



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**APOSTOLIC VICAR OF TABUK, INC.**  
 represented by **BISHOP PRUDENCIO**  
**ANDAYA, JR.,**

Petitioner,

- versus -

**G.R. No. 191132**

Present:

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

**SPOUSES ERNESTO AND ELIZABETH**  
**SISON and VENANCIO WADAS,**

Respondents.

Promulgated:

27 JAN 2016

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**DECISION**

**BRION, J.:**

This petition for review on *certiorari* seeks to reverse the 23 November 2009 and 26 January 2010 orders of the Regional Trial Court of Luna, Apayao, Branch 26 (*RTC*) in **Civil Case No. 2-2009**.<sup>1</sup> The *RTC* dismissed the petitioner's Rule 47 petition for annulment of judgment addressing the decision of the 6th Municipal Circuit Trial Court of Kabugao-Conner (*MCTC*) in **SPL. Civil Case No. 32-05-Cr**.<sup>2</sup>

**ANTECEDENTS**

On 16 February 2005, the respondent spouses Ernesto and Elizabeth Sison and respondent Venancio Wadas filed a forcible entry complaint against the Vicar Apostolic of Mountain Province represented by Fr. Gerry Gudmalin. The complaint was filed with the *MCTC* and docketed as **Spl. Civil Case No. 32-2005-Cr**.

<sup>1</sup> Both penned by Judge Quirino M. Andaya; *rollo*, pp. 31-36.  
<sup>2</sup> Penned by Judge Designate Tomas D. Lasam; *id.* at 64-64-A.

The respondents alleged that on 29 August 2004, Fr. Gerry Gudmalin, a priest of the St. Anthony Church of the Vicar Apostolic of Mountain Province, ordered the forcible demolition of their respective perimeter fences in order to expand the area of the Church. The priest dispossessed them of their lands and began constructing a building that encroached on portions of their respective lots.

On 11 March 2005, MCTC Junior Process Server Raul T. Abad executed an officer's return. The return states:

Respectfully informed the Hon. Court regarding the "SUMMON[s]" in Civil Case No. 32-2005-Cr., with the information that it was duly served, but the person/defendant cited therein went to Manila for an official business as per verbal information related by her [sic] secretary Mariphee B. Pollo, who received and signed said summon[s], she promised the undersigned that said summon[s] will be handed to the defendant upon his arrival from Manila.

On 13 July 2005, the case was submitted for decision because the defendant failed to file its answer despite service of summons.

On 12 August 2005, the MCTC rendered a decision in favor of the respondents. It ordered Fr. Gerry Gudmalin and the Vicar Apostolic of Mountain Province to: (1) refrain from any further construction within the respondents' properties; (2) remove their constructions; (3) vacate and return the respondents' properties; and (4) pay damages.

On 7 September 2005, the MCTC decision **became final and executory**.<sup>3</sup>

On 19 September 2005, petitioner Apostolic Vicar of Tabuk, Inc. (*the Vicariate of Tabuk*) filed an urgent manifestation and motion before the MCTC.<sup>4</sup> It manifested: (1) that the land subject of Spl. Civil Case No. 32-05-Cr. is owned and possessed by the Vicariate of Tabuk represented by Reverend Monsignor Prudencio P. Andaya, Jr., not by the Vicariate Apostolic of Mt. Province represented by Fr. Gerry Gudmalin as alleged in the complaint; and (2) that it had been denied due process because it was neither impleaded nor served summons. It moved for the court to set aside its 12 August 2005 decision and to summon and implead the Vicariate of Tabuk.

On 28 August 2006, the MCTC denied the petitioner's urgent motion and manifestation.<sup>5</sup> It treated the motion as a motion for reconsideration – a prohibited pleading under Section 19 of the Rules on Summary Procedure. It also stressed that in ejectment cases, the basic issue is possession *de facto*, not ownership; the proper defendant is the person who actually disturbed the complainant's possession over the property. Thus, the respondents correctly

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<sup>3</sup> Entry of Final Judgment dated 22 December 2009; *id.* at 57.

<sup>4</sup> *Id.* at 58.

<sup>5</sup> *Id.* at 64.

impleaded the Vicariate of Mt. Province (represented by Fr. Gerry Gudmalin) which ordered the demolition of the perimeter fences and the expansion of the Church's occupied area.

On 7 September 2007, the petitioner filed a notice of appeal from the 28 August 2006 decision. The appeal was raffled to the Regional Trial Court (RTC) of Luna, Apayao, Branch 26 and docketed as **Civil Case No. 1-2008**.<sup>6</sup>

On 3 June 2008, the RTC dismissed the appeal because the petitioner failed to file its appellant's memorandum within the reglementary period.

On 10 June 2009, the Vicariate of Tabuk filed a Rule 47 petition for annulment of the MCTC judgment in **Special Civil Case No. 32-2005-Cr**.<sup>7</sup> It argued that the MCTC rendered the decision without acquiring jurisdiction over its person. It also alleged that the Vicariate of Mt. Province no longer exists because it was dissolved in 1990. The petition was filed before the RTC of Luna, Apayao, Branch 26 and docketed as **Civil Case No. 2-2009**.

The respondents filed a motion to dismiss<sup>8</sup> dated 14 July 2009 because: (1) the petition *had* no cause of action and (2) the Vicariate of Tabuk had no juridical personality or legal capacity to sue. The respondents reasoned that the Vicariate of Mt. Province, through Fr. Gerry Gudmalin was properly impleaded because the sole issue was prior possession. They posited that since the Vicariate of Tabuk and Bishop Prudencio Andaya were not impleaded in **Spl. Civil Case No. 32-2005-Cr**, then they have no personality to file the petition for the annulment of judgment.

On 28 August 2009, the Vicariate of Tabuk filed its opposition<sup>9</sup> arguing that: (1) it is a corporation sole duly registered with the Securities and Exchange Commission; and (2) it is the proper party to file the petition for annulment because Fr. Gerry Gudmalin had no authority to represent the corporation sole in **Spl. Civil Case No. 32-2005-Cr**.

On 17 September 2009, the RTC denied the motion to dismiss because the petition stated a cause of action.<sup>10</sup> It held that if the allegations in the petition were hypothetically admitted, then a judgment can be rendered in accordance with the prayer. It brushed aside the contention that the Vicariate of Tabuk had no legal personality because its articles of incorporation were attached to the opposition.

On 22 September 2009, the respondents moved for reconsideration of the RTC's denial of their motion to dismiss.

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<sup>6</sup> Presided by Judge Quirino M. Andaya.

<sup>7</sup> *Rollo*, p. 68.

<sup>8</sup> *Id.* at 91.

<sup>9</sup> *Id.* at 95.

<sup>10</sup> *Id.* at 103.

On 19 October 2009, the Vicariate of Tabuk opposed the motion for reconsideration insisting that the RTC cannot dismiss the petition if the allegations sufficiently state a cause of action.

On 23 November 2009, the RTC reconsidered its denial and dismissed the petition for failure to state a cause of action. The RTC reasoned that the petitioner's filing of a notice of appeal and subsequent failure to file its appeal memorandum precluded its resort to annulment of judgment; the remedy is not available to a party who lost his right to appeal due to his own fault. The RTC concluded that since the petitioner claimed ownership over the property, then it should file an appropriate case for ownership with the proper court instead.

The petitioner moved for reconsideration which the RTC denied on 26 January 2010.

On 19 February 2010, the petitioner elevated the case directly to this court by filing the present petition for review on *certiorari*.

### **THE PETITION**

The petitioner prays that the Court set aside the RTC's dismissal of its petition for annulment of judgment and to issue a mandatory injunction restoring its possession of the subject lot.

It argues: (1) that its petition for annulment sufficiently stated a cause of action; (2) that it is the real party-in-interest that should have been impleaded in the ejectment suit; (3) that it had legal standing to question the MCTC's failure to serve summons; and (4) that its filing of a notice of appeal did not amount to voluntary submission to the MCTC's jurisdiction because the void judgment was already "final and executory" when the petitioner discovered it.

In their comment, the respondents maintain: (1) that the MCTC acquired jurisdiction over the named defendant in the case; (2) that as the actual occupant of the subject property, the named defendant is the real party-in-interest; and (3) that the petitioner cannot resort to an action for annulment of judgment (an equitable remedy) because it lost its opportunity to appeal after it failed to file its appellant's brief.

### **OUR RULING**

The RTC dismissed the Vicariate of Tabuk's petition for annulment of judgment because it allegedly *failed to state* a cause of action. However, upon reviewing the RTC's 23 November 2009 order and examining the petition for annulment, we conclude that the dismissal was actually due to *lack* of a cause of action.

Failure to state a cause of action and lack of a cause of action are not the same. **Failure to state a cause of action** refers to an **insufficiency of the allegations in the petition/complaint**. It is a ground for dismissal under Rule 16 of the Rules of Court before the defendant or respondent files a responsive pleading. Notably, the dismissal is without prejudice to the re-filing of an amended complaint.

