Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF BABAI GUIAMBANGAN, namely, KALIPA B. GUIAMBANGAN, SAYA GUIAMBANGAN DARUS, NENENG P. GUIAMBANGAN, AND EDGAR P. GUIAMBANGAN,[1]
Petitioners,

- versus -

MUNICIPALITY OF KALAMANSIG, SULTAN KUDARAT, represented by its MAYOR ROLANDO P. GARCIA, MEMBERS of its SANGGUNIANG BAYAN, and its MUNICIPAL TREASURER,[2]
Respondents.

G.R. No. 204899

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

Promulgated:
27 JUL 2016

x - x

DECISION

DEL CASTILLO, *J*.:

Assailed in this Petition for Review on *Certiorari*[3] are the June 14, 2011 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 04239 which dismissed the herein petitioners' Petition for *Certiorari*,[5] and its September 10, 2012 Resolution[6] which denied their Motion for Reconsideration[7] in said case.

Factual Antecedents

Datu Eishmael Summagumbra (Eishmael), heir of the late Babai Guiambangan (Babai) and ascendant and predecessor-in-interest of herein petitioners, Kalipa B. Guiambangan, Saya Guiambangan Darus, Neneng P.

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1 See *rollo*, pp. 13, 89, 506.
2 Id. at 14.
3 Id. at 12-27.
4 Id. at 38; issued by Associate Justices Rodrigo F. Lim, Jr., Pamela Ann A. Maxino and Zenaida Galapate-Laguilles.
5 Id. at 141-176.
6 Id. at 33-37; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Edgardo A. Camello and Renato C. Francisco.
7 Id. at 177-186.

Guiambangan, and Edgar P. Guiambangan, instituted before the Regional Trial Court of Isulan, Sultan Kudarat (RTC Branch 19) Civil Case No. 989 against herein respondents Municipality of Kalamansig, Sultan Kudarat, its Mayor, Members of its *Sangguniang Bayan*, and its Municipal Treasurer. The case was for recovery of possession of real property, rentals, damages, and attorney's fees, with an additional prayer for injunctive relief, in connection with a 422,129-square meter parcel of land situated in Port Lebak, Kalamansig, Sultan Kudarat which Eishmael claimed was registered in Babai's name as Original Certificate of Title No. 995-A (OCT 995-A).

On March 4, 2002, a Judgment[8] was rendered in Civil Case No. 989, which decreed as follows:

> WHEREFORE, upon all the foregoing considerations, judgment is hereby rendered:
>
> (a) – ordering the defendant, Municipality of Kalamansig, Sultan Kudarat, and those acting for and in its behalf to vacate the portions used as market site in Lot 1534-A, Psd-12-031263 and the portion in Lot 1534-B, Psd-12-031263 where the ice plant structure is constructed, and surrender the possession thereof to the plaintiff, Datu Eishmael Summagumbra, and for the latter to appropriate the improvements built by the defendant on the said lot in question, without paying indemnity;
>
> (b) – ordering the defendant to pay back monthly rents to plaintiff for the use of the portion of Lot 1534-A, Psd-12-031263, as market place from January 1997, until the finality of this judgment, at a reasonable amount of ₱5,000.00;
>
> (c) – ordering the defendants to pay to the plaintiff:
>
> 1 - moral damages in the reasonable amount of ₱30,000.00;
>
> 2 - exemplary damages in the reasonable amount of ₱20,000.00;
>
> 3 - ₱20,000.00, as reasonable amount of attorney's fees; and
>
> (d) – ordering the defendant to pay the costs of suit.
>
> For lack of merit, the counterclaim for damages interposed by the defendant should be, as it is hereby dismissed.
>
> IT IS SO ORDERED.[9]

The above March 4, 2002 Judgment became final and executory, and in a

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8 Records, pp. 1-24; penned by Judge German M. Malcampo.
9 Id. at 23-24.

May 2, 2002 Order,[10] the trial court directed the issuance of a writ of execution. On June 13, 2002, Sheriff Edwin Cabug[11] (Cabug) issued a Sheriff's Notice[12] to vacate the premises.

