



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 14, 2020** which reads as follows:*

“G.R. No. 252217 – Roberto A. Martinez and Eloida M. Cordero v. Court of Appeals and Martinez Memorial Colleges, Inc.

Petitioners Roberto A. Martinez and Eloida M. Cordero assail, on ground of grave abuse of discretion, the Court of Appeals’ Decision¹ dated August 15, 2019 and Resolution² dated February 20, 2020, in CA-G.R. SP No. 157851.

Antecedents

The case stemmed from an action for partition and accounting filed by petitioners against respondent Martinez Memorial Colleges, Inc. (MMCI).

Petitioners essentially alleged that their mother, Luz Martinez, and siblings are members of the MMCI’s Board of Directors (BOD). They and MMCI were the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. C-387144 located in Caloocan City. MMCI had been occupying and using their undivided share in the property without paying rent or accounting for profits. They demanded for the delivery or liquidation of their share (1/7) in the property, but the BOD refused. Since the parties failed to settle, they were prompted to file the complaint below.³

- over – six (6) pages ...

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¹ Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Marlene Gonzales-Sison and Louis P. Acosta, *rollo*, pp. 306-313.

² *Id.* at 320-321.

³ *Id.* at 34-36.

Respondent MMCI riposted it had no obligation to pay rent to petitioners as the parties had no lease agreement to speak of. Petitioners failed to prove that the property had been legally transferred to them. The property, along with seven (7) other parcels of land, was formerly registered under TCT No. 3389 in the name of the late Luz Martinez, mother of the parties and former Chairman of the Board of Directors of MMCI and Martinez Memorial Hospital (MMH). In 2006, Luz decided to increase MMCI's capital stock by transferring her properties to said corporations in exchange for shares of stock. In the process, petitioners fraudulently caused the issuance of TCT No. C-387144 transferring 1/7 share in the subject property to their names instead of MMCI's.⁴

The Ruling of the Regional Trial Court

By Decision dated May 18, 2018,⁵ the trial court dismissed the case for insufficient evidence. It held that petitioners failed to present any documents to prove the alleged conveyance of the property to them by its registered owner. Thus:

Wherefore, In View Thereof, for failure of plaintiffs to prove their case with preponderance of evidence, the Complaint is Dismissed.

Parties may just partition the parties [sic] among themselves.

Costs against Plaintiffs.

SO ORDERED.⁶

The trial court also denied petitioners' subsequent motion for reconsideration.⁷

Proceedings Before the Court of Appeals

Petitioners appealed to the Court of Appeal through a petition for review under Rule 42 of the Rules of Court. By Decision⁸ dated August 15, 2019, the Court of Appeals dismissed the petition for being a wrong mode of appeal. Considering that the assailed Decision and Resolution had been rendered by the trial court in the exercise of

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⁴ *Id.* at 49-56.

⁵ Penned by Senior Presiding Judge Thelma Canlas Trinidad-Pe Aguirre, *id.* at 214-228.

⁶ *Id.* at 227.

⁷ *Id.* at 240.

⁸ Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Marlene Gonzales-Sison and Louis P. Acosta, *id.* at 306-313.

its original jurisdiction, the correct remedy should have been an ordinary appeal to the Court of Appeals pursuant to Section 2, Rule 41 of the Rules of Court.

Petitioners moved for reconsideration⁹ which was denied.¹⁰

The Present Petition

Petitioners now seek affirmative relief from the Court and pray for the reversal of the Court of Appeals' dispositions. They principally argue that they did not avail of the wrong remedy, neither did they violate any provision of the rules on procedure that warrants relaxation. There was a mere harmless mistake in the title or designation of their appeal as petition for review under Rule 42, but they substantially complied with the requirements of an ordinary appeal under Rule 41 of the Rules of Court. Hence, the Court of Appeal's dismissal of their petition was unwarranted.¹¹

Ruling of the Court

We dismiss the petition.

Prefatorily, the Court notes that petitioners availed of the wrong remedy. The extra-ordinary remedy of *certiorari* under Rule 65 will not lie if there is a plain, speedy, and adequate remedy in the ordinary course of law.¹² A petition for *certiorari* under Rule 65 may be dismissed outright where the remedy of appeal is available. *Mercado v. Valley Mountain Mines Exploration, Inc.*¹³ ordains:

The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the

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⁹ *Id.* at 314-316.

¹⁰ *Id.* at 320-321, Resolution dated February 20, 2020.

¹¹ *Id.* at 3-27.

¹² *Mejia v. Court of Appeals*, G.R. No. 248187 (Notice), August 14, 2019; *Regencia v. Court of Appeals-Mindanao*, G.R. No. 225185 (Notice), August 3, 2016.

¹³ 677 Phil. 13, 51 (2011).

lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.

Here, since petitioners assail a final decision and resolution of the Court of Appeals, they should have filed a petition for review on *certiorari* under Rule 45, instead of a petition for *certiorari* under Rule 65. On this score alone, the petition should be dismissed.¹⁴

Even if a petition for *certiorari* under Rule 65 were to be allowed in the greater interest of justice, the petition is still dismissible for non-compliance with the material date rule.

In actions filed under Rule 65 of the Rules of Court, the petition must indicate the material dates showing when notice of the questioned judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.¹⁵

The rationale for this strict requirement is for the purpose of determining the timeliness of the petition. For such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed.¹⁶ Failure to comply with this requirement shall be sufficient ground for the dismissal of the petition.¹⁷

Here, the petition failed to indicate the date of receipt of the assailed Court of Appeals' Resolution which leaves the Court without any reckoning point for the purpose of determining whether the petition was filed on time. Hence, the petition should be dismissed outright for non-compliance with the material date rule.

In any event, the petition must still fail for failure to sufficiently show grave abuse of discretion on the part of the Court of Appeals in dismissing petitioners' appeal.

Section 2, Rule 41 of the Rules of Court delineates the different modes of appeal from the decision of the Regional Trial Court, *viz.*:

Section 2. *Modes of appeal.* —

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¹⁴ *Lopez v. Court of Appeals*, 478 Phil. 766, 769 (2004).

¹⁵ *Racion v. MST Marine Services Philippines, Inc.*, G.R. No. 219291, July 04, 2018.

¹⁶ *Santos v. Court of Appeals*, 413 Phil. 41, 53 (2001); *Sps. Lapid v. Laurea*, 439 Phil. 887, 895 (2002)

¹⁷ *Sps. Lapid v. Laurea*, 439 Phil 887, 895 (2002).

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court *in the exercise of its original jurisdiction* shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only question of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (Emphasis added)

The distinctions between the various modes of appeal cannot be taken for granted.¹⁸ An ordinary appeal under Rule 41 of the Rules of Court is a matter of right, while appeal by petition for review under Rule 42 is a matter of discretion. The former is taken from the decision rendered by a court in the exercise of its original jurisdiction, while the latter, from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction.

Here, the assailed decision and resolution were issued by the trial court in the exercise of its original jurisdiction. The proper remedy, therefore, is an ordinary appeal under Rule 41 of the Rules of Court, and not a petition for review under Rule 42. As such, the Court of Appeals acted judiciously in dismissing the petition for review for being a wrong mode of appeal.

WHEREFORE, the petition for *certiorari* is **DISMISSED** for being an improper remedy, non-compliance with the material date rule and for lack of merit. The Decision dated August 15, 2019 and Resolution dated February 20, 2020 of the Court of Appeals in CA-G.R. SP No. 157851 are **AFFIRMED**.

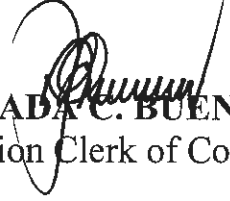
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¹⁸ *Heirs of Arturo Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 415 (2015).

SO ORDERED.” *Rosario, J., designated Member per Special Order No. 2794 dated October 9, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court ^{12/20}

by:

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