



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REMEDIOS M. MAULEON, G.R. No. 203288
Petitioner,

Present:

- versus -

LOLINA MORAN PORTER,
represented by ERVIN C.
MORAN,
Respondent.

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

JUL 18 2014 *HM Cabalag/Perfector*

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated April 11, 2012 and the Resolution³ dated August 30, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 121353 which affirmed the Decision⁴ dated June 25, 2010 of the Regional Trial Court of Caloocan City, Branch 128 (RTC) in SP. Civil Action No. C-984 dismissing petitioner Remedios M. Mauleon's (petitioner) petition for *certiorari* filed in the said case.

¹ *Rollo*, pp. 10-38.

² Id. at 41-55. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Jose C. Reyes, Jr. and Priscilla P. Baltazar-Padilla, concurring.

³ Id. at 64-65.

⁴ Id. at 56-61. Penned by Presiding Judge Eleanor R. Kwong.

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The Facts

On December 2, 2008, respondent Lolina Moran Porter (respondent), represented by Ervin C. Moran, filed a complaint for ejectment against petitioner⁵ and all persons claiming rights from her, seeking to recover possession of the property located at 10th Avenue, Caloocan City, covered by Transfer Certificate of Title (TCT) No. C-390954⁶ (subject property). Respondent alleged therein that she is the absolute owner of the subject property which she purchased from petitioner and her husband, Renato M. Mauleon, by virtue of a Deed of Absolute Sale executed on August 28, 2007.⁷ Despite the sale, however, the petitioner continued to occupy the subject property through respondent's tolerance. But when she made demands to vacate – the last of which was through a letter dated November 3, 2008 – petitioner refused to do so, and even failed to pay rent at the rate of ₱10,000.00 per month, reckoned from September 2007. As the parties failed to settle the matter before the barangay, respondent instituted a suit for unlawful detainer before the Metropolitan Trial Court of Caloocan City, Branch 53 (MeTC), docketed as Civil Case No. 08-29491.⁸

In defense, petitioner claimed that respondent's complaint is dismissible on the grounds that: (a) respondent failed to include her husband as party-plaintiff; and (b) there is a pending action for annulment of documents, title and reconveyance with damages between the parties before the Regional Trial Court of Caloocan City, Branch 125 (annulment of documents and reconveyance case).⁹

During the preliminary conference held on March 27, 2009, petitioner failed to appear, despite notice. Thus, respondent moved for the rendition of judgment pursuant to Section 6 in relation to Section 7 of the Rules on Summary Procedure, which the MeTC granted.¹⁰ Thereafter, the MeTC rendered a Decision¹¹ dated April 24, 2009 (MeTC Decision) ordering petitioner to vacate the subject property, and to pay respondent the amount of ₱20,000.00 as attorney's fees and the costs of suit.

Instead of appealing the aforesaid MeTC Decision, petitioner filed a "Most Very Urgent Manifestation with Omnibus Motion to Reconsider the Order dated March 27, 2009, to Suspend the Proceedings and/or to Dismiss the Case," and another "Manifestation with Motion to Resove [*sic*] Pending Incidents, to Dismiss the case and/or Nullify the Proceedings as well as the Precipitate Rendition of Decision"¹² before the MeTC. On the other hand,

⁵ Id. at 76.

⁶ Id. at 66.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 71.

¹¹ Id. at 66-69. Penned by Presiding Judge Mariam G. Bien.

¹² Id. at 70. Both motions were filed on May 8, 2009.

respondent filed a motion for execution of the MeTC Decision, which she claimed to have attained finality.¹³ Petitioner's motions were denied by the MeTC in an Order¹⁴ dated August 18, 2009 (August 18, 2009 Order), while respondent's motion for the issuance of a writ of execution was granted.¹⁵

Dissatisfied, petitioner filed a petition for *certiorari*¹⁶ under Rule 65 of the Rules of Court before the RTC, docketed as SP. Civil Action No. C-984, seeking the nullification of the MeTC Decision as well as the August 18, 2009 Order granting its execution for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, hinged on the following arguments: (a) the MeTC Decision and the August 18, 2009 Order were issued with undue haste in violation of petitioner's right to due process; (b) her motion for postponement of the March 27, 2009 hearing deserved consideration;¹⁷ (c) she is not bound by the reckless or gross negligence of her counsel;¹⁸ and (d) the pending annulment of documents and reconveyance case was determinative of the ejectment case.¹⁹

The RTC Ruling

In a Decision²⁰ dated June 25, 2010, the RTC dismissed the abovementioned *certiorari* petition for lack of merit.