On March 26, 2007, Cabug issued a Sheriff's Partial Return of Service,[13] indicating that the writ of execution was not enforced.

On August 4, 2008, fire gutted the Hall of Justice where the files of Civil Case No. 989 was kept; however, the record thereof was not reconstituted.

On September 17, 2010, Cabug issued another Sheriff's Partial Return of Service[14] and a Notice of Garnishment[15] which he sent to the Manager of the Land Bank of the Philippines Lebak, Sultan Kudarat Branch, in an apparent attempt to execute the March 4, 2002 Judgment in Civil Case No. 989.

Respondents filed an Urgent Motion to Issue an Order to the Sheriff Prohibiting Him from Executing an Alleged Judgment in the Above-Entitled Case[16] (Urgent Motion), seeking to restrain Cabug from enforcing the decision in Civil Case No. 989 on the ground that since the record thereof was not reconstituted, then there is no judgment in said case to be enforced; and that for failure to reconstitute the record, petitioners have no other recourse but to file the case anew, as Act No. 3110[17] requires. Petitioners filed their Omnibus Comment[18] to the motion, and to this respondents submitted their Comments/Reply.[19]

On December 16, 2010, the trial court issued an Order[20] granting respondents' Urgent Motion, stating as follows:

> As shown by the available records of the case, only machine copies of the judgment dated March 4, 2002 (containing twenty three (23) pages), Sheriff's

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10 *Rollo*, p. 66.
11 Also spelled as Cabog in some parts of the records.
12 *Rollo*, p. 67.
13 Id. at 73.
14 Id. at 74.
15 Id. at 75.
16 Id. at 76-80.
17 "AN ACT TO PROVIDE AN ADEQUATE PROCEDURE FOR THE RECONSTITUTION OF THE RECORDS OF PENDING JUDICIAL PROCEEDINGS AND BOOKS, DOCUMENTS, AND FILES OF THE OFFICE OF THE REGISTER OF DEEDS, DESTROYED BY FIRE OR OTHER PUBLIC CALAMITIES, AND FOR OTHER PURPOSES," approved on March 19, 1923, provides:
Sec. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.
18 *Rollo*, pp. 81-88.
19 Id. at 89-91.
20 Id. at 93-102; penned by Acting Presiding Judge Roberto L. Ayco.

Partial Return of Service dated July 16, 2002, Sheriff's Notice dated June 13, 2002, Order dated May 2, 2002, Order dated October 14, 2002, Certification issued by Atty. Heathcliff H. Leal, dated August 12, 1999, Entry of Judgment dated August 23, 2002 were submitted when the subject motions were filed as the whole records of the case were burned together with the other records of cases of the court on August 4, 2008 when the Hall of Justice housing it and the Offices of the Provincial Prosecutor, and the Public Attorney's Office was razed to the ground by a fire.

Clearly, after that Sheriff's Notice dated June 13, 2002 and Sheriff's Partial Return of Service dated July 16, 2002 no other proceedings nor incident was taken by the court regarding the case. x x x

x x x x

Then suddenly another Sheriff's Partial Return of Service dated September 17, 2010 was issued by Edwin Galor Cabug, Sheriff IV of the court, its content is also quoted as follows:

> 'RESPECTFULLY RETURNED to ERLINDA P. LELIM, OIC-Clerk of Court, of this Court, the herein Writ of Execution issued in the above-entitled case that the same have [sic] already been enforced and implemented and that the Kalamansig Public Market was already turned over to DARUS BASMAN who is the representative of the Plaintiff per Special Power of Attorney.
>
> FOR YOUR INFORMATION AND READY REFERENCE.'

Aside from the said Sheriff's Partial Return of Service dated September 17, 2010, Edwin Galor Cabug, Sheriff IV of the Court also issued a Notice of Garnishment dated September 17, 2010 addressed to the Manager, Land Bank of the Philippines, Lebak Branch, Lebak, Sultan Kudarat. x x x

x x x x

The above-mentioned Sheriff's Partial Return of Service and the Notice of Garnishment all dated September 17, 2010 were issued by x x x Cabug x x x without the court knowing it. The court had not issued any Order directing the issuance of any alias writ of execution. This will only show that the writ of execution referred to by him in his Sheriff's Partial Return of Service was that writ of execution directed by the court to be issued through its Order dated May 2, 2002 and the Notice of Garnishment should have been based upon it likewise.

