelnan v. VHF Phils., Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631, 639.

[13] Section 2, Rule 45 of the *Rules of Court*.

[14] Section 4, Rule 65 of the *Rules of Court*.

[15] Section 1, Rule 45 of the *Rules of Court*.

[16] Section 1, Rule 65 of the *Rules of Court*.

Yet, even if the Court were to act liberally in order to treat the petition for *certiorari* as a petition for review, the outcome would not shift to Nalvin's favor. The records definitively show that the CA, in point of fact and law, correctly affirmed the judgment of the RTC in adjudicating the ownership of the contested portions of Lot 5370 in favor of Vicente.

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

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court
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BROTAMONTE LAW OFFICE
Counsel for Petitioner
Ko Bldg., Gen. Luna St.
Tabaco City 4511 Albay

Court of Appeals (x)
Manila
(CA-G.R. CV No. 67488)

PUBLIC ATTORNEY'S OFFICE
Counsel for Respondent
DOJ Agencies Bldg.
Diliman 1128 Quezon City

The Hon. Presiding Judge
Regional Trial Court, Br. 18
Tabaco City 4511 Albay
(Civil Case No. T-1640)

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