It held that the pendency of the annulment of documents and reconveyance case did not abate an ejectment suit nor bar the execution of the judgment therein; neither did it deprive the MeTC of its jurisdiction over the unlawful detainer case which merely involves the issue of possession *de facto*.²¹ It further ruled that the assailed MeTC Decision and August 18, 2009 Order were not issued with grave abuse of discretion, finding that petitioner was not deprived of her right to adduce evidence. Instead, records showed that petitioner and her counsel failed to appear at the scheduled preliminary conference on March 27, 2009, and while she claimed to have moved for its postponement, her motion was filed by her counsel only after the MeTC Judge issued the order in open court submitting the case for decision.²²

¹³ Id. at 71.

¹⁴ Id. at 70-72.

¹⁵ Id. at 72.

¹⁶ Id. at 73-94.

¹⁷ Id. at 84-87.

¹⁸ Id. at 88-89.

¹⁹ Id. at 90-91.

²⁰ Id. at 56-61.

²¹ Id. at 59.

²² Id. at 60-61.

Unconvinced, petitioner filed a motion for reconsideration which was, however, denied in a Resolution²³ dated May 31, 2011, prompting her to elevate the matter on appeal to the CA.

The CA Ruling

In a Decision²⁴ dated April 11, 2012, the CA denied petitioner's appeal and affirmed the RTC's dismissal of her *certiorari* petition.

Preliminarily, the CA found that the filing of the *certiorari* petition before the RTC was inappropriately resorted to by petitioner as a substitute for an appeal.²⁵ It also declared that the MeTC had jurisdiction to entertain the ejectment case considering the following allegations in respondent's complaint, namely: (a) respondent is the registered owner of the subject property by virtue of a Deed of Absolute Sale executed in her favor by Renato M. Mauleon; (b) after the sale of the property, petitioner continued to stay on the subject property based on respondent's tolerance; and (c) a demand to vacate dated November 3, 2008 was made on petitioner but the same went unheeded.²⁶ Moreover, it affirmed the RTC's finding that the pendency of a prior case for annulment of documents and reconveyance is not a valid reason to frustrate the summary remedy of ejectment,²⁷ and further held that petitioner was not deprived of due process given that she was actually afforded the opportunity to be heard, notwithstanding the negligent acts of her counsel to which she was equally bound.²⁸

Unperturbed, petitioner sought reconsideration which was once more denied in a Resolution²⁹ dated August 30, 2012, hence, the instant petition with prayer for the issuance of a temporary restraining order (TRO).

The Proceedings Before the Court

In a Resolution³⁰ dated November 12, 2012, the Court granted petitioner's application for a TRO in order to preserve the status *quo*. Meanwhile, the parties were required to file their Comment³¹ and Reply³² which they complied with on November 26, 2012³³ and April 2, 2013,³⁴ respectively.

²³ Id. at 62.

²⁴ Id. at 41-55.

²⁵ Id. at 47-48.

²⁶ Id. at 48-49.

²⁷ Id. at 50-53.

²⁸ Id. at 53-54.

²⁹ Id. at 64-65.

³⁰ Id. at 103-104.

³¹ Id. at 104.

³² Id. at 118. See Resolution dated January 30, 2013.

³³ Id. at 104-117.

³⁴ Id. at 119-125.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in upholding the dismissal of petitioner's *certiorari* petition.

The Court's Ruling

The petition lacks merit.

