

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**GOVERNMENT SERVICE INSURANCE
SYSTEM,**

Petitioner,

-versus-

**G.R. No. 126874
March 10, 1999**

**ANTONIO P. OLISA,
*Respondent.***

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DECISION

PARDO, J.:

The case is an Appeal via *Certiorari* from a Decision of the Court of Appeals ordering the Regional Trial Court, Marikina City, to proceed with the proceedings of Civil Case No. 94-50-MK, setting aside the trial court's order dismissing the complaint as against petitioner Government Service Insurance System for annulment of sale and damages, arising from an award to one Benjamin Rivera, of a parcel of sixty five (65) square meters of land, located at the GSIS Subdivision in Marikina [City], Metro Manila.

The facts may be related as follows:

In his lifetime, Benjamin Rivera applied to the Government Service Insurance System (hereafter GSIS) for the award of a residential lot at the GSIS Subdivision, located at Sto. Niño, Marikina [City], Metro Manila. GSIS approved the application. On May 8, 1973, Benjamin Rivera died.

On July 18, 1973, Sixta F. Rivera, the surviving spouse of Benjamin Rivera and her children sold to Antonio P. Olisa their residential house of light materials constructed on the subject lot for four thousand pesos (P4,000.00). Sixta F. Rivera, in behalf of the heirs of the late Benjamin Rivera, executed a waiver of their rights over the subject residential lot in favor of the GSIS. In virtue of such waiver, Sixta F. Rivera gave the passbook of her late husband to Antonio P. Olisa so that he could continue the amortization payments for the lot to the GSIS. Meantime, Antonio P. Olisa took over peaceful and physical possession of the conveyed residential house and the subject parcel of land, and has remained in actual possession of the subject lot up to the present, where he constructed a new residential house thereat.

Although it was Antonio P. Olisa who actually made the amortization payments to the GSIS on the subject property, the receipts were issued still in the name of the deceased Benjamin Rivera.

Upon full payment of the cost of the subject lot, on April 27, 1994, GSIS executed a deed of sale in favor of the heirs of Benjamin Rivera, who had executed on March 24, 1994, an extra-judicial partition of the estate of Benjamin Rivera.

On July 8, 1994, the heirs of Benjamin Rivera executed a deed of sale of the subject parcel of land, already titled in their names, conveying the property to Vicente Francisco, a brother of Sixta F. Rivera.

On August 16, 1994, Antonio P. Olisa filed with the Regional Trial Court, Branch 272, Marikina, complaint for annulment of sale, titles and damages against the GSIS, Sixta, Marilou, Joseph, Jerry, Joselito, and Maribel, all surnamed Rivera and Vicente Francisco.

On September 20, 1994, GSIS filed a motion to dismiss the complaint as against the GSIS, on the ground that the complaint failed to state a

cause of action because there was no privity of contract between defendant GSIS and plaintiff Antonio P. Olisa.^[1]

On October 20, 1994, the trial court ordered the dismissal of the complaint as against the GSIS.^[2] Respondent Olisa received notice of the order on October 27, 1994.^[3]

On November 3, 1994, respondent Olisa filed a motion for partial reconsideration of the aforesaid order.^[4]

On August 22, 1995, the trial court denied respondent's motion for partial reconsideration, notice of which was received on August 28, 1995. Respondent Olisa did not appeal from the orders dated October 20, 1994 and August 22, 1995.

Instead, on September 8, 1995, Antonio P. Olisa filed with the Court of Appeals, a special civil action for certiorari alleging that the trial court acted with grave abuse of discretion in granting the motion to dismiss the complaint as against the GSIS.^[5]

After due proceedings, on June 10, 1996, the Court of Appeals promulgated its decision setting aside the orders of the trial Court dismissing the complaint as against the GSIS and denying plaintiff's motion for production of documents in the possession of the GSIS.^[6] The Court of Appeals ordered the trial court to proceed with the proceedings of Civil Case No. 94-50 MK.

