

**A. M. RAYMUNDO & CO., PLAINTIFF AND APPELLANT, VS.
BENITO SYMACO, DEFENDANT AND APPELLEE.**

G.R. No. L-22145. January 30, 1968

Ponente: DIZON, J.

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DIZON, J.:

Appeal by A. M. Raymundo & Co. from the order of January 12, 1961 of the Court of First Instance of Rizal in Civil Case No. 4677 dismissing its appeal from the decision of the Justice of the Peace Court of Malabon, in turn dismissing its complaint for forcible entry filed against Benito Symaco.

On June 28, 1967 appellant filed with the abovementioned Justice of the Peace Court a complaint for forcible entry, with a prayer for the issuance of a writ of preliminary injunction, against appellee, the main allegations of which were that it was the owner of a parcel of land situated in Malabon, Rizal with an area of approximately 328 square meters, covered by TCT No. 39853 of the Register of Deeds of Rizal; that on or about June 21, 1957, appellee, unlawfully and by means of force, strategy and stealth, entered upon a portion of 32.42 square meters of said land and had been constructing a building thereon.

Answering the complaint, appellee alleged that he was the owner of the parcel of land in question, having acquired the same by purchase from appellant itself on July 21, 1954, as evidenced by Transfer Certificate of Title No. 3560 of the Register of Deeds of Rizal issued in his name; that, as the issue between the parties was one of ownership, the court had no jurisdiction over the case; and that, because of the unfounded action, he suffered actual and moral damages in the sum of P2,000.00.

Finding that the issue involved was ownership and not mere possession, the Justice of the Peace Court dismissed the case. Appellant then took the case on appeal to the Court of First Instance of Rizal. At the pre-trial held thereat, the Court made a preliminary finding that appellee had encroached upon a portion of about 70 centimeters, along the side of Calle Real, of the property described in the Plan SWO-63711 beyond the boundary of his property as described in said plan. As a result, the court ordered the parties to submit "such pleadings as, in their opinion, would be necessary regarding the ownership of the property in question and the Court will thereafter then define whether it will act in its appellate or original jurisdiction".

In view of the order mentioned above, appellee moved dismiss the appeal on the grounds of lack of jurisdiction of the court a quo. The court, however, postponed its resolution thereon until after the presentation of the evidence by the parties. Thereafter the court appointed Mamerto Infante, supervising surveyor of the Bureau of Lands, as commissioner to conduct a relation survey of the land covered by appellant's title in order to ascertain whether a portion thereof had been included in appellee's title or whether said parcel of land was a part of Calle Real in Malabon. In his report submitted to the court, Infante sated that appellate was actually occupying a portion of 5.51 square meters of appellant's land but which also formed part of Calle Real, as shown by the sketch plan attached to the report.

On December 29, 1959, the court, upon a verified motion of appellant, issued a writ of preliminary injunction

prohibiting appellee from making any construction on the questioned area. The latter's motion for a reconsideration of said order was denied.

On the date set for hearing, appellee's counsel called the court's attention to his previous unresolved motion to dismiss the appeal. In this connection the court ordered him to file a formal motion to dismiss based on the evidence already presented - which order was complied with. Thereafter, finding that the evidence of record tended to show that the issue of ownership was necessarily involved in the proceedings, the Court issued the appealed order with the following alternative to the parties:

"x x x However, if the parties would express their intention to have this case heard under the original jurisdiction of the Court, the Court will be willing to hear the same and decide it on the merits so long as proper pleadings necessary for the determination of all the issues will be filed. As a consequence of this order of dismissal, the Court hereby dissolves the writ of preliminary injunction issued."

Instead of submitting the controversy to the court in the exercise of its original jurisdiction, as suggested above, appellant interposed the present appeal.

The foregoing facts show that the present appeal is without merit.

From the time the case was instituted in the Municipal Court of Malabon, appellant raised the question of ownership. He raised it again on appeal in the Court of First Instance of Rizal. The proceedings had in said court, as stated heretofore, clearly show, not only that the true question between the herein parties is ownership, but that the Municipality of Malabon is also affected by the controversy. There is no doubt, therefore, that the Municipal Court of Malabon and the Court of First Instance of Rizal were right in dismissing the case.

WHEREFORE, the order of dismissal appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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