This being so, can it still be legally and lawfully done considering the period of time that had elapsed? Why was there a need for Edwin Galor Cabug to issue another Sheriff's Partial Return of Service when he had issued a similar return on July 16, 2002?

This Acting Presiding Judge having assumed as such just lately, other than the documents forming parts of the carpeta of the case furnished him, he does not personally know the reasons, why this case was handled this way and in this manner.

Based however, upon said available documents, it is clear that after the Sheriff's Partial Return of Service was issued on July 16, 2002 no other move was ever adopted nor availed of by the Plaintiff in order to enforce and satisfy the Judgment of the Court dated March 4, 2002. x x x

x x x x

The next that was done thereafter was only the issuance of another Sheriff's Partial Return of Service dated September 17, 2010 and the issuance of a Notice of Garnishment, also on said day, September 17, 2010.

The Sheriff's Partial Return of Service dated July 16, 2002, only served a copy of the writ of execution and Sheriff's Notice upon Hon. Mayor and Hon. Vice Mayor at the Session Hall of the Sangguniang Bayan of the Municipality of Kalamansig, Sultan Kudarat. It had never enforced nor satisfy [sic] the subject Judgment of the court. It would then only show that the judgment of the court in this case was never enforced nor satisfied even partially. There was only service of the copy of the writ of execution and Sheriff's Notice.

The records of the case including the original copy of the judgment of the court dated March 4, 2002 and that of the other records of the cases of the court were burned on August 4, 2008 and nothing was salvaged by the court.

There was no attempt nor effort from either of the parties to have the records of the case reconstituted in accordance with Section 3 of Act No. 3110 despite the Notice of Loss of Judicial Records published in the Official Gazette on September 30, 2008 and in the newspapers both local and national. The period of time provided by said law for the reconstitution of the records of this case had long prescribed and may no longer be availed of. The parties in this case then are considered to have waived their rights to avail of said reconstitution. It is therefore mandatory on the part of the court to declare the records of this case to have been destroyed by fire and may no longer be reconstituted in view of the apparent waiver of the parties.

Section 6 of Rule 39 of the 1997 Rules of Civil Procedure directs the manner on how a final and executory judgment or order may be executed. It provides, as follows:

> '*Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)'

This court believes that its judgment dated March 4, 2002 was never executed nor satisfied even partially within the period provided by the pertinent rule above-quoted.

Execution contemplates the usual situation where a judgment is susceptible of enforcement the moment it acquires the character of finality x x x and a judgment becomes final and executory by operation of law, not by judicial

> declaration x x x. Execution is fittingly called the fruit and end of law, and aptly called the life of law x x x. Execution is the process of the court for carrying its decree into effect. In an action to recover possession of lands, as in this case, if the judgment is for the Plaintiff, the writ of execution will be an order to deliver the possession to the Plaintiff.
>
> The judgment of the court in this case was never carried out nor enforced. The service of a copy of the writ of execution and Sheriff's Notice to the Mayor and Vice Mayor x x x did not in any manner satisfy the said judgment. None of the matters decreed by the court in its judgment was ever enforced.
>
> As shown by the Certification issued by Atty. Heathcliff H. Leal, the Clerk of Court then, the said judgment became final and executory on August 23, 2002.
>
> The five (5) years period provided by Section 6 of Rule 39 of the Rules of Civil Procedure above-quoted had lapsed without the subject judgment being enforced even partially.
>
> WHEREFORE, the court finds, as follows:
>
> (a) - the Sheriff's Partial Return of Service and the Notice of Garnishment issued by Edwin Galor Cabug, Sheriff IV of the court were issued without apparent basis, hence, the same are hereby declared null and void and of no effect at all;
>
> (b) - the judgment of the court dated March 4, 2002 was never enforced nor complied, even partially and had become stale and can no longer be enforced by a mere motion unless the same is revived in accordance with the rules; and
>
> (c) - the records of the case were among the records of cases of the court burned and razed by fire on August 4, 2008, nothing was salvaged by the court, it were [sic] not reconstituted and the period for its reconstitution had long lapsed.
>
> SO ORDERED.[21]

Petitioners filed a Motion for Reconsideration,[22] arguing that the court had no jurisdiction to pass upon the Urgent Motion, invalidate Cabug's actions, and declare stale its March 4, 2002 Judgment for failure to reconstitute the records and failure to execute the decision within the 5-year period provided for under Rule 39 of the 1997 Rules of Civil Procedure (1997 Rules); that when the March 4, 2002 Judgment became final and executory, the trial court lost its jurisdiction to entertain respondents' Urgent Motion, as it may no longer "decide or pass upon any issue that may thereafter be raised by the parties," including the issue of "validity or enforceability of the judgment;" that as shown by Cabug's March 26, 2007 Sheriff's Partial Return of Service, the failure to execute the March 4, 2002 Judgment is attributable to respondents' act of delaying satisfaction by requesting

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21 Id. at 94-102.
22 Id. at 103-131.

additional time to consult their lawyer and the members of the *Sangguniang Bayan* and other municipal officials; that respondents' delay did not therefore result in the expiration of the 5-year period allowed for the execution of the March 4, 2002 Judgment by mere motion, but instead interrupted it, because a judgment debtor's delay will extend the time within which the writ of execution may be enforced, and the time during which execution is stayed or delayed by him should be excluded from the computation of the 5-year period allowed for execution by mere motion;[23] that Act No. 3110 on reconstitution of court records applies only to "pending cases," and not to Civil Case No. 989 where the March 4, 2002 Judgment is already final and executory; that assuming *arguendo* that Act No. 3110 applied to Civil Case No. 989, then the assailed December 16, 2010 Order of the trial court in said case is null and void because it could not have acted on a case whose record has not been properly reconstituted; that they and their counsel did not receive any notice of loss of the record of Civil Case No. 989, which notice is required to be sent under Act No. 3110, thus, they may not be blamed for failure to cause reconstitution of the record; and that the enforcement of the writ of execution did not require the court's permission, as well as the issuance of an alias writ of execution, since under the 1997 Rules,[24] alias writs of execution were done away with; the lifetime of a writ of execution is no longer 60 days, but the whole 5-year period during which a judgment may be enforced by motion, and all that the sheriff must do is to make a monthly report/return to the court on the proceedings taken, and such report shall be filed with the court and copies thereof furnished the parties.

However, in a May 3, 2011 Order,[25] the trial court denied the motion for reconsideration.

Ruling of the Court of Appeals

Petitioners filed an original Petition for *Certiorari*[26] before the CA, which was docketed as CA-G.R. SP No. 04239. In a June 14, 2011 Resolution, however, the CA resolved to dismiss the Petition, thus:

> The Court RESOLVES to DISMISS the instant Petition for Certiorari

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23 Citing *Yau v. Silverio, Sr.*, 567 Phil. 493 (2008), and Regalado, Florenz D., Remedial Law Compendium, Sixth Revised Edition, Volume I, pp. 417-418.

24 Rule 39, on EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS, states:

> Sec. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

25 *Rollo*, pp. 138-140.

26 Id. at 141-175.

for failing to strictly comply with Rule 65 and other related provisions of the Rules of Court, particularly for:

(a) Failure to implead Public Respondent RTC Br. 19, Sultan Kudarat in the caption of the case;

(b) Lack of appropriate service of the petition on adverse parties Municipality of Kalamansig represented by Mayor Rolando P. Garcia, the Sangguniang Bayan Members and the Municipal Treasurer of the said Municipality as required by Rule 46, Section 3;

(c) Being defective in substance as the verification and certification of non-forum shopping is signed by Saya Guiambangan without any proof that she has been duly authorized by the other heirs of Babai Guiambangan to file the petition on their behalf.[27]

Petitioners filed a Motion for Reconsideration,[28] which the CA denied in its September 10, 2012 Resolution. The appellate court held:

Petitioners moved for reconsideration. They explain that it was only petitioner Saya Guiambangan Summagumbra who signed the verification and certification against forum shopping, because she is "*the only substituted heir to the late Datu Eishmael Summagumbra*." They claim that this is evident in the affidavit of Renato Consebit (Consebit), the previous counsel for the plaintiff in the case *a quo*. The relevant portion of the affidavit reads:

> 3. That I will confirm and affirm the fact that when I accepted the position as one of the Prosecutors in the Office of the National Prosecution Service, sometime in May 3, 2005, I did not formally and officially filed [sic] my withdrawal as counsel for the Heirs of the late Babai Guiambangan, but I am quite sure that sometime on October 9, 2003, I filed a Motion to Substitute Datu Eishmael Summagumbra as representative of defendant Heirs of Babai Guiambangan Summagumbra NAMING THEREIN SAYA GUIAMBANGAN DARUS AS THE LEGAL REPRESENTATIVE OF THE HEIRS OF BABAI GUIAMBANGAN. x x x

Petitioners also alleged that although, they were not able to serve copies of the petition to private respondents, they were able to serve it to private respondents' alleged counsel in the case *a quo*. They insists [sic] that when a party is represented by a counsel of record, the service of orders and notices must be made upon such counsel.

Lastly, they claimed that their failure to implead public respondent was only a typographical error.

The motion is bereft of merit.

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27 Id. at 38.

28 Id. at 177-186.

> A petition involving two or more petitioners must be accompanied by a certification of non-forum shopping accomplished by all petitioners, or by one who is authorized to represent them; otherwise, the petition shall be considered as defective and may be dismissed, under the terms of Section 3, Rule 46, in relation [sic] Section 1, Rule 65 of the Rules of Court.
>
> In the title of their petition, petitioners referred [sic] themselves as the '*Heirs of Babai Guiambangan, represented by Saya Guiambangan Summagumbra*.'
>
> The records show that it was only petitioner Saya Guiambangan Summagumbra who signed the certification of non-forum shopping. However, she failed to provide proof that she had authority to sign for the other heirs of Babai Guiambangan (Guiambangan). This makes the petition defective.
>
> Admittedly, the infirmity is only formal. In appropriate cases, it has been waived to give the parties a chance to argue their causes and defenses on the merits. But to justify the relaxation of the rules, a satisfactory explanation and a subsequent fulfillment of the requirememnts have always been required.
>
> However, instead of securing the consent of the other heirs of Guiambangan, petitioner Saya Guiambangan Summagumbra merely referred Us to the affidavit of Consebit. This did not help their case. Firstly, petitioner Saya Guiambangan Summagumbra failed to establish that she and Saya Guiambangan Darus, the person named in such affidavit, is [sic] the same person. Secondly, the affidavit cannot certainly be the source of petitioner Saya Guiambangan Summagumbra's authority to represent the other heirs of Guiambangan because it merely narrated that Consebit filed a motion in the case *a quo*. As it is, there is on record, no proof that petitioner Saya Guiambangan Summagumbra is authorized to represent the other petitioners in this case. This makes the case dismissible.
>
> With the foregoing disquisition, We find it unnecessary to discuss the other matters raised.
>
> WHEREFORE, the motion for reconsideration is DENIED.
>
> SO ORDERED.[29]

Hence, the present Petition.

In a June 9, 2014 Resolution,[30] the Court resolved to give due course to the instant Petition.

