

MARA, INC., PETITIONER, VS. HON. JUSTINIANO C. ESTRELLA, CITY JUDGE OF QUEZON CITY, BRANCH V, AND JOSE DE LEON, RESPONDENTS.*G.R. No. L-40511. July 25, 1975*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/11395e0d9ca9/>**AQUINO, J.:**

On May 4, 1973 Mara, Inc. filed in the City Court of Quezon City a complaint for forcible entry against Jose de Leon. It alleged that on or about April 5, 1973 De Leon through force, intimidation, threat, strategy and stealth occupied Lots 7, 9, 11 and 13, located at G. Araneta Avenue, Sta. Mesa Heights Subdivision, Barrio Santol, Quezon City with a total area of four thousand square meters, registered in the name of Mara, Inc. as shown in Transfer Certificates of Title Nos. 127719, 127720, 127721 and 127722 of the Registry of Deeds of Quezon City. Mara, Inc. further alleged that it had prior possession of the four lots (Civil Case No. V-23366).

On May 8, 1973 or four days after the filing of the complaint, Mara, Inc. asked the City Court to issue a writ of preliminary mandatory injunction for the purpose of restoring to it the possession of the said lots.

De Leon opposed the motion on the grounds that Mara, Inc. was never in possession of the lots; that its titles were derived from Original Certificate of Title No. 735 which was allegedly void, and that the said lots were covered by Original Certificate of Title No. 56 which was being reconstituted in the Court of First Instance of Rizal, Quezon City Branch IX and which is in the name of the spouses Blas Fajardo and Pantaleona Santiago.

Judge Justiniano C. Estrella in his order of October 3, 1973 deferred the resolution of the said motion until the trial of the case because of the jurisdictional issue raised by De Leon. In his order of February 1, 1974 Judge Estrella denied De Leon's motion to dismiss the complaint on the ground of lack of jurisdiction. However, he later reaffirmed his prior order to hold in abeyance the resolution of plaintiffs motion for the issuance of a preliminary mandatory injunction (Order of February 25, 1974).

After Judge Estrella's attention was called to this Court's decision in *Benin vs. Tuason*, L-26127, *Alcantara vs. Tuason*, L-26128 and *Pili vs. Tuason*, L-26129, June 28, 1974, 57 SCRA 531, which upheld the validity and incontestability of TCT No. 735, to which the titles of Mara, Inc. to the four lots in question could be traced, he granted the writ of preliminary mandatory injunction on condition that Mara, Inc. should file a bond in the sum of P10,000 (Order of November 20, 1974).

De Leon moved for the reconsideration of that order. He alleged that the preliminary mandatory injunction would cause irreparable injury to him because it would result in the demolition of his improvements. He contended that OCT No. 56 was not nullified by this Court in the *Benin*, *Alcantara* and *Pili* cases. Judge Estrella denied the motion in his order of December 20, 1974.

Mara, Inc. filed on December 6, 1974 its bond for P10,000. On February 10, 1975 Judge Estrella issued the writ of preliminary mandatory injunction. De Leon filed a motion dated February 28, 1975 for the dissolution of the

injunction. He manifested that he was willing to file a counterbond in the same amount. Mara, Inc. opposed the motion.

Judge Estrella in his order of April 1, 1975 granted the motion for the dissolution of the injunction provided that De Leon filed "a surety bond in the sum of P10,000 to answer for all damages which the plaintiff may suffer".

On April 22, 1975 Mara, Inc. instituted in this Court the instant special civil action of certiorari for the purpose of annulling Judge Estrella's order dissolving the injunction.

De Leon in his comment insisted that he had a right to occupy the four lots because of OCT No. 56 which allegedly was issued earlier than OCT No. 735. That was the same defense which he had pleaded in his answer to the ejectment suit and which was eroded by this Court's decision in the Benin, Alcantara and Pili cases upholding the validity of TCT No. 735 from which the titles of Mara, Inc. were derived.

The issue is whether Mara, Inc. is entitled to the writ of preliminary mandatory injunction to recover possession of the four lots during the pendency of the ejectment suit or whether the City Court acted with grave abuse of discretion in dissolving the injunction.

At first we denied the petition for certiorari. We acted on the assumption that De Leon had posted the surety bond required in Judge Estrella's order of April 1, 1975. It turned out that he did not file any such bond. He merely submitted a check for that amount. Then he later filed a motion that he be allowed to substitute cash for the said check.

Section 8, Rule 58 of the Rules of Court provides that a copy of the bond for the dissolution of the injunction should be served on the other party. That requirement, which is intended to enable the opposing party to object to the sufficiency of the bond, was not observed in this case. The City Court acted with grave abuse of discretion in dissolving the injunction and in suspending its implementation on the basis of De Leon's insufficient bond.

Mara, Inc. filed a motion for reconsideration. After further consideration of the facts of the case, we came to the conclusion that its petition for certiorari is meritorious.

The Civil Code provides:

"ART. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof. (446a)"

Mara, Inc. based its petition for a writ of preliminary mandatory injunction on the second paragraph of article 539 which was incorporated as the second paragraph of section 3, Rule 70 of the Rules of Court dealing with forcible entry and detainer. The Code Commission noted that there had been "prolonged litigations between the owner and the usurper" and that the owner had been frequently deprived of his possession even when he had an immediate right thereto. (p. 98 of Report.)

The urgency of the remedy of injunction is underscored by the fact that the court is given only thirty days within which to decide the motion for the issuance of the writ of preliminary mandatory injunction. It is deplorable that in this case it took the City Court more than-nineteen months to decide the motion of Mara, Inc.

As expressed by Justice Moreland in his flamboyant rhetoric, "it is the undisputed policy of every people which

maintains the principle of private ownership of property that he who owns a thing shall not be deprived of its possession or use except for the most urgent and imperative reasons and then only so long as is necessary to make the rights which underlie those reasons effective. It is a principle of universal acceptance which declares that one has the instant right to occupy and use that which he owns, and it is only in the presence of reasons of the strongest and most urgent nature that that principle is prevented from accomplishing the purpose which underlies it. The force which gave birth to this stern and imperious principle is the same force which destroyed the feudal despotism and created the democracy of private owners" (McMicking vs. Sy Conbieng, 21 Phil. 211, 219).

The injunction contemplated in article 539 is an exception to the general rule that the writ of injunction is not proper where its purpose is to take property out of the possession or control of one person and place it in the hands of another whose title has not clearly been established by law (3 Moran's Comments on the Rules of Court, 1970 Ed. pp. 72-73).

Therefore, if the petitioner asking for an injunction is the registered owner and the oppositor is an interloper or squatter who has no possessory right to the land in litigation, a writ of preliminary mandatory injunction may be issued pendente lite (See De Garcia vs. Santos, 79 Phil. 365; Rodulfa vs. Alfonso, 76 Phil. 225; Torre vs. Querubin, 101 Phil. 53).

In the instant case, the Torrens titles of Mara, Inc. to the four lots appear to be unassailable. De Leon in his answer to the complaint for ejectment merely pretended lack of knowledge of the said titles. He has not shown in his answer any indubitable right to possess the four lots in question.

It results that the City Court, after finding that OCT No. 735, from which the four titles of Mara, Inc. were derived, is incontestable and after denying De Leon's motion for the reconsideration of the order granting the injunction, made a capricious and whimsical exercise of discretion in dissolving the injunction and in allowing De Leon to file a counterbond. As already noted, he filed in court a check for P10,000 instead of a surety bond. He did not apprise Mara, Inc. of that fact.

WHEREFORE, the petition for certiorari is granted, the City Court's order of April 1, 1975 is set aside, and its order of November 20, 1974 is affirmed. Costs against respondent De Leon.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion Jr., JJ., concur.

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