At the outset, it bears to note that petitioner's course of action before the RTC was principally anchored on the validity of the August 18, 2009 Order which granted the execution of the MeTC Decision. On this score, Section 1(e), Rule 41 of the Rules of Court explicitly provides that an order of execution is not appealable, hence, an aggrieved party may resort to the special civil action of *certiorari* under Rule 65 of the Rules of Court. This is because an order of execution is not a final order or resolution within the contemplation of the rules, but is issued to carry out the enforcement of a final judgment or order against the losing party, hence, generally not appealable.³⁵ While there are circumstances wherein appeal from an improper execution is allowed,³⁶ none obtains in this case. Consequently, the Court finds that petitioner properly availed of the remedy of *certiorari* before the RTC, contrary to the finding of the CA³⁷ that she should have appealed therefrom.

Notwithstanding the foregoing, the Court nonetheless perceives no reversible error on the part of the CA in upholding the RTC's finding that no grave abuse of discretion attended the issuance of the MeTC Decision and the August 18, 2009 Order directing its execution.

Records show that during the scheduled preliminary conference on March 27, 2009, petitioner and her counsel failed to appear despite notice. Hence, the MeTC was justified in granting respondent's motion to render judgment in the ejectment case pursuant to Section 6 in relation to Section 7 of the Rules on Summary Procedure which read as follows:

SEC. 6. *Effect of failure to answer.* – Should the defendant fail to answer the complaint within the period above provided, the court, *motu*

³⁵ *Land Bank of the Philippines v. Hon. Planta*, 497 Phil. 194, 201 (2005).

³⁶ In *Banaga v. Judge Majaducon* (526 Phil. 641, 649-650 [2006]), the Court enumerated the following exceptional circumstances where a party may elevate the matter of an improper execution for appeal, to wit: (a) the writ of execution varies the judgment; (b) there has been a change in the situation of the parties making execution inequitable or unjust; (c) execution is sought to be enforced against property exempt from execution; (d) it appears that the controversy has never been subject to the judgment of the court; (e) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (f) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.

³⁷ *Rollo*, pp. 47-48.

proprio, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: *Provided, however*, That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.

SEC. 7. *Preliminary conference; appearance of parties.* - Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. x x x.

x x x x

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. x x x.

The use of the word "shall" in the foregoing provisions makes the attendance of the parties in the preliminary conference mandatory, and non-appearance thereat is excusable only when the party offers a justifiable cause for his failure to attend.³⁸ The petitioner in this case, however, failed in this respect.

It is undisputed that petitioner's counsel filed an urgent motion to postpone the March 27, 2009 hearing on the same date and only after the MeTC judge had already granted respondent's motion for rendition of judgment. As such, the MeTC properly declared that the aforesaid motion deserves scant consideration and, in fact, should not even be received considering the three (3)-day notice rule on motions,³⁹ stated in Section 4, Rule 15 of the Rules of Court, *viz.*:

SEC. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party **at least three (3) days before the date of hearing**, unless the court for good cause sets the hearing on shorter notice. (Emphasis supplied)

Petitioner's asseveration that her non-appearance in the March 27, 2009 hearing was due to her counsel's assurance that he had duly filed a motion for postponement, which the MeTC should have purportedly granted,⁴⁰ cannot be sustained since no party has the right to assume that

³⁸ *Five Star Mktg. Co., Inc. v. Booc*, 561 Phil. 167, 183 (2007), citing *Tubiano v. Razo*, 390 Phil. 863, 868 (2000).

³⁹ *Rollo*, p. 71.

⁴⁰ *Id.* at 87-88.

such motion would be approved by the courts.⁴¹ Consequently, absent any justifiable reason for her and her counsel's non-appearance at the said preliminary conference, the Court concurs with the RTC's finding that no grave abuse of discretion can be ascribed against the MeTC in submitting the case for decision⁴² and, subsequently, ordering petitioner's ejectment from the subject property.

