

FELIX MORADA, PETITIONER, VS. THE HONORABLE HERMOGENES CALUAG, JUDGE, COURT OF FIRST INSTANCE, QUEZON CITY AND J. M. TUASON, CO., INC., RESPONDENTS.*G.R. No. L-18055. August 31, 1962*

Ponente: DIZON, J.

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Petition for mandamus with preliminary injunction filed by Felix Morada against J. M. Tuason, Co., Inc. and the Hon. Hermogenes Caluag, Judge of the Court of First Instance of Quezon City, to compel the latter to allow the filing of a third-party complaint in Civil Case No. 4473 of said court, and to restrain him from continuing with the trial of said case until final determination of the instant petition.

On May 21, 1959, J. M. Tuason Co., Inc. filed an action in the Court of First Instance of Quezon City presided by the respondent judge to recover from petitioner the possession of a parcel of land (Civil Case No. Q-4473). The complaint alleged that the plaintiff was the registered owner of a parcel of land known as the Santa Mesa Heights Subdivision, situated in Quezon City, covered by Transfer Certificate of Title No. 1267 (37686-Rizal) of the Registry of Deeds of Quezon City, and that on or about May 26, 1957, petitioner, by means of force, strategy and stealth, unlawfully took possession of a portion thereof with an area of 1,000 square meters, more or less, and constructed his house thereon. Upon these facts the plaintiff prayed that judgment be rendered ordering petitioner to vacate the said land, to remove his house and other constructions thereon, and to pay damages.

In his answer to the complaint, petitioner alleged that he was the owner of the land in question, his wife having acquired it in 1946 from its owner, Roman Mendoza, and alleged further that the property was part of a bigger parcel which had been authorized for expropriation by the government.

On December 8, 1959, petitioner filed a motion to suspend the trial of the case under Republic Act 1162, as amended by Republic Act 2342 and Republic Act 2616. On January 15, 1960, the court denied the motion and set the case for trial on February 17, 1960. On that date, petitioner filed a motion for reconsideration of the last mentioned order, but the same was denied. However, the trial of the case was reset for June 30, 1960.

On June 20, 1960, petitioner filed a motion for leave to file a third-party complaint against Roman Mendoza—the party who allegedly sold the property to his wife. Five days thereafter, respondent judge denied said motion as "it appears from defendant's answer that it was his wife and not he who bought this lot from the proposed third-party defendant, and since she is not a party in this case, the third-party complaint should not be allowed, because the wife alone has the right to enforce the warranty of eviction."

Upon petitioner's motion for a clarification of the order of denial, the respondent judge, on January 7, 1961, issued an order explaining that under Article 1559 of the New Civil Code the period for a defendant-vendee to file a third-party complaint against his vendor for his warranty against eviction is within the time fixed in the Rules of Court for answering the complaint and that said period had long expired in the present case.

The undisputed facts of this case make it obvious that, as between petitioner—who wanted to file a third party complaint against Roman Mendoza—on the one hand, and the latter, on the other, there is no privity of contract in relation to the property in litigation. It was petitioner's wife—who allegedly purchased said property from Mendoza—who had the right to sue the latter to enforce his warranty against eviction. It seems clear, therefore, that respondent judge committed no error in denying petitioner's motion for leave to file a third-party complaint against Mendoza. To allow or not to allow the filing of a third-party complaint is a matter that rests within the sound discretion of the court (Section 1, Rule 12, Rules of Court). On the other hand, the writ of mandamus cannot be issued to control the discretion of a judge or to compel him to decide a motion pending before him in a particular way (*Dy Cay vs. Crossfield* 38 Phil. 521). To all these we must add that, for a party to be entitled to the writ of mandamus, he must show that he has a clear legal right to the performance of the act to be required of the respondent—which herein petitioner cannot do, having alleged in his answer that it was his wife who had purchased the property in question from the would be third party defendant. What should have been done before the filing of the motion denied by respondent judge was to have petitioner's wife intervene in the action. Once admitted as an intervenor, she could have been allowed to file a third party complaint against her alleged vendor.

Having arrived at the above conclusion, we find it unnecessary to decide whether, under Article 1559 of the New Civil Code, the filing by a defendant-vendee of a third party complaint against his vendor to enforce his warranty against eviction must necessarily be filed within the time fixed in the Rules of Court for answering the complaint.

Wherefore, the writ prayed for is denied, and the writ of preliminary injunction issued heretofore is hereby dissolved. With costs against petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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