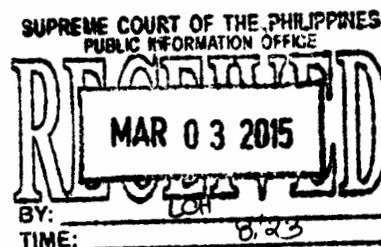




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 14, 2015** which reads as follows:

“G.R. No. 157780 – HEIRS OF ALBINA VDA. DE ABELLA, REPRESENTED BY JIMMY ABELLA UMIL, Petitioners, v. HEIRS OF JOSE ABELLA, REPRESENTED BY CELEDONIA ABELLA TRIAS, AND HON. ARNULFO O. BUGTAS, IN HIS CAPACITY AS ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 1, IN BORONGAN, EASTERN SAMAR, Respondents.

This special civil action for *certiorari* was directly commenced in this Court to assail the order issued on January 31, 2003,¹ whereby respondent Judge Arnulfo O. Bugtas, Presiding Judge of the Regional Trial Court, Branch 1, in Borongan, Eastern Samar (RTC) denied the petitioners’ Motion for Issuance of a Temporary Restraining Order *Ex Parte*,² alleging that the denial was made in grave abuse of his discretion amounting to lack or excess of jurisdiction.

The antecedents follow.

Spouses Francisco Abella and Valentina Reyes died intestate leaving 30 parcels of residential and agricultural lands located in Borongan, Eastern Samar. They had three children, namely: Jose, Fortunato, and Froilan. Jose died in 1957, and was survived by his children and grandchildren, including respondent Celedonia Abella Trias. Fortunato, who was married to Albina Huelde Abella, was survived by their children and grandchildren, including petitioner Jimmy Abella Umil. Froilan died without issue.

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¹ Rollo, p. 15.

² Id. at 65-67.

On May 9, 1979, respondents heirs of Jose Abella commenced an action for partition, damages and accounting in the RTC,³ which dismissed the same for lack of cause of action.⁴ Aggrieved, the respondents appealed, and the Court of Appeals (CA), through the decision promulgated on December 29, 1995,⁵ adjudicated as follows:

WHEREFORE, premises considered, the appealed decision is hereby **MODIFIED** to read as follows:

1. Declaring parcels no. 1, 4, 5, 8, 9, 10, 11, 12, 17, 19 and 21 are the exclusive properties of herein appellees.
2. Declaring parcels no. 7, 14, and 15 as belonging to the intestate estate of the late Francisco Abella and Valentina Abella.
3. Ordering appellees to render an accounting of the fruits derived from parcels 7, 14, and 15 and ordering the partition of the same parcels in accordance with law.

SO ORDERED.

The parties separately sought reconsideration, but the CA denied their motions. The decision became final and executory, and was entered in the Book of Entries of Judgment on February 10, 1997.⁶ On July 10, 2000, respondents heirs of Jose Abella filed a Motion for Execution in the RTC,⁷ which the petitioners opposed.⁸ On May 28, 2001, the RTC granted the Motion for Execution.⁹ The petitioners filed their Motion for Reconsideration.¹⁰

Pending the resolution of the petitioners' Motion for Reconsideration, they filed a Motion for Clarificatory Judgment in the CA,¹¹ which ultimately denied the motion in order not to preempt the

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³ Records, pp. 1-8.

⁴ Id. at 88-101.

⁵ *Rollo*, pp. 19-26; penned by Associate Justice Antonio M. Martinez (later a Member of the Court, but already retired and deceased), concurred in by Associate Justice Pacita Canizares-Nye (retired/deceased) and Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, but already retired).

⁶ *CA rollo*, p. 202.

⁷ *Rollo*, pp. 27-28.

⁸ Id. at 29.

⁹ Id. at 32.

¹⁰ Id. at 5, 38.

¹¹ *CA rollo*, pp. 203-206.

RTC's consideration of the pending Motion for Reconsideration.¹² After the RTC ultimately denied the Motion for Reconsideration,¹³ they filed a Second Motion for Clarificatory Judgment in the CA on October 23, 2002.¹⁴

Pending the resolution of the Second Motion for Clarificatory Judgment, Atty. Enrique C. Dala, Clerk of Court VI and concurrent *Ex Officio* Provincial Sheriff of the RTC, issued a Writ of Execution dated December 2, 2002.¹⁵ Sheriff Virgilio Dadulla then issued a Notice of Levy Upon Realty¹⁶ and a Notice of Sale on Execution of Real Property¹⁷ on January 7, 2003 and January 8, 2003, respectively.

On January 29, 2003, the petitioners filed a Motion to Quash Writ of Execution, Notice of Levy Upon Realty and Notice of Sale on Execution of Real Property.¹⁸ They further filed a Motion for Issuance of a Temporary Restraining Order *Ex Parte* for the purpose of preventing the holding of the Sheriff's Public Auction on January 31, 2003. However, the RTC denied the Motion for Issuance of a Temporary Restraining Order *Ex Parte*, and did not resolve the Motion to Quash Writ of Execution, Notice of Levy Upon Realty and Notice of Sale on Execution of Real Property.

The petitioners thus commenced this special civil action for *certiorari* directly in this Court to assail the RTC's denial of the Motion for Issuance of a Temporary Restraining Order *Ex Parte* without first resolving their Motion to Quash Writ of Execution and Notice of Sale on Execution of Real Property, insisting that the respondent Judge thereby acted with grave abuse of discretion amounting to excess or lack of jurisdiction, and that even granting *arguendo* that the Writ of Execution issued upon the order of respondent Judge was legal, the writ did not conform to the decision of the CA promulgated on December 29, 1995.

Ruling

The petition for *certiorari* lacks merit.

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¹² Id. at 281.

¹³ Id. at 195.

¹⁴ *Rollo*, pp. 37-39.

¹⁵ Id. at 40-43.

¹⁶ Id. at 61-62.

¹⁷ Id. at 44-45.

¹⁸ *CA rollo*, pp. 298-300.

To start with, the direct resort to the Court violates the principle of hierarchy of courts. Although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, such concurrence did not give the petitioners unrestricted freedom of choice of court forum.¹⁹ Jurisprudence and practice dictate that a direct recourse to this Court is improper simply because the Court was a court of last resort and must remain so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket.²⁰

In *Dy v. Bibat-Palamos*,²¹ the Court has recognized various exceptions to the strict application of the principle of hierarchy of courts, to wit:

x x x, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons ***clearly stated in the petition***, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case. (Emphasis supplied)²²

Thus, to warrant a direct recourse to the Court, the petitioners must show exceptional and compelling reasons therefor, clearly and specifically set out in the petition.²³ Considering that this case did not present exceptional and compelling reasons as to come under any of the exceptions, their direct recourse to this Court warranted the dismissal of their petition for *certiorari* for being in violation of the principle of hierarchy of courts.

Secondly, *certiorari*, being an extraordinary remedy, is granted only in the instances authorized by the *Rules of Court*. Under Section 1 of Rule 65 of the *Rules of Court*, the conditions authorizing the resort to *certiorari* are that: (1) the respondent 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

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¹⁹ *Talento v. Judge Escaladas, Jr.*, G.R. No. 180884, June 27, 2008, 556 SCRA 491; *Zamboanga Barter Goods Retailers Association, Inc. v. Lobregat*, G.R. No. 145466, July 7, 2004, 433 SCRA 624, 628.

²⁰ *Cabarles v. Maceda*, G.R. No. 161330, February 20, 2007, 516 SCRA 303, 320-321.

²¹ G.R. No. 196200, September 11, 2013, 705 SCRA 613.

²² *Id.* at 621-622.

²³ *Rayos v. City of Manila*, G.R. No. 196063, December 14, 2011, 662 SCRA 684, 690.

of jurisdiction; and (2) there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. *Without jurisdiction* means that the court acted with absolute lack of authority. There is *excess of jurisdiction* when the court transcends its power, or acts without any statutory authority. *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.²⁴

The petitioners disregarded the conditions. They could not deny that they had a plain, speedy, and adequate remedy in the ordinary course of law. They could have filed a motion for reconsideration but did not. The well-established rule is that a motion for reconsideration was an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* under Rule 65 of the *Rules of Court*.²⁵ This recourse exists to grant an opportunity to the RTC to correct any actual or perceived error attributed to it through the re-examination of the legal and factual circumstances of the case.²⁶

The petitioners contend that there was an urgency to resolve the issue of the denial of their Motion for Issuance of a Temporary Restraining Order *Ex Parte* considering that the auction sale had already been scheduled on January 31, 2003. However, the perceived urgency did not exempt them from the requirement to file the motion for reconsideration, which was an adequate remedy in the ordinary course of the proceedings.

And, thirdly, the conduct of the auction sale was the natural consequence of the execution of the final and executory judgment. To stop the execution by injunction would violate the stability of judicial proceedings, especially the enforceability of the final and executory judgment. Hence, Judge Bugtas correctly ruled on the matter, and should not be faulted for granting the respondents' Motion for Execution. Pursuant to Section 1, Rule 39 of the *Rules of Court*,²⁷ the prevailing party was

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²⁴ *De los Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

²⁵ *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 383.

²⁶ *Siok Ping Tang v. Subic Bay Distribution, Inc.*, G.R. No. 162575, December 15, 2010, 638 SCRA 457, 470.

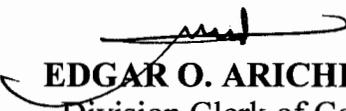
²⁷ *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals and Philippine Ports Authority*, G.R. Nos. 163286, 166025 & 170269, August 22, 2012, 678 SCRA 622, 634.

entitled *as a matter of right* to the writ of execution once the judgment became final and executory. Consequently, the assailed denial of the Motion for Issuance of a Temporary Restraining Order *Ex Parte* could not be the proper subject of the petition for *certiorari*.

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

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *pk alac*

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