

**CECILIO PANALIGAN, MARCIAL FULINARA, JUAN RAMOS AND
CRISANTO BATTAD, PETITIONERS-APPELLANTS, VS. JUDGE
NICOLAS C. ADOLFO, FAUSTINO L. CAPATI AND ROSARIO M. CAP
ATI, RESPONDENTS...**

G.R. No. L-24100. September 30, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

What is assailed in this appeal on questions of law is a decision of the then Judge, now Justice of the Court of Appeals, Ricardo T. Puno, dismissing a certiorari proceeding against respondent Justice of the Peace Nicolas C. Adolfo of Subic^[1] arising from an order for mandatory preliminary injunction. The antecedents of the case were set forth in the aforesaid decision now on appeal, included as a twenty-one-page appendix to the brief for petitioners, now appellants: "On June 30, 1961, respondents Faustino L. Capati and Rosario M. Capati filed a complaint before the Justice of the Peace Court of Subic, Zambales against the herein petitioners Cecilio Panaligan, Marcial Fulinara, Juan Ramos, Sandey Eglan and Crisanlo Batlad for forcible entry, with preliminary mandatory injunction (docketed as Civil Case No 133 in the Justice of the Peace Court of Subic, Zambales), which complaint was later amended on July 24, 1961. The defendants-petitioners filed a motion to dismiss said case on July 15, 1961, alleging as grounds therefor: 1) the pendency of another action between the same parties for the same cause; 2) lack of jurisdiction over the subject matter; and 3) that the complaint states no cause of action. Defendants-petitioners averred that in forcible entry cases, 'prior physical possession' must be alleged in the complaint to confer jurisdiction upon the court; and they contended that the complaint, being lacking in this respect, was defective and lacked the proper averment of jurisdictional fact. Plaintiffs-respondents, in their opposition to the motion to dismiss, dated July 19, 1961, insisted that prior physical possession has been alleged under paragraphed 2 of the complaint, which sets forth; 'That plaintiff had been in the lawful and peaceful possession of a parcel of land . . . ' The lower court, in an order dated July 22, 1961, denied the motion to dismiss and at the same time ordered the plaintiffs-respondents to amend their complaint within three days from said date, to the end that the land, which is the object of this litigation, be particularly described therein. In compliance with this order, the plaintiffs filed on July 25, 1961, an amended complaint dated July 24, 1961. On July 26, 1961, defendants-petitioners filed a motion for reconsideration of the order of the Court dated July 22, 1961, reiterating the same grounds contained in their motion to dismiss, with the additional contention that the lower court erred in holding that the motion to dismiss does not interrupt the running of 30-day period within which the Judge should decide the petition for the issuance of the writ of preliminary mandatory injunction, as provided in Article 539 of the Civil Code. The defendants-petitioners reasoned out that because injunction is a mere ancillary remedy, a direct attack, through a motion to dismiss, on the principal action based on forcible entry interrupted the running of the 30-day period within which to hear and decide the preliminary injunction. The lower court, in an order dated July 26, 1961 denied the motion for reconsideration and set the hearing of the petition for a writ of preliminary mandatory injunction on July 29, 1961 at 8:30 A.M. The defendants-petitioners, in their manifestation dated July 28, 1961, waived their right to be heard in opposition to said petition for the issuance of the writ of

preliminary mandatory injunction and, accordingly, did not attend the hearing set for July 19, 1961, despite due notice to them. After the plaintiffs-respondents presented their evidence on July 29, 1961, the lower court issued an order dated July 31, 1961, granting the writ of preliminary mandatory injunction, upon the plaintiffs-respondents' filing of a bond in the amount of P50.00." [2] There was a motion for reconsideration, but it was denied. Hence resort was had to the remedy by certiorari.

The then Judge Puno, as noted, dismissed such petition for lack of merit. His very comprehensive decision started with what he considered was the general principle governing certiorari proceedings. After quoting from the work of former Chief Justice Moran as to the requisites for the availability of this special civil action, his decision continues: "In the case of *Herrera v. Barretto*, 25 Phil. 245, the Supreme Court laid down the ruling that 'Jurisdiction is the authority to hear and determine a cause — the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction of the person and subject matter, *** the decision of all other questions arising in the case is but an exercise of that jurisdiction.' When a court exercises its jurisdiction an error committed while engaged in that exercise does not deprive it of the jurisdiction which it is exercising when the error is committed. If it did, every error committed by a court would deprive it of jurisdiction and every erroneous judgment, would be a void judgment. This, of course, is not possible, The administration of justice would not survive such a rule.' (*De la Cruz v. Moir*, 36 Phil. 213, 219). It should not, however, be overlooked that abuse of discretion alone is not sufficient; and to warrant the issuance of the writ on that ground, the abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (*Tavera-Luna, Inc. v. Nable*, 67 Phil. 340; *Alafriz v. Nable*, 72 Phil. 278)." [3] Reference was again made to the work of Chief Justice Moran which distinguished between jurisdictional errors and errors of judgment or procedure which may be corrected not by certiorari but by appeal. After which, he concluded: "From the general principles above set forth it appears quite patent that the respondent Judge had jurisdiction over Civil Cases Nos. 133 and 125 of the Justice of the Peace Court of Subic, Zambales, both being forcible entry cases filed under the provisions of Rule 72 of the Rules of Court," [4] Nor did the then Judge Puno stop there. He took up in detail the various contentions advanced and pointed out why they are far from tenable. After which he stated the conclusion thus: "In the light of the foregoing discussion, the Court believes and so rules that petitioners have not fully established the basis for any regulatory interference with the actuations of the respondent Justice of the Peace. This proceeding involves an extraordinary remedy which must be given due course only after the exercise of caution and deliberation, and upon a conclusive showing that proper legal grounds exist. In the case at bar, this Court is constrained to leave the official action of the respondent Judge of the court below undisturbed." [5]

The appeal was taken to the Court of Appeals, but in view of the litigation not raising any factual issues but only legal questions, it was elevated to this Court.

1. In the light of the above, it is thus understandable why the principal error assigned is the alleged failure of the trial court to evaluate "several essential proceedings which transpired at the Justice of the Peace Court of Subic, Zambales, as associative and cumulative incidents, approximating the exercise of a grave abuse of discretion and/or excess of jurisdiction, by the respondent Judge." [6] What is immediately discernible in the above wording is that rhetoric rather than the law is relied upon. A brief that would rely on so-called "associative and cumulative incidents" is on its face bereft of any persuasive value. The element of ambiguity is there. There is an absence of that definiteness and clarity that would lend it plausibility. There was not even a specific allegation of grave abuse

of discretion or possible excess of jurisdiction. At the most, the actuations of the Justice of the Peace was indicted for lending itself to the characterization of "approximating the exercise of a grave abuse of discretion and/or excess of jurisdiction." That was all. Certainly it cannot be enough. Nothing can be clearer than that. For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[7] That invariably has been the tenor of our decisions.[8] What other conclusion can there be then except that on such flimsy and superficial accusation, the reversal of the appealed decision is not justifiable. So we rule.

2. There was a second error assigned. Here again, resort was had to the language of hesitancy bordering on diffidence. It may be a tribute to the sense of candor of counsel for appellants or to a realization on their part as men of law that they could not be any more positive in their assertion. They did speak in such alleged error of the trial court "'not appreciating the apparent deprivation of petitioners' day in court by the Justice of the Peace Court of Subic, Zambales, as a salient matter for a cause of action for certiorari.'"[9] If it were really thus, then the test of arbitrariness or caprice as a basis for this special civil action would have been met in view of a constitutional question, that of procedural due process, having arisen. Note, however, that the language used does not speak of "deprivation" but only of "apparent deprivation." Petitioners ought to have realized that on such an imputation of grave abuse of discretion, the Court should rule not on the appearances but on the realities. What is significant and decisive is this paragraph from the decision appealed from: "The lower court, in an order dated July 20, 1961 denied the motion for reconsideration and set the hearing of the petition for a writ of preliminary mandatory injunction on July 29, 1961 at 8:30 A.M. The defendants-petitioners, in their manifestation dated July 28, 1961, waived their right to be heard in opposition to said petition for the issuance of the writ of preliminary mandatory injunction and, accordingly, did not attend the hearing set for July 29, 1961, despite due notice to them. After the plaintiffs-respondents presented their evidence on July 29, 1963, the lower court issued an order dated July 31, 1961, granting the writ of preliminary mandatory injunction, upon the plaintiffs-respondents' filing of a bond in the amount of P50.00."[10] With petitioners having raised only legal questions, that factual appraisal is binding on this Court. Accordingly, with matters being placed in their true light, the claim that there was a deprivation of a day in court or a denial of procedural due process falls to the ground."

WHEREFORE, the decision of the Court of First Instance of Zambales of February 20, 1963, dismissing a petition for certiorari, is affirmed. Costs against petitioners.

Barredo, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., is on official leave.

[1] The other respondents are Faustino L. Capati and Rosario M. Capati.

[2] Decision. Appendix to Brief for the Petitioners-Appellants. 30-33.

[3] Ibid. 39-41.

[4] Ibid. 42.

[5] Ibid. 53.

[6] Brief for the Petitioners-Appellants. 7.

[7] Cf. *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340 (1939); *Abad Santos v. Province of Tarlac*, 67 Phil. 480 (1939); *Alafriz v. Nable*, 72 Phil. 278 (1941).

[8] Cf. *Tan v. People*, 88 Phil. 609 (1951); *Negado v. Ruiz Castro*, 104 Phil. 103 (1958); *Liwanag v. Castillo*, 106 Phil. 375 (1959); *Hamoy v. Secretary of Agriculture*, 106 Phil. 1046 (1960); *Pajo v. Ago*, 108 Phil. 905 (1960); *Abig v. Constantino*, L-12460. May 31, 1961. 2 SCRA 299; *People v. Marave*, L-19023. July 31, 1964. 11 SCRA 618; *Palma v. Q and S, Inc.*, L-20366, May 19, 1966, 17 SCRA 97; *Vda. de Bacaling v. Laguna*, L-26694. Dec. 18, 1973. 54 SCRA 243; *De Castro v. Delta Motor Sales Corp.*, L-34971. May 31, 1974. 57 SCRA 344.

[9] Brief for the Petitioners-Appellants, 7.

[10] Decision, Appendix to Brief for the Petitioners-Appellants, 32-33.

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