

**J.M. TUASON &#038; CO., INC., PETITIONER, VS. HONORABLE  
HONORATO B. MASAKAYAN, PRESIDING JUDGE OF THE COURT OF  
FIRST INSTANCE OF RIZAL, AND FELIPE PAPA, RESPONDENTS.**

*G.R. No. L-26693. August 21, 1974*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

A similarity in this certiorari proceeding with the recently decided Tuason vs. Honorable Judge Felix V. Makasiar[1] may be detected. There, as here, the challenged order was dictated by prudence and caution, a court of first instance deeming it advisable to postpone action on a matter involved in the Tuason Estate, as doubts had been raised anew on the validity of its original Certificate of Title No. 735 in a decision of the late Judge Eulogio Mencias, and the matter was elevated to this Court.[2] The similarity is however superficial. In this proceeding, petitioner J.M. Tuason and Co. is on much stronger ground. There is a judgment against respondent Papa to vacate, and the judgment had long become final. Respondent was adamant. Petitioner thereafter sought from respondent Judge an order of demolition. It could be that in view of the drastic consequences, he merely issued an order requiring "that final action on the motion (for issuance of a special order of demolition) and the enforcement of the judgment be held in abeyance pending final determination of G.R. Nos. L-24559 (J.M. Tuason & Co., Inc. vs. Hon. Judge Guillermo E. Torres, etc., et al.) and L-26127 to L-26129 Victor Benin, etc., et al. vs. Mariano Severo Tuason y de la Paz, et al.; Juan Alcantara, etc., et al. vs. Mariano, Severo Tuason y de la Paz, et al.; and Diego Pili, etc., et al. vs. Mariano Severo Tuason y de la Paz, et al., respectively." [3] That reason, of course, even assuming that it was not even then tainted with infirmity, is of no moment now. Only last June, as demonstrated in the opinion of Justice Zaldivar in the joint decision rendered in Benin vs. Tuason,[4] Alcantara vs. Tuason,[5] and Pili vs. Tuason,[6] after a most thorough review of all relevant facts and the authoritative precedents, whatever doubt there might be as to the title had been set at rest. The writ of certiorari prayed for is granted.

The facts, as noted in the petition, are all matters of record. Petitioner is the registered owner of a parcel of land in Quezon City, as evidenced by Transfer Certificate of Title No. 1267 of the Registry of Deeds of Quezon City. It shows on its face that it is traceable to Original Certificate of Title No. 735 issued on July 8, 1914 by the Register of Deeds of Rizal.[7] On or about February 17 and 24, 1957, respondent Papa without the petitioner's knowledge and consent did occupy a portion of such property.[8] Petitioner then filed with the Court of First Instance of Rizal, Quezon City Branch, a complaint for recovery of possession of the portion usurped and for damages. The case was docketed as Civil Case No. Q-3168.[9] On November 28, 1958, after hearing, the lower court, then presided by the then Judge Nicasio Yatco, rendered a decision declaring that the land in question belongs to the petitioner, adjudging respondent Papa to be without any valid right of possession and title whatever to the said land, ordering him to vacate the same and to remove his constructions therefrom as well as to pay damages and the costs of suit.[10] On March 14, 1966, such decision was subsequently affirmed by the Court of Appeals.[11] Such judgment of the lower court, as affirmed by the Court of Appeals, having become final and executory, the lower court, at that time presided by respondent Judge, on motion of the petitioner, issued an order requiring the

issuance of a writ of execution on June 4, 1966.[12] It was accordingly issued by its Clerk of Court on June 27, 1966.[13] It was at this stage that on July 21, 1966, respondent Papa filed with the lower court a motion to vacate the writ of execution on the ground that the petitioner's ownership and right to evict him are "subject to serious doubts" in view of the decision dated January 18, 1965 of the Court of First Instance of Rizal, Pasig Branch II, in Civil Cases Nos. 3621, 3622 and 3623, holding that all Transfer Certificates of Title emanating or allegedly derived from Original Certificate of Title No. 735 (Rizal) are null and void, the aforesaid decision, as noted, having been appealed to this Court.[14] On July 25, 1966, the lower court, through the respondent Judge, issued an order denying such motion of respondent Papa on the ground that it is his mandatory duty to enforce and execute the final decision in the case.[15] Prior to such date, on July 19, 1966, petitioner filed with the lower court a motion for the issuance of a special order of demolition.[16] There was apparently a change of heart by respondent Judge, for on July 30, 1966, the challenged order of respondent Court was issued, with this concluding paragraph: "It is the well-considered opinion of this Court and so resolves, that final action on the motion and the enforcement of the judgment be held in abeyance pending the final determination of the appealed cases to the Supreme Court in G.R. No. L-24539.

That is the background of this case. As set forth at the outset, the actuation of respondent Judge must have been inspired by his deeming it advisable to await the outcome of the Benin and related petitions. The matter had been disposed of in the aforesaid decision, with Justice Zaldivar as ponente. There is lacking now the slightest pretense for the lower court delaying action on the motion for the issuance of the order of demolition. Petitioner, to repeat, must prevail.

WHEREFORE, the writ of certiorari prayed for is granted and the order of July 30, 1966, of the then respondent Judge Honorato B. Masakayan nullified and set aside. The case is remanded to the lower court with instruction for the Judge taking the place of respondent, now deceased, to act expeditiously on such motion in accordance with law.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.  
Barredo, J., took no part.

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[1] L-26374, July 31, 1974.

[2] Benin vs. Tuason, Civil Case No. 3621, and Pili vs. Tuason, Civil Case No. 3622 Instance of Rizal.

[3] Petition, par. 4(k)(1).

[4] L-26127, June 28, 1974.

[5] L-26128, June 28, 1974.

[6] L-28129, June 28, 1974.

[7] Cf. Petition, par. 4(a).

[8] Cf. Ibid. par. 4(b).

[9] Cf. Ibid, par. 4(c).

[10] Cf. Ibid, par. 4(d).

[11] Cf. Ibid, par. 4(e).

[12] Cf. Ibid, par. 4(f).

[13] Cf. Ibid, par. 4(g).

[14] Cf. Ibid, par. 4(h).

[15] Cf. Ibid, par. 4(j).

[16] Cf. Ibid, par. 4(k).

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