Issues

In essence, petitioners raise the issue of whether their Petition for *Certiorari* before the CA was properly dismissed due to mere procedural technicalities, when

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29 Id. at 34-37.
30 Id. at 429-430.

these defects should have been overlooked given the circumstances and merit of their case.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that the trial court's December 16, 2010 and May 3, 2011 Orders be invalidated, petitioners contend, in their Petition and Reply,[31] that the CA should not have dismissed their Petition for *Certiorari* on the ground of technicality, and should have treated their case with more leniency and liberality; that while it was only petitioner Saya Guiambangan Darus who executed the verification in the CA Petition, she did the same in her personal capacity and as representative of the other petitioners who are her co-heirs and co-owners; that even if the other heirs did not sign the CA Petition and are not made party to the CA case as a result, still any judgment obtained will be to their benefit as well, considering that they share a common interest in the action, as co-heirs to Babai and Eishmael, and as co-owners of the subject property; that even though the signatory to the CA Petition was designated only as "Saya Guiambangan," it refers to petitioner herein, Saya Guiambangan Darus, who actually signed the said petition, thus, "Saya Guiambangan" and "Saya Guiambangan Darus" refer to one and the same individual; that in any case, they attached a Special Power of Attorney[32] to the instant Petition in order to comply with the procedural requirement; and that if the CA looked beyond the procedural aspect of the case, it would have realized the merit in their cause.

Respondents' Arguments

Respondents, on the other hand, essentially argue in their Comment[33] that the CA committed no error; that a party availing of the remedy of *certiorari* must strictly observe the procedural requirements under the 1997 Rules, failing which his petition should be dismissed or rejected; and that since petitioners' CA Petition contained errors in violation of the 1997 Rules and circulars of the Court requiring proper verification, impleading of parties, and service of pleadings, then the appellate court was correct in exercising its discretion to dismiss the same. Thus, they pray for denial.

In their Memorandum,[34] respondents add that petitioners' claim of ownership is based on OCT 995-A, which on its face is patently fake as found by the Land Registration Authority (LRA) itself; that OCT 995-A is based on a Land Registration Commission record which actually pertains to a piece of property located in Manila; that petitioners were able to secure the title through defective

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31 Id. at 418-426.
32 Id. at 39-40.
33 Id. at 393-406.
34 Id. at 452-467.

reconstitution proceedings, in that the trial court hastily allowed reconstitution even without awaiting the LRA's report on the title; and that as a result, the government filed Civil Case No. 1024 against petitioners for the annulment/cancellation of petitioners' title and reversion of the subject property, which case is pending before the same court (Branch 19) handling Civil Case No. 989.[35]

Our Ruling

The Court grants the Petition.

The CA dismissed petitioners' *Certiorari* Petition on three grounds: first, for failure to implead the trial court as required by Section 5, Rule 65 of the 1997 Rules,[36] which states as follows:

> Sec. 5. Respondents and costs in certain cases. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

This, however, is not fatal. In *Abdulrahman v. The Office of the Ombudsman*,[37] this Court held that "neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action,"[38] particularly a Petition for *Certiorari* under Rule 65; the CA should simply order that a party be impleaded in the case. The Court made the following pronouncement in said case:

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35 Id. at 490-496; Amended Complaint in Civil Case No. 1024.

36 On *Certiorari*, Prohibition, and *Mandamus*.

37 G.R. No. 175977, August 19, 2013,

38 Citing Section 11, Rule 3 of the 1997 Rules, on Parties to Civil Actions, which state:

> Sec. 11. *Misjoinder and non-joinder of parties*. – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

> The acceptance of a petition for certiorari, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court. Thus, the court may reject and dismiss a petition for certiorari (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars.
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> In this case, the CA dismissed petitioner's special civil action for certiorari because of procedural errors, namely: (1) failure to implead private respondent; (2) failure to attach copies of the pleadings and documents relevant to the petition; (3) failure to file a motion for reconsideration of the Order of Implementation; and, consequently, (4) failure to allege material dates in the petition.
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> Petitioner argues that the rules of procedure should be liberally construed when substantial issues need to be resolved.
>
> Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice. "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules."
>
> Thus, we have given due course to a petition because it was meritorious, even though we recognized that the CA was correct in dismissing the petition for certiorari in the light of the failure of petitioner to submit material documents. We have affirmed the CA when it granted a petition for certiorari despite the litigant's failure to file a motion for reconsideration beforehand. We have also had occasion to excuse the failure to comply with the rule on the statement of material dates in the petition, since the dates were evident from the records.[39]

Next, the CA dismissed the Petition for lack of appropriate service of the Petition for *Certiorari* on the respondents as required by Section 3, Rule 46 of the 1997 Rules,[40] although the record indicates that a copy thereof was served upon

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39 *Abdulrahman v. The Office of the Ombudsman*, supra note 37.

40 On Original Cases, which states:

> Sec. 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the 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.
>
> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

their counsel of record. While this is not sanctioned by the 1997 Rules, this Court has excused it in the past, thus:

> True it is that Rule 46, Section 3 mandates that a copy of the petition should be served on the other party; and that proof of such service should be filed with the petition in court. However, the rule was substantially complied with when service was made to petitioner's former counsel, Atty. Dennis Ancheta.
>
> Without the benefit of a proper notice of petitioner's substitution of counsel, respondent had no recourse but to serve the copy of its petition to whom it knew and perceived as being petitioner's counsel of record. In faithful compliance and with no intention of delay, service was made on Atty. Ancheta.[41]

Finally, while only one of the heirs, Saya Guiambangan Darus, verified the CA Petition for *Certiorari*, without proof of authority to file the same obtained from the other heirs, this is not fatal. As heirs, they all share a common interest; indeed, even if the other heirs were not impleaded, the Petition may be heard, as any judgment should inure to their benefit just the same. Or, quite simply, the CA could have ordered their inclusion, as earlier stated above.

> x x x As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.[42]

This *ponente* reiterated this principle in *Heirs of Lazaro Gallardo v. Soliman*,[43] and later, in *Jacinto v. Gumaru, Jr.*[44] Indeed, the CA should not have forgotten the guidelines laid down by the Court regarding verifications and certifications against forum shopping:

> **For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:**
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (n)

41 *Okada v. Security Pacific Assurance Corporation*, 595 Phil. 732, 747 (2008).

42 *Iglesia ni Cristo v. Judge Ponferrada*, 536 Phil. 705, 722 (2006).

43 708 Phil. 428 (2013).

44 G.R. No. 191906, June 2, 2014, 724 SCRA 343.

> **2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.**
>
> 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'
>
> **5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.**
>
> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[45] (Emphasis supplied)

Regarding respondents' argument that petitioners' title is spurious and for this reason Civil Case No. 1024 for annulment of title and reversion of the subject property was instituted, this cannot justify the dismissal of petitioners' *Certiorari* Petition before the CA; it is irrelevant to these proceedings. As far as the trial court and parties are concerned, there is admittedly a Judgment dated March 4, 2002 rendered in favor of petitioners in Civil Case No. 989; indeed, the trial court even cited the dispositive portion of said Judgment in its December 16, 2010 Order, and respondents did the same in their Memorandum before this Court;[46] that said judgment became final and executory; and that the trial court directed the issuance of a writ of execution. All these facts need not be further proved, and reconstitution of the record is irrelevant and unnecessary on this score given the admission of all concerned. The March 4, 2002 Judgment and May 2, 2002 Order of the trial court directing issuance of a writ of execution are deemed reconstituted. It must be remembered that under Act No. 3110, the judicial record shall be reconstituted to the extent that the parties agree; thereafter, the court shall intervene and determine what proper action to take. It can reconstitute only that part of the record which can stand on its own, and then continue proceedings upon

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45 *Altres v. Empleo*, 594 Phil. 246, 261-262 (2008); cited in *Jacinto v. Gumaru, Jr.*, supra note 44 at 355-357.

46 *Rollo*, pp. 98, 453-454.

such record so reconstituted.[47] In the present case, it can be said that the Judgment in Civil Case No. 989 and record of subsequent actions taken are deemed reconstituted by agreement of the parties and with the approval of the trial court.

WHEREFORE, the Petition is **GRANTED**. The June 14, 2011 and September 10, 2012 Resolutions in CA-G.R. SP No. 04239 are **REVERSED** and **SET ASIDE** and the case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

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[47] Act No. 3110, Section 5 states:

In case the counsels or parties are unable to come to an agreement, the Court shall determine what may be proper in the interest of equity and justice, and may also consider the proceeding in question as non-existent and reconstitute only that part of the record which can stand without such proceeding, and continue proceedings upon the record so reconstituted.

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

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