

BRIGIDA NAVARRO, PETITIONER, VS. COURT OF APPEALS, BIBIANO M. VIÑA, AND ENRIQUETA VESAGAS, RESPONDENTS.

G.R. No. L-44510. January 27, 1992

Ponente: DAVIDE JR., J.

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DAVIDE JR., J.:

This is a petition under Rule 45 of the Rules of Court for the review of the decision of the Court of Appeals in C.A.-G.R. No. 03551 annulling and setting aside the order of the then Court of First Instance (now Regional Trial Court) of Camarines Sur, which reconsidered the dismissal of Civil Case No. T-511, and the writ of preliminary injunction which it subsequently issued.

The factual and procedural antecedents of this case as summarized by the respondent Court in its challenged decision, are as follows:

"1. On August 14, 1972, private respondent Brigida filed a complaint (Annex A), docketed as Civil Case No. T-511, against the petitioners[1] and others for the annulment of the final judgment rendered by the same court in Civil Case No. T-329 entitled 'Bibiano M. Viña vs. Pastor Bravo.' On February 10, 1973, herein petitioners filed a motion to dismiss (Annex B), which was denied. However, five months, later, on October 19, 1973, respondent judge issued an order (Annex E) the dispositive portion of which reads:

'WHEREFORE, on grounds alleged on (sic) the 'Motion to Dismiss' and for failure to prosecute on the part of the plaintiff, this case is hereby DISMISSED.'

2. Six months thereafter, a Motion for Reconsideration (Annex F) erroneously dated 'October 20, 1974,' which should be April 20, 1974, was filed with the trial court, with notice stating 'May 10, 1974,' as the date of presentation to the court and hearing thereof. An opposition dated May 8, 1974, was filed by petitioners (Annex G). Then, on May 10, 1974, petitioners received thru the mails (sic) a copy of a 'Supplement to Motion for Reconsideration and/or for Issuance of Writ of Preliminary Mandatory Injunction,' dated May 4, 1974 (Annex H), which per movant's notice would be admitted to and heard by the court also on 'May 10, 1974.'

3. Without proof of service, the respondent Judge heard ex parte the motion for reconsideration, granted the same in his order of May 11, 1974 (Annex I), thereby reinstating the case. In the same order, respondent judge reset for May 14, 1974, the hearing of the Supplement to Motion for Reconsideration, etc., 'to enable the adverse parties to interpose objection,' directing that copies of the order be sent immediately to counsels for defendants by registered mail-special delivery complemented by telegraphic notice.'

4. The telegram sent by the court was received by petitioners on May 14, the very day of the rescheduled hearing. So, petitioners immediately sent a reply telegram requesting for the resetting of the hearing.

5. On May 14, 1974, without proof of service, notwithstanding the inability of petitioners' counsel to be present due to the above circumstances, the respondent judge (a) issued an order (Annex J), dated May 14, 1974, granting the prayer for the issuance of a writ of preliminary mandatory injunction, to the petitioners 'to restore the possession of the land in question .. to the herein plaintiff (now private respondent); (b) approved the plaintiffs bond; and (c) issued the writ (Annex K) which was immediately served and enforced at 'midnight' of

the same day. As a result, the petitioner's tenants were forcible (sic) ejected and possession of petitioners' property involved in the litigation was delivered to private respondent.

6. Forthwith, an omnibus motion (Annex L) dated May 25, 1974, was filed by petitioners upon receipt of the respondent judge' (sic) orders of May 11 and 14 wherein they pointed out the irregularity of the reconsideration of the dismissal order and consequent reinstatement of the case, and the issuance and enforcement of the writ of preliminary mandatory injunction. This omnibus motion was denied by order dated September 13, 1974.[2]

xxx xxx xxx

As noted at the outset, the questioned orders were issued in Civil Case No. T-511, of CFI of Camarines Sur, wherein private respondent, as plaintiff, sought to annul a final judgment of the same court in Civil Case No. T-329. Pursuant to the judgment, herein petitioners, as plaintiffs, were able to secure possession of the property under litigation from one Pastor Bravo who had refused to vacate the property even after the sale in his favor of said property by Basilia Abuda had been declared null and void (Civil Case No. T-222) in a judgment that became final and executory in March 1971, when Bravo's appeal was dismissed by the Court of Appeals. Said Basilia Abuda was the predecessor in interest of the herein petitioners who acquired the property through a series of transactions and who were and still are the registered owners thereof by virtue of TCT No. 8418. This Appellate Tribunal had called attention to this fact in its recent decision in CA-G.R. No. 04048-SP, promulgated November 11, 1975.

Anent Civil Case No. T-329, the said decision also took note of the following relevant facts:

(a) After trial, judgment was rendered against Bravo, declaring Viña's title to be valid and binding and condemning Bravo to pay damages. Bravo appealed but the Court of Appeals turned it down in CA-G.R. No. 48042-R. There was partial execution pending appeal of the appealed decision. Then Bravo elevated the decision of the Court of Appeals to the Supreme Court which denied his petition, rendering the decision in Civil Case No. T-329 final and executory.

(b) Upon demand (sic) of the records to the lower court, Viña moved to execute the judgment. Another controversy arose regarding an order of Judge Navarro, then presiding judge. Again, this incident reached the Court of Appeals (CA-G.R. No. 1837-SP) and the Supreme Court (G.R. No. L-36949) where judgment was rendered on the basis of a compromise agreement.

(c) Under said compromise agreement: 'xxx Bravo will not seek execution of the disputed order of Judge Navarro in Civil Case No. T-329, provided petitioner [Viña] shall desist, as they hereby desist, from having the judgment in the said case executed, pending finality of the judgment of Judge Alfredo Rebuena in Civil Case No. T-528, annulling the decision in Civil Case No. T-329, both of First Instance of Camarines Sur, Branch IV.'

The decision in Civil Case No. T-329 was, later on, annulled by virtue of a judgment by default dated April 24, 1974, rendered in Civil Case No. T-528 by the presiding judge, now respondent judge in the instant proceedings. On certiorari, however, this Appellate Tribunal (Special Third Division), speaking (sic) Justice Pascual, rendered judgment (CA-G.R. No. 04048-SP) declaring 'as null and void,' and setting aside, 'the proceedings in Civil Case No. T-528,' including the challenged judgment by default rendered therein by the respondent judge.

Incidentally, that case is just one of the three cases, mentioned by this Court in its recent decision instituted to annul the final judgment in Civil Case No. T-329 in favor of herein petitioners 'whose fault was in winning Civil Case No. T-329,' according to the ponente. The two other cases are: (1) Civil Case No. 478, entitled 'Brigida Navarro vs. Basilia Abuda, et al.' (before Branch VI); and Civil Case No. 511, entitled, 'Brigida Navarro vs. Basilia Abuda, et al.,' (before Branch IV), which rendered judgment by default in Civil Case No.

528)."[3]

After the trial court issued its Order of 13 September 1974 denying their omnibus motion of 25 May 1974, herein private respondents filed with the respondent Court a petition to annul the questioned Orders of 11 and 14 May 1974 on the ground that such were issued with grave abuse of discretion amounting to excess or lack of jurisdiction.[4] The case was docketed as C.A.-G.R. No. 03551. In its decision promulgated on 30 June 1976, respondent Court granted the petition and annulled and set aside the above questioned orders. With respect to the Order of 11 May 1974 reconsidering the order of dismissal of 19 October 1973, respondent Court held that apart from the fact that it was hastily acted upon without proof of service of notice, the judge conveniently ignored the fact that the dismissal was not solely for failure to prosecute, but "on grounds alleged in the motion to dismiss and for failure to prosecute." These grounds are: (1) pendency of another action between the same parties and for the same cause (Civil Case No. T-478) and (2) prescription of the action for annulment. Having dismissed the case on these substantial grounds, it was arbitrary, whimsical and capricious for the judge to reconsider the dismissal order six (6) months thereafter by merely accepting as satisfactory the plaintiffs belated explanation regarding the failure to prosecute the case.

As regards the Order of 14 May 1974, the respondent Court noted that the preliminary injunction which was granted ex parte on 14 May 1974 was mandatory in character; the writ was hurriedly issued and enforced at midnight of the same day. Prior to and at the time the writ was issued, herein private respondents were, by virtue of the decision in Civil Case No. T-329, in possession and control of the property, the certificate of title of which is in their names. Injunction is not available to take that property from them and place it in the possession of another whose title has not been clearly established.[5]

Concluding, the respondent Court stated:

"xxx We are inclined to conclude that the petitioners registered owners who were admittedly in possession of the land involved in the litigation, were deprived of their property without due process of law; and that the respondent judge acted with undue haste, arbitrarily, whimsically and improvidently in issuing the questioned orders xxx"[6]

Unsatisfied with the foregoing decision, petitioner filed this petition on 18 December 1976 alleging therein that: (a) summons was not actually and properly served upon the petitioner, hence she was deprived of her day in court; (b) the trial court did not abuse its discretion in rendering justice albeit delayed for twelve (12) years; and (c) in ordering the return of the property to private respondents, the respondent Court deprived the probate court of property in custodia legis.

In the resolution of 2 January 1987, this Court required the parties to comment on the petition.[7] In their Comment[8] filed on 14 February 1977, private respondents allege that summons was actually served on the counsel of record for petitioner, the petition raises questions of fact which are not proper in a petition for review and that the petition is intended to prolong the petitioner's illegal occupation of the property in question. Petitioner filed a Counter-Comment.[9]

This Court gave due course to the petition on 16 March 1977.[10]

Petitioner filed her Brief on 18 June 1977[11] wherein she reiterated her arguments in the petition. Respondents filed their Brief on 27 September 1977.

The petition is devoid of merit. No reversible error was committed by the respondent Court in annulling and setting aside the questioned orders.

As to the first grievance, We immediately note that the matter of service of summons was not raised before the

respondent Court. Besides, the challenged decision explicitly states that the registered letters addressed to respondents containing the summons were duly delivered to the addressees on 29 March 1976.[12]

Petitioner admits that the motion to reconsider the Order of 19 October 1973 which dismissed the case on grounds alleged in the motion to dismiss and for failure to prosecute on the part of the plaintiff was filed six (6) months later. Nothing on record indicates the date petitioner received a copy of the Order; hence, it is to be presumed that the motion for reconsideration was seasonably filed. Nevertheless, the judge gravely abused his discretion when he issued on 11 May 1974 the first questioned order despite the fact that he had set the hearing for the supplement to said motion and the companion motion for issuance of a writ of preliminary injunction on 14 May 1974 to enable the adverse parties to interpose objections. Notice of the hearing on 14 May 1974 was ordered to "be sent immediately to counsels for defendants by registered mail special delivery complemented by telegraphic notice." The telegram was received by private respondents through counsel only on 14 May 1974, the date of the hearing. They immediately sent to the court a telegram requesting for a resetting of the hearing. It is quite obvious that when the judge called the case for hearing on 14 May 1974, there was no proof of service of the order for such hearing on private respondents. The judge then gravely abused his discretion when he insisted on hearing the pending incident and thereafter granted ex-parte the motion for the issuance of a writ of preliminary injunction placing the property in dispute in the possession of the petitioner and depriving the private respondents of their possession thereof which they had previously obtained by reason of the final judgment in Civil Case No. T-329. Under Section 5, Rule 58 of the Rules of Court, no preliminary injunction shall be granted without notice to the defendant. Moreover, it is a settled rule in this jurisdiction that a writ of injunction is not proper where its purpose is to take property out of the possession or control of one person and place the same in the hands of another where title has not been clearly established by law.[13]

In *Buayan Cattle Co., Inc. vs. Hon. Quintillan, etc., et al.*: [14]

"xxx Injunctions are not available to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established (*Emilia vs. Bado*, L-236785, April 25, 1968, 23 SCRA 183; *Pio vs. Marcos*, L-27849, April 30, 1974, 56 SCRA 726). The office of the writ of injunction is to restrain the wrongdoer (*Calo vs. Roldan*, L-252, March 30, 1946, 76 Phil. 445, 451-452), not to protect him.

"There is no power the exercise of which is more delicate which requires greater caution, deliberation and sound discretion, or (which is) more dangerous in a doubtful case than the issuing of an injunction; it is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction (28 Am. Jur. 201; *Francisco*, supra, p. 179)."

In the instant case, the judge of the lower court knew, or ought to have known, that private respondents, who were plaintiffs in another case before his own court — Civil Case No. T-329 — were placed in possession and control of the property in question by virtue of a final decision in the latter case. In a manner of speaking, the judge arbitrarily allowed the left hand of the court to take, by way of preliminary injunction, what its right hand had given by virtue of a final judgment. He made a mockery of the judicial process which this Court cannot countenance.

WHEREFORE, for lack of merit, the petition is hereby DISMISSED, with costs against petitioner.

IT IS SO ORDERED.

Gutierrez, Jr. (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] The petitioners referred to are the private respondents, spouses Bibiano M. Viña and Enriqueta Vesagas.

[2] Rollo, 82-84.

[3] Rollo, 85-87.

[4] Rollo, 84.

[5] Citing *Emilia vs. Bado*, 23 SCRA 183.

[6] Rollo, 92-93.

[7] *Id.*, 50.

[8] *Id.*, 51.

[9] Rollo, 98.

[10] *Id.*, 104.

[11] *Id.*, 116.

[12] *Id.*, 32-33.

[13] MORAN, *Comments on the Rules of Court*, Vol. 3, 1980 ed., 81, citing a number of cases.

[14] 128 SCRA 276.

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