On the other hand, the **lack of a cause of action** refers to an **insufficiency of factual or legal basis to grant the complaint**. It applies to a situation where the evidence failed to *prove* the cause of action alleged in the pleading. It is a ground for dismissal using a demurrer to evidence under Rule 33 after the plaintiff has completed presenting his evidence. The dismissal constitutes *res judicata* on the issue and will bar future suits based on the same cause of action.

In the present case, the petition for annulment of judgment actually stated a cause of action: that the MCTC rendered a judgment against the petitioner without acquiring jurisdiction over its person. If the RTC hypothetically admitted this allegation, the petitioner becomes entitled to the relief prayed for: the annulment of the MCTC judgment. Thus, the RTC erred when it stated that the dismissal was for “failure to state a cause of action.”

Nevertheless, Rule 47 authorizes the RTC to dismiss a petition for annulment of judgment outright if it *has no substantial merit*:

**Section 5. Action by the court.** — Should the court find **no substantial merit** in the petition, the same may be **dismissed outright with specific reasons for such dismissal**. x x x

We affirm the RTC’s dismissal of the petition.

*First*, in an ejectment suit (*accion interdictal*), the sole issue is the right of physical or material possession over the subject real property independent of any claim of ownership by the parties involved. Ownership over the property is immaterial and is only passed upon *provisionally* for the limited purpose of determining which party has the better right to possession.<sup>11</sup>

The only purpose of an ejectment suit for Forcible Entry (*detentacion*) is to protect the person who had prior physical possession against another who unlawfully entered the property and usurped his possession. The suit is only filed against the possessor(s) of the property at the commencement of action, and not against one who does not in fact occupy the land.<sup>12</sup> To determine who should be made a party-defendant, we simply look at who *committed* the acts amounting to forcible entry and *remains* in possession of the subject property.<sup>13</sup>

<sup>11</sup> *Chua v. Court of Appeals*, 350 Phil. 74, 89 (1998).

<sup>12</sup> *Co Tiac v. Natividad*, 80 Phil. 127, 131 (1948), citing *Laeno v. Laeno*, 12 Phil. 508 (1909).

<sup>13</sup> *Id.*

In the present case, it was alleged that it was Fr. Gerry Gudmalin, acting for the Vicar Apostolic of Mountain Province, who forcibly entered the property previously held by the respondents and who remains in possession. Hence, the Vicariate of Mt. Province was correctly impleaded as the defendant. While the petitioner denies the existence of the Vicariate of Mt. Province, this Court cannot pass upon this peripheral issue because we are not a trier of facts.

*Second*, ejectment suits are actions *in personam* wherein judgment only binds parties who had been properly impleaded and were given an opportunity to be heard.<sup>14</sup> The MCTC judgment was only rendered against Fr. Gudmalin and the Vicar Apostolic of Mountain Province, not against the petitioner Vicariate of Tabuk. Hence, the petitioner can only be bound by the MCTC judgment if it is shown to be: (a) a trespasser, squatter, or agent of the defendants fraudulently occupying the property to frustrate the judgment; (b) a guest or other occupant of the premises with the permission of the defendants; (c) a transferee *pendente lite*; (d) sub-lessee; (e) co-lessee; or (f) a member of the family, a relative, or other privy of the defendants.<sup>15</sup>

In such a case, a court hearing is required to determine the character of such possession. If the executing court finds that the petitioner is a mere successor-in-interest, guest, or agent of the defendants, the order of execution shall be enforced against it.

Since the judgment was not rendered against the petitioner, it has no legal personality to ask for annulment of the judgment. Understandably, the petitioner feels aggrieved because it claims ownership over the subject lot that the MCTC ordered Fr. Gudmalin to turn over to the respondents. However, from a purely legal perspective, the MCTC judgment did not prejudice the petitioner.

This is not to say that the petitioner is left without a remedy in law. The petitioner may still avail of the plenary action of *accion reivindicatoria* wherein the issue of its ownership may be thoroughly threshed out in a full-blown trial after which complete reliefs may be granted to the proper parties.

**WHEREFORE**, premises considered, the petition is **DENIED** for lack of merit. Costs against the petitioners.

**SO ORDERED.**

  
ARTURO D. BRION  
Associate Justice

<sup>14</sup> *Floyd v. Gonzales*, 591 Phil. 420, 426 (2008), citing *Biscocho v. Marero*, A.M. No. P-01-1527, 22 April 2002, 381 SCRA 430, 432.

<sup>15</sup> *Id.* at 427, citing *Equitable PCI Bank v. Ku*, G.R. No. 142950, 26 March 2001, 355 SCRA 309, 312.

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice

**ATTESTATION**

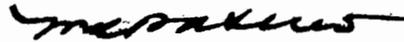
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice