Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HEIRS OF FERMIN ARANIA, REPRESENTED BY LOIDA A. SORIANO; HEIRS OF ARSENIO OROSCO, REPRESENTED BY PEDRITO OROSCO; HEIRS OF FLORENCIO BARROGA, REPRESENTED BY ENRIQUE BARROGA; HEIRS OF FRANCISCO VILORIA, REPRESENTED BY EXEQUIEL VILORIA; DOMINGO MAGALONG; HEIRS OF ANTONIO ANDRES, REPRESENTED BY PAULINO ANDRES; HEIRS OF GREGORIO GAHIS, REPRESENTED BY FELIX GAHIS; HEIRS OF FLORENTINO CORPUZ, REPRESENTED BY ERNESTO CORPUZ; GAVINO CORPUZ; AND HEIRS OF SIMPLICIO GALAPON, REPRESENTED BY FERNANDO GALAPON,
Petitioners,

- versus -

INTESTATE ESTATE OF MAGDALENA R. SANGALANG, REPRESENTED BY ITS ADMINISTRATRIX SOLITA S. JIMENEZ; ANGELO S. JIMENEZ, JR.; JAYSON P. JIMENEZ; SOLITA S. JIMENEZ; JOHN S. HERMOGENES; HEIRS OF MAGDALENA R. SANGALANG, REPRESENTED BY

G.R. No. 193208

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,*
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

December 13, 2017

* On Official Leave.

ROMULO SANGALANG JIMENEZ; AND ROMULO SANGALANG JIMENEZ,
Private Respondents,

HONORABLE COURT OF APPEALS, FIFTEENTH DIVISION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), REGION III, OFFICE OF THE REGIONAL ADJUDICATOR, AND OFFICE OF THE PROVINCIAL ADJUDICATOR, BRANCH 2, TALAVERA, NUEVA ECIJA; AND MR. DELFIN GASPAR, IN HIS CAPACITY AS SHERIFF OF THE BOARD, DARAB NORTH NUEVA ECIJA,
Public Respondents.

x - x

DECISION

MARTIRES, *J.*:

This is a petition for annulment of judgment seeking to set aside the Decision,[1] dated 30 October 2001, of the Court of Appeals *(CA)* in CA-G.R. SP No. 64164 which nullified the Decision,[2] dated 21 December 1998, of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 6576, an action for recovery of possession.

THE FACTS

On 16 May 1996, the petitioners filed an action for recovery of possession of several parcels of agricultural land *(subject landholdings)* before the Provincial Agrarian Reform Adjudication Board *(PARAD).* The subject landholdings form part of the estate of Magdalena Sangalang *(Magdalena)* located at Baloc, Sto. Domingo, Nueva Ecija. They alleged that they are the lawful tenant-tillers of the subject landholdings since time immemorial up to the promulgation of Presidential Decree *(P.D.)* No. 27 and thereafter. As proof of their claim, the petitioners presented their Certificates of Land Transfer *(CLTs).* In addition, the Barangay Agrarian Reform

---

[1] *Rollo*, pp. 29-39; penned by Associate Justice Mercedes Gozo-Dadole with Associate Justice Edgardo P. Cruz and Associate Justice Juan Q. Enriquez, Jr., concurring.

[2] Id. at 56-61.

Committee *(BARC)* Chairman of the locality certified that the petitioners are tillers of their respective landholdings of which they are the CLT holders. The petitioners averred that sometime in 1987, they were harassed by Magdalena and her cohorts and that through coercion, threats, and intimidation, they were forced to leave their respective landholdings. Magdalena subsequently died in 1993. The petitioners further contended that they were paying lease rentals with respect to the subject landholdings as evidenced by receipts issued to them.[3]

On their part, the respondents countered that the petitioners are not the lawful tenants of the subject landholdings, the same having been under the administration of their mother, Magdalena, during her lifetime. They asserted that the certification issued by the BARC was falsified because the said committee was only organized in September 1988 by virtue of Republic Act *(R.A.)* No. 6657.[4]

The PARAD Ruling

In a decision,[5] dated 1 April 1997, the PARAD ruled that the subject landholdings were covered by Operation Land Transfer *(OLT)* and that CLTs were already issued in favor of the petitioners. It added that a certification was issued by the Municipal Agrarian Reform Officer *(MARO)* of Sto. Domingo, Nueva Ecija to the effect that the landholdings of Magdalena are covered by Operation Land Transfer pursuant to P.D. No. 27. The PARAD observed that the issuance of the CLTs in favor of the petitioners was annotated at the back of Transfer Certificate of Title *(TCT)* No. NT-59021 or the mother title and that the receipts issued to the petitioners clearly proved that they were made to pay lease rentals for the subject landholdings. It adjudged that the act of the respondents in forcibly ousting the petitioners from their lawful possession and cultivation of their respective landholdings violated agrarian reform laws. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering the respondents to vacate and relinquish their possession of the landholdings in question; and
>
> 2. Declaring the petitioners to be the lawful and legitimate farmer beneficiaries over the landholdings in question.[6]

Aggrieved, the respondents filed an appeal before the DARAB.

---

3 Id. at 50-51.
4 Id. at 51.
5 Id. at 50-53.
6 Id. at 53.

The DARAB Ruling

In a decision, dated 21 December 1998, the DARAB held that the receipts issued by respondent Romulo Jimenez proved that the respondents had acknowledged the petitioners as their tenants who had religiously complied with their obligation to pay rentals, and that the issuance of the CLTs substantiated the petitioners' right to physical possession of the subject landholdings. It opined that agrarian laws require the respondents to first secure a court order before dispossessing the petitioners who were in actual possession and cultivation of the subject landholdings.

The DARAB stated that before a CLT is issued, the tenant-farmer should fully comply with the requirements for a grant of title under P.D. No. 27. Hence, when a CLT is issued, the grantee thereof is presumed to have complied with the requirements of the law and the issuance of the same is presumed to be made with regularity. The DARAB concluded that the presumption that official duty has been regularly performed was substantiated by a certification issued by the MARO of Sto. Domingo, Nueva Ecija that the landholdings of Magdalena, covered by TCT Nos. NT-59021, NT-59022 and NT-59023, were included in Operation Land Transfer pursuant to P.D. No. 27. The DARAB disposed the case in this wise:

> WHEREFORE, premises considered, the assailed decision is hereby AFFIRMED IN TOTO.
>
> SO ORDERED.[7]

Undeterred, the respondents filed a petition for review before the CA Seventh Division, docketed as CA-G.R. SP No. 57360, to challenge the DARAB decision. They question the petitioners' failure to comply with the requisites of procedural due process on three grounds, namely; 1) the alleged absence of any hearing for the presentation of the evidence of the parties; 2) the assailed decision relied on the petitioners' position paper which was inadmissible since a copy thereof was never furnished to the respondents; and 3) the petitioners were allowed to submit their position paper despite the absence of any order from the PARAD.[8]

In the meantime, a writ of execution pending appeal, dated 8 March 2001, was issued by the DARAB.[9] Thereafter, the respondents filed a petition for certiorari before the CA Special Fifteenth Division, docketed as CA-G.R. SP No. 64164, to assail the issuance of the said writ of execution

---

7 Id. at 60.
8 Id. at 44-45.
9 Id. at 33.

pending appeal. They aver that the action for recovery of possession should have been filed against the estate of Magdalena; that the PARAD and the DARAB had no jurisdiction over the estate or over the persons of the respondents because no summons was served; that the CLTs did not make the petitioners owners of the subject landholdings; that the subject landholdings had ceased to be agricultural lands; that the writ of execution pending appeal was issued without hearing; and that the order for the issuance of the writ did not contain any good reason or impose any condition therefor in violation of Section 2 of DARAB Rule XII.[10]

The CA Seventh Division's Ruling in the Petition for Review

In a decision,[11] dated 5 November 2001, the CA pronounced that as regards the alleged absence of any hearing for the presentation of the evidence of the parties, the minutes of the hearing conducted on 18 July 1996, clearly showed that in lieu of a hearing, the parties agreed to present their documentary evidence within the period prescribed.

With respect to the second issue, the appellate court declared that the petitioners' failure to furnish the respondents with a copy of their position paper did not constitute denial of due process, because records indicated that the respondents were apprised of the existence of the petitioners' position paper when they received the supplemental position paper on 28 February 1997. It added that from 28 February 1997 until the PARAD rendered its decision on 1 April 1997, the respondents had every opportunity to comment on the position paper but they chose to keep silent. Moreover, the respondents were not only heard on a motion to quash before the PARAD but likewise on a memorandum of appeal before the DARAB.

The CA did not sustain the respondents' challenge to the validity of the PARAD's decision insofar as it relied on the petitioners' position paper, a pleading which was allegedly inadmissible since it was filed in the absence of any directive from the PARAD. It reasoned that the decisions of the PARAD and the DARAB relied not so much on the arguments in the position paper but on the documentary evidence.

As to the jurisdiction of the PARAD and the DARAB, the appellate court resolved that the existence of the tenancy relationship and the circumstance that the petitioners were seeking to enforce their respective CLTs, which, in turn, derive validity from P.D. No. 27, the implementation of which is within the jurisdiction of the DARAB, squarely places the case within the jurisdiction of the DARAB and the PARAD. The dispositive portion reads:

---

[10] Id. at 34-35.
[11] Id. at 41-49.

> WHEREFORE, premises considered, the petition for review is DISMISSED and the assailed Decision, dated December 21, 1998, issued by the DARAB, is AFFIRMED in toto. Costs against petitioner.
>
> SO ORDERED.[12]

Unconvinced, the respondents moved for reconsideration.

The CA Special Fifteenth Division's Ruling in the Petition for Certiorari

In a decision, dated 30 October 2001, the CA held that the DARAB and the PARAD did not acquire jurisdiction over the persons of the respondents because they were not served with summons. It ruled that the PARAD and the DARAB had no jurisdiction over the subject landholdings considering that they had ceased to be agricultural lands due to the municipal classification thereof as residential or agro-industrial. The CA further adjudged that the writ of execution pending appeal was null and void because it was issued without notice of hearing. The *fallo* reads:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, there being lack of jurisdiction and grave abuse of discretion amounting to lack or in excess of jurisdiction, this petition is GRANTED. The Decision dated April 1, 1997 of the public respondent Department of Agrarian Reform Adjudication Board, Branch 11, Region III, (PARAD), in Darab Case No. 5559" NNE' 96, the Decision dated December 21, 1998 of the public respondent Department of Agrarian Reform Adjudication Board (DARAB), the Order dated January 25, 2000 by Department of Agrarian Reform Adjudication Board and the Writ of Execution Pending appeal dated March 9, 2001 all rendered and/or issued in Darab Case No. 6576 are nullified, set aside and/or canceled insofar as they affect herein petitioners. The Writ of Preliminary Injunction dated September 8, 2000 is made permanent.
>
> SO ORDERED.[13]

Aggrieved, the petitioners sought to file a petition for review before this Court to assail the decision of the CA in the certiorari action. Unfortunately, their second motion for extension to file petition for review was denied in a 30 January 2002 Resolution[14] on the ground of lack of affidavit of service of copies of the motion on the respondents and the CA. Thus, on 21 March 2002, the decision of the CA in the certiorari action had become final and executory.[15]

---

12 Id. at 49.
13 Id. at 38.
14 Id. at 102.
15 Id.

Meanwhile, on 3 October 2002, the CA issued a Resolution[16] to the effect that the decision in the petition for review has become final and executory on account of the respondents' voluntary withdrawal of the petition.

ISSUE

WHETHER THE CA DECISION IN THE PETITION FOR CERTIORARI MAY BE NULLIFIED AND SET ASIDE.

The petitioners argue that possession in favor of the farmer-beneficiaries and confirmation of the award by virtue of the agrarian reform law were unanimously adjudged by all three forums; that they were about to claim their victory and take possession of the subject landholdings utilizing the favorable judgment of the DARAB, pending appeal to the CA; that in an effort to circumvent the wheels of justice, the respondents filed the petition for certiorari to assail the issuance of the writ of execution pending appeal and to attack the decisions of the PARAD and the DARAB; that the CA Special Fifteenth Division committed a palpable error when it took cognizance of the petition for certiorari and, much more, committed a grave error when it rendered a decision therein which collides with the decision of the CA Seventh Division; and that they have a favorable judgment in the PARAD, DARAB, and the CA Seventh Division but they cannot take possession over the subject landholdings by reason of the CA Special Fifteenth Division's judgment.[17]

In their Comment,[18] the respondents counter that this Court, in a 30 January 2002 Resolution, had previously affirmed the decision of the CA Special Fifteenth Division subject of the present petition for annulment; that the said resolution became final and executory on 21 March 2002; that the present petition violates the rules of procedure meant to put a stop to repeated litigation and forum shopping; and that in a Resolution, dated 8 October 2002, the CA reconciled its two decisions by recognizing the final and executory status of the decision in the certiorari action and by withdrawing its previous decision dated 5 November 2001.

In their Reply,[19] the petitioners aver that the decision rendered by the CA Seventh Division must be sustained because it affirmed the decisions of the DARAB and the PARAD and it was decided on the merits; and that the said decision had already attained finality but could not be executed by reason of the conflicting decision in the certiorari action.

---

16 Id. at 101.
17 Id. at 16-18.
18 Id. at 239-249.
19 Id. at 308-312.

THE COURT'S RULING

Propriety of the remedy of annulment of judgment

The petitioners, in seeking to remedy the perceived injustice brought about by the conflicting decisions of the appellate court, filed before the Court a petition for annulment of judgment, a remedy found in Section 1, Rule 47 of the Rules of Civil Procedure, *viz*:

> Section 1. Coverage. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Dare Adventure Farm Corporation v. Court of Appeals[20] provides an extensive discussion on the extraordinary remedy of annulment of judgment:

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. **The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.** A petition for annulment that ignores or disregards any of the safeguards cannot prosper.
>
> The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the

[20] 695 Phil. 681 (2012).

> land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[21] (emphasis supplied and citations omitted)

From the foregoing, it can be easily discerned that the petition for annulment of judgment instituted by the petitioners before the Court cannot prosper.

First, an appropriate remedy to question the decision in the petition for certiorari was available. In fact, the petitioners filed a petition for review on certiorari before this Court, docketed as G.R. No. 150695, which, however, was denied on the ground of lack of affidavit of service of copies of the motion for extension.[22]

Further, neither extrinsic fraud nor lack of jurisdiction exists in this case. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court; by giving him a false promise of a compromise; or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat.[23] The petitioners were able to properly and fully ventilate their claims before the PARAD and the DARAB. The two administrative tribunals even ruled in their favor. When the respondents filed a petition for review as well as a petition for certiorari before the CA, there is no showing that the petitioners were deprived of any opportunity to answer the petitions.

Finally, a petition for certiorari alleging grave abuse of discretion on the part of the DARAB squarely falls within the jurisdiction of the CA. Hence, a petition to annul the judgment of the appellate court in the certiorari action has no leg to stand on.

Notwithstanding the unavailability of the remedy of annulment of judgment, the Court resolves to give due course to this petition in order to cure the grave injustice suffered by the petitioners brought about by the respondents' blatant disrespect of the rules of procedure, which they now invoke to defeat the petitioners' claim.

---

21 Id. at 688-689.

22 *Rollo*, p. 102.

23 *People v. CA*, 676 Phil. 330, 334-335 (2011).

Respondents are guilty of willful and deliberate forum shopping.

In this jurisdiction, the rule against forum shopping has been ingrained in Section 5, Rule 7 of the Rules of Court:

> **Section 5.** *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Expounding on the pernicious practice of forum shopping committed by a party who avails of several judicial remedies before different courts to ensure a favorable ruling, the Court, in *Yap v. Chua,*[24] held:

> Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same

[24] 687 Phil. 392 (2012).

> issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.
>
> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.
>
> *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.
>
> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[25]

The respondents undoubtedly committed forum shopping when they instituted a petition for certiorari before the CA in the guise of challenging the validity of the writ of execution pending appeal, despite knowledge that a petition to review the DARAB findings was pending in another division of the appellate court.

As regards the first requisite, in the petition for certiorari, the parties are the Intestate Estate of Magdalena R. Sangalang represented by its administratrix, Solita Jimenez, Angelo Jimenez, Jr., Jayson Jimenez, Solita Jimenez, and John Hermogenes as petitioners, and the petitioners herein as respondents. On the other hand, in the petition for review, Romulo S. Jimenez is the sole petitioner while the petitioners herein are the respondents. It has been consistently held that absolute identity of parties is not required. A substantial identity of parties is enough to qualify under the first requisite.[26] Here, it is clear as daylight that the petitioners in both cases represent the same interest as they are all legal heirs of Magdalena Sangalang.

---

25 Id. at 399-400.

26 *Spouses Marasigan v. Chevron Phils. Inc., et al.*, 681 Phil. 503, 516 (2012).

With respect to the second requisite, the respondents bewailed violation of procedural due process in the petition for review by alleging lack of hearing, inadmissiblity of the petitioners' position paper, and lack of directive from the PARAD to submit position paper; whereas, in the petition for certiorari, they averred that the action for recovery of possession should have been filed against the estate of Magdalena; that the PARAD and the DARAB had no jurisdiction over the estate or over the persons of the respondents because no summons was served; that the CLTs did not make the petitioners owners of the subject landholdings; that the subject landholdings had ceased to be agricultural lands; that the writ of execution pending appeal was issued without hearing; and that the order for the issuance of the writ did not contain any good reason or impose any condition therefor. Indeed, the respondents assigned different errors in the two petitions. However, the relief they sought from both petitions is, without any doubt, the setting aside of the PARAD and DARAB decisions in favor of the petitioners.

In *Pentacapital Investment Corporation v. Mahinay,*[27] the Court ruled that "forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)."[28]

Both petitions in the appellate court are grounded on the same cause of action, i.e., the respondents' claim of ownership over the lands in question and the PARAD and DARAB's violation of their rights as owners when the administrative bodies ruled in favor of the petitioners. Certainly, the respondents may rightfully question the issuance of the writ of execution pending appeal, the same being the principal relief sought in the petition for certiorari. In evident bad faith, however, they assigned other errors that already pertained to the merits of the case. It is worthy to note that the petition for review came first before the petition for certiorari. What the respondents should have done was to file a supplemental petition to assail the issuance of the writ of execution pending appeal.[29] Moreover, it was the CA Seventh Division which has authority to rule on the propriety of the

---

27 637 Phil. 283 (2010).

28 Id. at 309.

29 Section 6, Rule 10, Rules of Court: *Supplemental pleadings.* — Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading. (6a)

execution pending appeal considering that Section 2, Rule 39 of the Rules of Court provides that "after the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court." As a corollary proposition, a challenge to a writ of execution pending appeal issued by the trial court should be brought before the appellate court after the former has lost jurisdiction over the case.

In *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*,[30] petitioner therein filed a petition for certiorari before the CA to question the trial court's orders recalling the taking of depositions. In the meantime, for petitioner's refusal to attend the pre-trial conference, it was declared non-suited and its complaint was dismissed. Thus, petitioner therein filed an appeal before the CA. In denying the petition for certiorari, the CA opined:

> Any decision of ours will not produce any practical legal effect. According to the petitioner, if we annul the questioned Orders, the dismissal of its Complaint by the trial [court] will have to be set aside in its pending appeal. That assumes that the division handling the appeal will agree with Our decision. On the other hand, it may not. Also other issues may be involved therein than the validity of the herein questioned orders.
>
> We cannot pre-empt the decision that might be rendered in such appeal. The division to [which] it has been assigned should be left free to resolve the same. On the other hand, it is better that this Court speak with one voice.[31]

In affirming the appellate court's decision to deny the petition for certiorari, this Court ruled:

> x x x Thus, in arguing that the reversal of the two interlocutory Orders would likely result in the setting aside of the dismissal of petitioner's amended complaint, petitioner effectively contends that its Petition for *Certiorari*, like the appeal, seeks to set aside *the Resolution and the two Orders.*
>
> Such argument unwittingly discloses a recourse to forum shopping, which has been held as the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for *Certiorari* and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

---

30 393 Phil. 633 (2000).

31 Id. at 638-639.

> Hence, even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.[32]

Meanwhile, in *City of Taguig v. City of Makati,*[33] the City of Makati filed a petition for annulment of judgment and an appeal to assail the decision of the RTC in favor of the City of Taguig in a territorial dispute case. In ruling that "simultaneously pursuing an appeal (or motion for reconsideration) and a petition for annulment of judgment is an act of forum shopping," the Court held:

> *Ley Construction* discredits respondent City of Makati's claim that it could not have engaged in forum shopping as its Rule 47 Petition and its Motion for Reconsideration/Appeal were grounded on different causes of action.
>
> *Ley Construction* involved two (2) remedies: first, a Petition for Certiorari under Rule 65; and second, an Appeal. Rule 65, Section 1 of the 1997 Rules of Civil Procedure states that a Petition for Certiorari is available "[w]hen any 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." Thus, a petition for certiorari raises questions of jurisdiction. It does not, in the strict sense, delve into the merits or substance of the case or the proceedings, which allegedly occasioned an error in jurisdiction.
>
> In *Ley Construction*, one could have dwelt on the fine distinction between, on one hand, Rule 65 petitions as proceedings grounded on errors in jurisdiction, and, on the other, appeals as proceedings that go into the merits or substance of a case. This is not entirely different from respondent City of Makati's invitation to dwell on the difference between, on one hand, its Rule 47 Petition as assailing the issuance of a judgment without jurisdiction, and, on the other, its Motion for Reconsideration (later, Appeal), as focusing on the substance of its and of petitioner City of Taguig's respective territorial claims.[34]

What can be gleaned from the foregoing cases is that notwithstanding the difference between two pending actions as regards the nature of the case and the assigned errors, if the reliefs sought are identical and would produce the same legal effect, then the party who instituted the actions may be held liable for forum shopping.

Finally, as to the third requisite, the judgment in the petition for review amounted to *res judicata* in the petition for certiorari. There is *res judicata* or bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there

---

32 Id. at 641-642.
33 G.R. No. 208393, 15 June 2016, 793 SCRA 527.
34 Id. at 557-559.

is identity of parties, subject matter, and causes of action.[35] As previously discussed, the parties in the two petitions are identical. Further, the petitions involve the same subject matter, i.e., the landholdings covered by the petitioners' respective CLTs.

"Identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action."[36] In this case, the same evidence will be necessary to sustain the causes of action in the two cases which are unequivocally based on the same set of facts. While it may be true that the respondents raised as an additional assignment of error in the petition for certiorari the DARAB's issuance of the writ of execution pending appeal, they nevertheless sought the nullification of the DARAB decision. Hence, in truth and in fact, the two petitions are based on the same cause of action.

In sum, considering that all the elements of *litis pendentia* are present, the Court declares that the respondents are guilty of forum shopping when they filed the petition for certiorari despite the pendency of the petition for review.

Consequences of forum shopping

In *Dotmatrix Trading v. Legaspi,*[37] the Court settled the criteria on which case should be dismissed in case all the elements of *litis pendentia* are present:

> Under this established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.[38]

---

35 *Abelita III v. Doria*, 612 Phil. 1127, 1137 (2009).
36 *Cruz v. Court of Appeals*, 517 Phil. 572, 585 (2006).
37 619 Phil. 421 (2009).
38 Id. at 432.

The abovementioned criteria find application in the case at bar to determine which of the two petitions filed before the appellate court should have been dismissed. *First,* the petition for review was instituted before the petition for certiorari. *Second,* the petition for review was certainly not meant to preempt the petition for certiorari as the latter was only filed supposedly to question the issuance of the writ of execution pending appeal. *Third,* the petition for review was the appropriate vehicle to thresh out the issues between the parties as it was precisely instituted to assail the DARAB decision in favor of the petitioners. Consequently, the petition for review prevails. The decision in the petition for certiorari, which should have been dismissed, as well as all orders and issuances emanating therefrom are null and void having no legal force and effect. Considering that the decision in the petition for review is already final and executory after the respondents withdrew their motion for reconsideration, the execution of said decision naturally follows.

Finally, as to the liability of the respondents for their commission of forum shopping, Section 5, Rule 8 of the Rules of Court provides:

> SEC. 5. x x x If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

After the PARAD and the DARAB ruled in their favor, the petitioners sought the issuance of a writ of execution pending appeal in hopes of finally being able to take possession of and cultivate the lands which were awarded to them by virtue of the agrarian reform laws. The respondents, however, took advantage of the petitioners' eagerness to have the decisions executed. They filed a petition for certiorari to assail the issuance of the writ of execution but they also assigned errors to question the merits of the DARAB decision. Thus, the respondents were able to file two petitions before the appellate court which consequently resulted in two conflicting decisions, the harmful effect sought to be avoided by the rule against forum shopping. It is worthy to note that the respondents withdrew their motion for reconsideration in the petition for review, only when the Resolution of this Court dismissing the petition for review filed by the petitioners to assail the decision in the petition for certiorari, has become final and executory. For decades, they successfully evaded the implementation of agrarian reform laws by violating the rules of procedure and making a mockery of justice. This Court refuses to close its eyes to the detestable strategy employed by the respondents and will not reward such inexcusable behavior.

Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding ₱2,000.00. Accordingly, a fine of ₱2,000.00 is imposed on each of the respondents.

WHEREFORE, the petition is **GRANTED**. The Decision, dated 30 October 2001, of the Court of Appeals in CA-G.R. SP No. 64164 and the Resolution of this Court in G.R. No. 150695, as well as all orders and issuances emanating therefrom, are **NULLIFIED** and **SET ASIDE**. The respondents are declared to have engaged in forum shopping in simultaneously pursuing a Petition for Review before the Court of Appeals Seventh Division and a Petition for Certiorari before the Court of Appeals Special Fifteenth Division. The DARAB is hereby ordered to proceed with the execution of the Decision, dated 5 November 2001, of the Court of Appeals in CA-G.R. SP No. 57360, with dispatch.

The Court finds respondents Intestate Estate of Magdalena R. Sangalang, represented by its Administratrix Solita S. Jimenez, Angelo S. Jimenez, Jr., Jayson P. Jimenez, Solita S. Jimenez, John S. Hermogenes, Romulo S. Jimenez, and Heirs of Magdalena R. Sangalang, represented by Romulo S. Jimenez, **GUILTY** of direct contempt, and imposes a **FINE** of ₱2,000.00 for each respondent.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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