Hence, the present recourse.^[7]

Petitioner GSIS submits that the Court of Appeals erred in setting aside the trial court's order dismissing the complaint as against the GSIS for the proper remedy is an appeal from the order of dismissal, not a special civil action of certiorari.

We find the petition impressed with merit.

The trial court's order dismissing the complaint as against the GSIS is a final order, not an interlocutory one.^[8] It "finally disposes of, adjudicates or determines the rights, or some rights of the parties, either on the controversy or some definite and separate branch

thereof, and which concludes them until it is reversed or set aside.”^[9] Hence, it is a “proper subject of appeal, not certiorari.”^[10]

However, respondent Olisa did not take an appeal from the order of dismissal. Instead, he filed a petition for certiorari with the Court of Appeals. Certiorari is not available where the proper remedy is an appeal in due course.^[11] And such remedy has lapsed because of respondent’s failure to take an appeal. “The special civil action of certiorari is not and can not be made a substitute for appeal or a lapsed appeal.”^[12]

Obviously, respondent Olisa interposed the extraordinary action of certiorari in lieu of the remedy of appeal which he has lost.^[13] He alleged in the petition that there is “NO plain, speedy and adequate remedy in the ordinary course of law except the instant petition.”^[14] Notice that he omitted the term “appeal”. Indeed, he could not truly say that there is “NO appeal.”

Consequently, an action for certiorari will not prosper, for the rule is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law^[15] Of course, there are exceptions to the rule.^[16] One of which is that appeal would not be an adequate and effectual remedy.^[17] None of the recognized exceptions applies to this case.

The trial court’s dismissal of the complaint as against the GSIS, if erroneous, is an error of judgment, not of jurisdiction. “An error of judgment is one which the Court may commit in the exercise of its jurisdiction and which error is reviewable only by appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. This error is correctable only by the extraordinary writ of certiorari.”^[18]

In Santiago Land Development Company vs. Court of Appeals^[19] this Court held that “certiorari is not available to correct errors of procedure or mistakes in the judge’s findings and conclusions and that certiorari will not be issued to cure errors in proceedings or to correct erroneous conclusions of law and fact.”

It is significant to note that respondent Olisa can obtain complete judicial relief even without the GSIS being joined as a party to the case. If the court sustains respondent's view, the court shall simply order defendant Vicente Francisco who now has the title to the property to reconvey the same to respondent Olisa. After all, he is in actual possession of the subject lot.

On the other hand, GSIS is not a privy in any way to the contract between respondent Olisa and the heirs of Benjamin Rivera for the transfer of rights to the lot in question. Actually this is a prohibited transaction in the original award to Benjamin Rivera. The GSIS had nothing to do with the subsequent sale of the lot between the Riveras and Vicente Francisco. The only participation that GSIS had with respect to the subject property was the issuance of the title to the heirs of the original awardee, Benjamin Rivera, which was a matter of compliance with the contract after full payment of the purchase price of the lot. Since, according to the record of the GSIS, respondent Olisa had not been substituted in place of the original awardee, GSIS was bound to honor the contract with the original awardee. Indeed, the payments were continued in the name of the original awardee.

Surely, for complying with the terms of its contract, GSIS can not be faulted.

However, in the complaint below, respondent alleged that he filed with the GSIS an application to be substituted as awardee in place of the late Benjamin Rivera, the original awardee. He failed to attach any document to support such claim. The GSIS could not have approved such transfer of rights, which is prohibited in the terms of the award in favor of Rivera. We have held that "facts which appear by record or document included in the pleadings to be unfounded" are not deemed admitted by a motion to dismiss."^[20]

In a similar case, this Court held that "In the first place, there can be no question that petitioners purchased the property in question from the De los Reyes spouses by virtue of a deed of sale with assumption of mortgage of the property without the previous consent of the respondent GSIS. Petitioners thereby took a calculated risk knowing as they did that under the mortgage contract of the De los Reyes with

the GSIS, its previous consent must be secured in transactions of this nature.”^[21]

Consequently, any error of the trial court in its ruling dismissing the complaint as against GSIS is one of procedure, not of jurisdiction, which may be corrected only by appeal.^[22]

With the foregoing ruling, we find no need to resolve the other issues raised by petitioner.

WHEREFORE, the Court hereby **GRANTS** the petition, and **REVERSES** the appealed decision of the Court of Appeals in CA-G.R. SP No. 38371. **ACCORDINGLY**, the Court **DISMISSES** the petition of respondent Antonio P. Olisa filed therein.

The Court orders the remand of the record of the case to the trial court for further proceedings.

No costs.

SO ORDERED.

Davide, Jr., C.J., Melo and Kapunan, JJ., concur.

[1] Petition, par. 2, Statement of Facts, Rollo, p. 13; Annex “D” Motion to Dismiss, Rollo, pp. 46-49.

[2] Idem. par. 3; Annex “E” Order, Rollo, pp. 50-53.

[3] See Petition, Annex “E”, Motion for Partial Reconsideration, CA-G. R. SP No. 38371, Rollo, p. 49.

[4] Petition, CA-G.R. SP No. 38371, par. 8, Annex “E”, Rollo, pp. 3, 49-53.

[5] Petition, par. 4, Statement of Facts, Rollo, pp. 14-15; See also Petition, CA-G.R. SP No. 38371, Rollo, pp. 1-13.

[6] Petition, Annex “A”, Rollo, pp. 15, 28-33.

[7] Petition, Rollo, pp. 10-27.

[8] Santos vs. Pecson, 79 Phil. 261.

[9] Gold City Integrated Port Services, Inc. vs. Intermediate Appellate Court, 171 SCRA 579, 583, citing Puertollano vs. Intermediate Appellate Court, 156 SCRA 188.

[10] Fajardo vs. Bautista 232 SCRA 291 citing Marahay vs. Melicor, 181 SCRA 811.

- [11] Bernardo vs. Court of Appeals, 275 SCRA 413, See also Jamer vs. National Labor Relations Commission, 278 SCRA 632, 1997.
- [12] Dulos vs. Court of Appeals, 188 SCRA 413, 419; Rolloque vs. Court of Appeals, 193 SCRA 47; Felizardo vs. Court of Appeals, 233 SCRA 220; de la Paz vs. Panis, 245 SCRA 242.
- [13] Landicho vs. Tensuan, 151 SCRA 410; Dy vs. Court of Appeals, 195 SCRA 585.
- [14] Petition, CA-G.R. SP No. 38371, par. 13, Rollo, p. 4.
- [15] Petition, CA-G.R. SP No. 38371, par. 13, Rollo, p. 4. Jamer vs. NLRC, 278 SCRA 632.
- [16] Escudero vs. Dulay, 158 SCRA 69; Mascarina vs. Eastern Quezon College, 168 SCRA 100; Akut vs. Court of Appeals, 116 SCRA 214; People vs. Castañeda, 165 SCRA 327.
- [17] Hualan Construction & Development Corp. vs. Court of Appeals, 214 SCRA 612; Fajardo vs. Bautista, supra.
- [18] Fortich vs. Corona, G.R. No. 131457, April 24, 1998.
- [19] 258 SCRA 535; see also: Purefoods Corporation vs. NLRC 171 SCRA 415; Carlos Fortich, et. al. vs. Renato Corona, G.R. No. 131457, April 24, 1998.
- [20] Tan vs. Director of Forestry, 125 SCRA 302, 315.
- [21] Cruz vs. Court of Appeals, 191 SCRA 170.
- [22] Republic vs. Sioson, 118 Phil. 1377; De Villa vs. Commendador, 200 SCRA 80; Sy vs. Court of Appeals, 200 SCRA 117; Day vs. Regional Trial Court of Zamboanga, 191 SCRA 610.