Similarly, no grave abuse of discretion can be attributed against the MeTC in issuing the August 18, 2009 Order directing the execution of its Decision. Section 19, Rule 70 of the Rules of Court provides for the immediate execution of judgment in favor of the plaintiff in ejectment cases, which can only be stayed if the defendant perfects an appeal, files a supersedeas bond, and makes periodic deposit of rental or other reasonable compensation for the use and occupancy of the subject premises during the pendency of the appeal.⁴³ These requirements are mandatory and concurrent, without which execution will issue as a matter of right.⁴⁴

In this case, it is evident that petitioner failed to interpose an appeal from the MeTC Decision rendering the same final and executory. Hence, the August 18, 2009 Order granting its execution was properly issued.

It is settled that when a decision has acquired finality, the same becomes immutable and unalterable. By this principle of immutability of judgments, the Court is now precluded from further examining the MeTC Decision and to further dwell on petitioner's perceived errors therein, *i.e.*, that her possession of the subject property was not by virtue of respondent's tolerance, hence, the ejectment complaint should have been dismissed for lack of jurisdiction; and that the pending annulment of documents and reconveyance case was prejudicial to the ejectment suit. As held in the case of *Ocampo v. Vda. de Fernandez*:⁴⁵

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may 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. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

⁴¹ *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111, 126.

⁴² *Rollo*, p. 61.

⁴³ *Ocampo v. Vda. De Fernandez*, 552 Phil. 166, 187 (2007).

⁴⁴ *Republic of the Phils. (represented by the Phil. Orthopedic Center) v. Spouses Luriz*, 542 Phil. 137, 150 (2007).

⁴⁵ *Ocampo v. Vda. De Fernandez*, *supra* note 43, at 188.

Resultantly, the implementation and execution of judgments that had attained finality are already ministerial on the courts. Public policy also dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality. Hence, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution, the issuance of which is the trial court's ministerial duty.

Finally, the Court finds that the CA did not err in holding that petitioner was bound by the negligence of her former counsel which, as she purports, led her to lose her case and her right to appeal. Seeing no cogent reason to deviate therefrom, the Court hereunder quotes the CA's ruling on this score with full approval:

We likewise cannot countenance the argument raised by appellant [petitioner herein] that she should not be bound by the negligence of her former counsel. Appellant claims that her failure to attend the preliminary conference which resulted in the alleged precipitate and hasty rendition of the decision of the MTC was due to the assurance of her former counsel that her appearance was not necessary. Moreover, appellant claims that her former counsel failed to file a timely notice of appeal, thus, she lost her right thereto.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. In which case, the remedy then is to reopen the case and allow the party who was denied his day in court to adduce his evidence. However, a thorough review of the instant case reveals that appellant cannot seek refuge or obtain reprieve under these principles.

A review of the records would disclose that appellant was not deprived of her day in court before the MTC. After the filing of the complaint, appellant was able to file her Answer to the complaint, hence, it cannot be successfully argued that she was deprived of her day in court.
x x x.


On her lost appeal, time and again it has been held that the right to appeal is not a natural right or a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.

Hence, there is no justifiable reason to exempt petitioner from the general rule that clients should suffer the consequences of the negligence, mistake or lack of competence of the counsel whom they themselves hired and had the full authority to fire at any time and replace with another even without any justifiable reason.⁴⁶

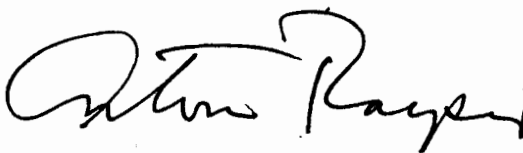
⁴⁶ *Rollo*, pp. 53-54.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated April 11, 2012 and the Resolution dated August 30, 2012 of the Court of Appeals in CA-G.R. SP No. 121353 are hereby **AFFIRMED**. Accordingly, the temporary restraining order issued by the Court on November 12, 2012 is **LIFTED** and **DISSOLVED**.

SO ORDERED.

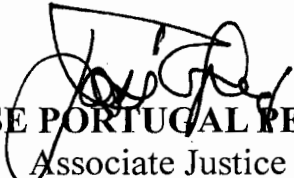

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
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, Second Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice