

**ORTIGAS & COMPANY, LIMITED PARTNERSHIP, PETITIONER,
VS. HON. VIVENCIO M. RUIZ, IN HIS CAPACITY AS JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL (BRANCH XV), INOCENCIO
BERNARDO, ...**

G.R. No. L-33952. March 09, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for Certiorari and Prohibition With Preliminary Injunction seeking to annul the Order of respondent Court dated August 13, 1971 and to prohibit respondent Court from proceeding in any manner with Civil Case No. 678-M (15043) for alleged lack of jurisdiction.

The dispositive portion of the questioned Order (Rollo, p. 57) reads as follows:

"WHEREFORE, let a restraining order be issued directing the defendant Ortigas and Company, Limited Partnership, not to fence the land in question or continue with the fencing thereof or, from threatening and actually obstructing, molesting and/or preventing by force the entry to, and/or exit from, the said land the plaintiffs and their families, or from constructing network of roads, streets and canals thereon, or from introducing any other improvements thereon, or otherwise exercising rights of possession and dominion thereon until further orders from this Court.

"In the meantime, let the petition for issuance of a writ of preliminary injunction be set for hearing on August 28, 1971, at 8:00 a.m."

The facts of the case are as follows:

Petitioner is the duly registered owner of several adjacent parcels of land situated in Ugong Sur, Pasig, Rizal, bounded by Ortigas Ave., E. Rodriguez, Jr. Ave. and Escarpment Road, containing an area of 162 hectares, more or less, consolidated into one parcel, under TCT-No. 227758 of the Register of Deeds of Rizal. Said parcel is a portion of the Mandaluyon Estate (also sometimes known as "Hacienda de Mandaloya", "Hacienda de Mandaloyen", "Hacienda de Mandaloyoa", etc.) over which Petitioner, thru its predecessor-in-interest, the "Provincia del Santisima Nombre de Jesus de Agustinos Calzados," has been in continuous possession since 1862 or 125 years ago, as confirmed by the Court in *Compañia Agricola de Ultramar v. Marcos Domingo, et al.*, 6 Phil. 246 (1906), when it affirmed the decision of the Court of Land Registration declaring the *Compañia Agricola de Ultramar*, also one of petitioner's predecessors-in-interest, owner of the lands in question to the exclusion of the claims of contestants or any persons holding under them.

Sometime in 1967, Civil Case No. 7-M (10339) was filed against petitioner by a certain Pedro del Rosario and three others, in their own behalf and in behalf of 104 others, as a class suit, in the Court of First Instance of Rizal, seeking, among other things, the declaration of petitioner's titles null and void, allegedly for lack of publication in the land registration proceeding from which they were derived and for alleged fraud employed in registering

under Act No. 496 certain parcels of agricultural land in Quezon City and Pasig, Rizal (Rollo, p. 63) which form part of the Mandaloyon Estate (Rollo, p. 9) and the declaration of plaintiffs thereon as lawful owners and possessors of their respective landholdings. In this case, respondent Court issued a restraining order ex-parte, still in force and effect when the instant petition was filed.

In view of the adverse decision rendered by respondent Court, petitioner filed a motion for new trial within the reglementary period on the ground of newly discovered evidence (Rollo, p. 9) which motion was denied by respondent Court. As a result, petitioner was constrained to go up on certiorari to the Court of Appeals, which enjoined respondent Court from taking any further action in Civil Case No. 7-M (10339) (Rollo, p. 76). As of the filing of this petition here in the Supreme Court, the case was still pending decision with the Court of Appeals, as to whether respondent Court should be ordered to grant a new trial for the reception of new evidence (Rollo, p. 10).

On August 10, 1971, Civil Case No. 678-M (15043) was filed by Inocencio Bernardo and five others for and in their own behalf and in behalf of 37 others against petitioner, filed as a class suit concerning another portion of the Mandaloyon Estate, containing an aggregate area of 1,923,454 sq. meters. The complaint is generally identical to that of Civil Case No. 7-M (10339), and seeks, as in the aforementioned case, that the original certificates of title nos. 13, 33, 336, 337 and 344 be declared null and void for lack of publication in the land registration proceeding and certain transfer certificates of title of petitioner derived therefrom, more specifically TCT Nos. 227758, 35749, 35750 and 100110, and for alleged fraud in registering the parcels of land being claimed by plaintiffs therein; and that the plaintiffs be declared as lawful owners and possessors of their respective landholdings (Rollo, p. 48).

An urgent ex-parte motion of private respondents (plaintiffs in Civil Case No. 678-M [15043]), opposing among others, petitioner's construction of fences and high walls, roads, streets and canals on the land in dispute, having been filed (Rollo, p. 60), respondent Court issued the afore-quoted questioned Order of August 13, 1971.

Hence, this petition.

Petitioner filed its petition on August 23, 1971 (Rollo, p. 14). Respondents filed a motion to dismiss the petition on August 24, 1971 for being premature and for lack of merit (Rollo, p. 110) which motion was opposed by petitioner by motion filed on August 24, 1971 (Rollo, p. 120).

Meanwhile, petitioner as defendant in Civil Case No. 678-M (15043), filed with respondent Court their Answer with Counterclaim dated August 24, 1971 (Rollo, p. 174) and an Opposition to plaintiff's motion for preliminary injunction with counter-motion for issuance of preliminary injunction and/or restraining order against plaintiffs dated August 26, 1971. On the same date, petitioner filed with the lower court an omnibus motion praying for the Court to order the dropping of persons as plaintiffs, except Inocencio Bernardo for improper class suit pursuant to Section 11, Rule 3 of the Rules of Court, and the payment by plaintiff of the correct amount of filing fees based on the assessed value of the property involved which is P2,242,150.00. Petitioner also filed in the lower court a motion to lift restraining order of August 13, 1971, dated August 26, 1971 also.

On August 24, 1971, respondents filed a motion to dismiss (Rollo, pp. 110-111) but the Court required them in the resolution of August 25, 1971 to file an answer to the petition and set the case for hearing on September 3, 1971 (Rollo, p. 132). In compliance thereof, respondents filed their Answer to the petition on September 1, 1971 (Rollo, p. 137).

At the hearing the parties argued their respective causes and petitioner was required to file a reply to respondents' answer (Rollo, p. 240).

On September 6, 1971, petitioner filed a manifestation informing this Court of the incident report from its security guard with pictures showing the extent of the damage caused by respondents to petitioner's walls on the property in question for record purposes in view of their materiality and pertinence to the instant petition (Rollo, p. 241).

On the same date, petitioner filed with the lower court an urgent manifestation and motion asking respondent Court to resolve petitioner's pending motions, especially its motion to lift restraining order of August 13, 1971 and the omnibus motion (Rollo, p. 398).

On September 8, 1971, petitioner filed a Reply to the Answer of respondents to the petition (Rollo, p. 255). On the same date, respondents filed a manifestation containing their proposals in compliance with the Order of the Court during the hearing of the case on September 3, 1971, that parties execute an agreement between themselves that would govern the status quo in their relationship over the land in question while still litigating against each other under Civil Case No. 678-M (15043) in the Court of First Instance of Rizal and Civil Case Nos. 2028 to 2098 For Forcible Entry in the Municipal Court of Pasig, Rizal (Rollo, p. 379). On the same date, petitioner filed its manifestation informing the Court that parties failed to enter into such agreement (Rollo, p. 246) for which reason the Court resolved to require respondents to comment thereon (Rollo, p. 391).

On September 10, 1971, defendant Company (petitioner herein) filed another urgent manifestation and motion with respondent Court, reiterating its urgent manifestation and motion of September 6, 1971, urging respondent Court to immediately resolve the urgent questions pending before it, most especially petitioner's motion to lift respondent Court's restraining order, and the omnibus motion, both dated August 26, 1971 (Rollo, p. 402).

On September 16, 1971, petitioner filed another manifestation informing the Court, among others, that it is not waiving its petition on file with the Court and that respondent Court had not yet acted upon its motion to lift the restraining order of August 13, 1971, dated August 26, 1971 for which inaction petitioner has been definitely restrained from performing any act of ownership and dominion over almost 200 hectares of land (Rollo, p. 394).

On October 2, 1971, petitioner filed a manifestation explaining why it failed to enter into an agreement with respondents as required by the Court (Rollo, p. 404).

In the resolution of October 12, 1971, the Supreme Court directed the issuance of a writ of preliminary injunction upon petitioner's filing of a bond in the sum of ten thousand pesos (P10,000.00), enjoining respondent Court from enforcing the restraining order issued by it on August 13, 1971 and from proceeding in any manner with Civil Case No. 678-M (15043) until further orders by the Court (Rollo, p. 421). The corresponding writ was issued on October 14, 1971 (Rollo, p. 422).

The only issue in this petition is:

WHETHER OR NOT RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING ITS ORDER OF AUGUST 13, 1971.

The petition is impressed with merit.

It is undisputed that petitioner is the duly registered owner of the land in dispute as evidenced by OCT Nos. 13, 33, 334, 336 and 337 by virtue of Decrees Nos. 240, 1942 and 1425 issued in GLRO Record Nos. 699, 875 and 917 of the Philippine Government. In fact, private respondents admitted that much in their complaint in Civil Case No. 15043 entitled "Bernardo et al. v. The Director of Bureau of Lands, et al." filed in the Court of First Instance of Rizal (Rollo, p. 50), although they claim that the present title of petitioner TCT No. 227758 is itself void, regardless of source (Rollo, p. 141).

Likewise undisputed is the fact that respondent Judge has declared that GLRO Record No. 917 and Decree No.

1425 are null and void in Civil Case No. 7-M (10339) entitled "Pedro del Rosario, et al. v. Ortigas and Company Ltd. Partnership, et al." for alleged lack of publication (Rollo, p. 50). Nonetheless such decision has not become final, because of a petition for injunction filed in the Court of Appeals in CA-G.R. No. 10339-R where respondent Judge was immediately enjoined by said appellate court from proceeding in the aforesaid case and the Register of Deeds of Quezon City and Rizal to desist from taking any action involving the Original Certificates of Titles of the petitioner (Rollo, p. 76).

Furthermore, the fact of continuous possession by the petitioner thru its predecessor-in-interest, Provincia del Santisima Nombre de Jesus de Agustinos Calzados since 1862 or 125 years ago has as aforestated, been confirmed by the Supreme Court in *Compañia Agricola de Ultramar v. Marcos Domingo, et al.* (6 Phil. 246 [1906]). That decision is without question, decisive in the instant case. As held by the Court some years ago, through Justice J.B.L. Reyes "a ruling constituting the law of the case, even if erroneous ... may no longer be disturbed or modified since it has become final..." (*NWSA v. NWSA Consolidated Union, et al.*, 27 SCRA 227 [1969], citing *People v. Olarte*, 19 SCRA 494 [1967]; *Balmes v. Suson*, 28 SCRA 304 [1969]; *Mangayao v. Guzman*, 55 SCRA 540 [1974]; *National Mines and Allied Workers Union [NMAWU-MIF] v. Luna*, 83 SCRA 607 [1978]; *Solis v. People*, 84 SCRA 377 [1978]). The law of the case does not apply to what is embodied in the decision solely but also to its implementation carried out in fealty to what has been decreed (*Libudan v. Panma Gil*, 45 SCRA 17 [1972]).

On the basis of such facts, it is clearly evident that the restraining order issued by the lower court is improper and without basis.

But just as important is the well-settled rule that injunction will not lie to take the property out of the control of the party in possession (*PNB v. Adil*, 118 SCRA 117 [1982]). In a similar case, the Court ruled that in actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. To authorize a temporary injunction, the complainant must make out at least a prima facie showing of a right to the final relief. Preliminary injunction will not issue to protect a right not in esse (*Buayan Cattle Co. Inc. v. Quintillan*, 128 SCRA 286-287 [1984]).

Two requisites are necessary if a preliminary injunction is to issue, namely, the existence of the right to be protected, and the facts against which the injunction is to be directed are violative of said right. In particular, for a writ of preliminary injunction to issue, the existence of the right and the violation must appear in the allegation of the complaint and a preliminary injunction is proper only when the plaintiff appears to be entitled to the relief demanded in his complaint. Furthermore, the complaint for injunctive relief must be construed strictly against the pleader (*Buayan Cattle Co. Inc. v. Quintillan*, supra).

Respondents anchor their claim on the decision of the lower court in Civil Case No. 7-M (10339), (Rollo, p. 89) which, however, has not become final, apart from the fact that as petitioner pointed out both groups of plaintiffs in Civil Case No. 7-M (10339) and Civil Case No. 678-M (15043) are claiming the same lots, Lots 49 and 50, PSU-25901. (Rollo, p. 52-A, par. [d] and pp. 66-67 [b]).

Thus, the existence of a "clear positive right" especially calling for judicial protection has not been shown. As held by the Court, injunction is not to protect contingent or future right; nor is it a remedy to enforce an abstract right (*Yapinchay v. Torres*, 28 SCRA 489 [1969]).

Another factor which militates against the validity of the restraining order issued is the fact that said order was issued ex-parte.

Section 5, Rule 58 of the Rules of Court makes it clear that no preliminary injunction may issue ex-parte, except

where the delay made necessary by the giving of notice would prevent effective relief and might be productive of serious damage (National Mines Allied Workers Union (NMAWUMIF) v. Valero, 132 SCRA 578 [1984]).

What the restraining order of respondent Judge enjoins, is the fencing of the property by the petitioner, a titled owner, its construction of a network of roads, streets and canals thereon or its introduction of improvements or exercise of acts of possession.

A careful study of the records reveals no case of extreme urgency which bears strongly in respondents' favor, much less any impending damage that they may suffer because of petitioner's actuations. The area of the land in question as described in the complaint is 192 hectares, more or less. The census made by the Philippine Constabulary per agreement of April 16, 1971, Annex "E" of the Answer found 89 incomplete structures occupying areas of between 2.5 to 10 sq. meters scattered in the premises. Only 71 of the structures were claimed by persons appearing in the list. Of the 43 parties to the case filed in the court a quo only twenty eight (28) appear in said list. Therefore, fifteen (15) of the said parties are not in possession of any portion of the land in question.

In sharp contrast, it is admitted that petitioner is in possession of the portions not occupied by the structures. Petitioner's possession is of more than 99% of the land in question (Reply, Rollo, pp. 299-300). Unquestionably, therefore, it is the petitioner who stands more to suffer from the invasion of the land in dispute by speculators, squatters, and other unscrupulous persons who were led to believe that the decision of the lower court nullifying petitioner's titles is already final (Rollo, pp. 406-407).

On this issue, the Supreme Court adopted a resolution on October 12, 1971, which reads:

"L-33952 (Ortigas & Co. Ltd. v. Hon. Vivencio M. Ruiz, et al.) — Upon consideration of the pleadings filed by the parties in this case as well as the annexes thereto, it appearing that petitioner is the registered owner of the land involved herein and that it has the right, at least prima facie, to exercise rights of ownership and possession over said land: As prayed for, let a writ of preliminary injunction issue, upon the filing of a bond in the sum of ten thousand pesos (P10,000.00) to be approved by this Court, enjoining respondent Judge from enforcing the restraining order issued by him on August 13, 1971 and from proceeding in any manner with Civil Case No. 678-M (15043), until further orders by this Court." (Rollo, p. 418).

Finally, under Section 5, Batas Pambansa Blg. 224, a judge may issue a temporary restraining order with a limited life of twenty (20) days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary restraining order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20-days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. A temporary restraining order can no longer exist indefinitely for it has become truly temporary (Board of Transportation v. Castro, 125 SCRA 417 [1983] citing Dionisio, et al. v. Court of First Instance of South Cotabato, Branch II, G.R. No. 61048 promulgated on August 17, 1983). In the same case, the Court ruled that respondent Judge committed a grave abuse of discretion in failing to resolve without considerable delay petitioner's motion for the dissolution of the restraining order.

Petitioner argues further, that a class suit is not proper in this case as such presupposes a common and general interest by several plaintiffs in a single specific thing (Section 12, Rule 3, Rules of Court). Consequently, it cannot be maintained when each of those impleaded as alleged plaintiffs "has only a special or particular interest in the specific thing completely different from another thing in which the defendants have a like interest." (Berces v. Villanueva, 25 Phil. 473). (Rollo, p. 24).

Petitioner's contention is meritorious.

It is not a case where one or more may sue for the benefit of all (Mathay v. Consolidated Bank and Trust

Company, 58 SCRA 559) or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party (*Borlaza v. Polistico*, 47 Phil. 348; *Newsweek, Inc. v. The Intermediate Appellate Court, et al.*, G.R. No. 63559, promulgated May 30, 1986).

In the case at bar, a class suit would not lie because each of the defendants has an interest only in the particular portion of the land he is actually occupying, and not in the portions individually occupied by the other defendants. (*Berces v. Villanueva*, supra; *Rallonza v. Evangelista*, 15 Phil. 531). They do not have a common or general interest in the subject matter of the controversy (*Newsweek, Inc. v. The Intermediate Appellate Court, et al.*, supra).

Hence, there is merit in petitioner's contention that only the principal plaintiff named in the complaint Inocencio Bernardo can remain as party plaintiff, and all the rest must be dropped from the case, pursuant to Section 11, Rule 38 of the Rules of Court. And since Bernardo does not pretend to own almost two million square meters involved in the case, the restraining order of respondent Judge granting that it could be maintained must be co-extensive with the boundaries of Bernardo's claim. Otherwise stated, respondent Judge cannot restrain petitioner from performing acts of ownership or dominion over the entire 200 hectares involved in this case.

But more than the foregoing, it will be noted that in respondents' complaint, they pray among other things that the Original Certificates of Titles in question be declared null and void and the land in dispute, except that portion being claimed as their own, be declared as properties of the public domain (*Rollo*, p. 55).

On this point, the Supreme Court has already ruled that in all actions for the reversion to the Government of lands of the public domain or improvements thereon, the Republic of the Philippines is the real party in interest. The action shall be instituted by the Solicitor General or the officer acting in his stead, in behalf of the Republic of the Philippines (*Director of Lands v. Lim, et al.*, G.R. No. L-4372, April 30, 1952).

It will be noted that respondents themselves allege that the Director of Lands refused to be a party plaintiff (*Rollo*, p. 49). Consequently, as to the portion of land being claimed for the government by respondents, the case has to be dismissed.

On the other hand as to the portions claimed by respondents for themselves, it is evident that their action is already barred by laches.

In a line of decisions, the Court has uniformly held in favor of the registered owner who had been in possession of the property in dispute for a considerable period of time, as follows:

"Having been registered owners of lot for more than 40 years and having possessed it during said period, their title had become indefeasible and their possession could not be disturbed. (*Sinoan v. Soroñgon*, 136 SCRA 407).

"Failure of the deceased or his predecessors-in-interest to take steps to assert any rights over the disputed land for 20 years from date of registration of title is fatal to their cause of action on the ground of laches. (133 SCRA 718, [1984], *Caragay-Layno v. Court of Appeals*).

"Cause of action to recover possession of property is barred by laches due to petitioner's inaction for more than 50 years." (*Alarcon v. Bidin*, 120 SCRA 390).

On the other hand, private respondents lay stress on the alleged fact that the instant petition of certiorari is not proper as the petitioner is not without any remedy, speedy and adequate in the lower court itself. They say petitioner could and should have moved for a reconsideration of the restraining order of the lower court (*Rollo*, p. 111).

This contention is untenable.

The Supreme Court has categorically ruled that a motion for new trial or reconsideration is not a prerequisite to an appeal, a petition for review or a petition for certiorari. The amendments to the Rules of Court by the Judiciary Reorganization Act, (Batas Pambansa Blg. 129) and by the interim Rules have been held to apply prospectively, (Habaluyas Enterprises Inc. v. Japson, 142 SCRA 211-212 [1986]).

This case was brought before the Supreme Court for the resolution of an incident in Civil Case No. 678-M (15043) and the normal cause of action to take thereafter, would be to remand this case to the trial court for further proceedings. However, in line with jurisprudence, that such time consuming procedure may be properly dispensed with to resolve the issue (Quisumbing v. Court of Appeals, L-60364, June 23, 1983, 122 SCRA 709-710) where there is enough basis to end the basic controversy between the parties here and now, dispensing with procedural steps which would not anyway affect substantially the merits of their respective claims (Velasco v. Court of Appeals, L-47544, January 28, 1980, 95 SCRA 621-622), We will now resolve this entire controversy.

PREMISES CONSIDERED, the restraining order issued by the lower court is hereby SET ASIDE; Civil Case No. 678-M (15043) is dismissed; and the injunction issued by this Court in the resolution of October 12, 1971 is hereby made PERMANENT.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

Alampay, J., on leave.

Padilla, J., Took no part, because I am a limited partner in petitioner-partnership.

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