

ENRIQUE BALDISIMO, PETITIONER, VS. HON. COURT OF FIRST INSTANCE OF CAPIZ AND ANGEL ARBOLEDA, RESPONDENTS.

G.R. No. L-22261. September 29, 1967

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Petition for mandamus to compel the Court of First Instance of Capiz to issue a writ of execution in its Civil Case No. V-438.

Petitioner Enrique Baldesimo is the plaintiff in Civil Case No. V-438 of the Court of First Instance of Capiz, where he seeks to recover from respondent Angel Arboleda the ownership and possession of a parcel of land described in his complaint. After trial, the lower court, on October 27, 1953, adjudicated to petitioner only a portion of the land sought to be re-covered. On appeal to the Court of Appeals, by both parties (docketed as CA-G. R. No. 14853-R), the appellate court rendered a decision, dated October 22, 1957, awarding the whole property in litigation to petitioner and declaring him entitled to its possession; the dispositive portion of which decision reads:

"For all them forgoing considerations, plaintiff Enrique Baldesimo is hereby declared owner of the western portion with an area of 86,504 square meters, of the whole land indicated in the plan, Exhibit A. The eastern portion of the land, with an area of 39,127 square meters, properly belongs to defendant Angel Arboleda. According to Hilaria Ongas the boundary line between the land of plaintiff and that of defendant is a line drawn northward from a point (which used to be an old culvert) 60 meters west along the provincial road from point 1 in the plan, Exhibit A.

"Under the circumstances, defendant Angel Arboleda should not be made to pay damages because he is a possessor in good faith. He took possession of plaintiff's land under the mistaken belief that it was part of the land he bought from the Ongas. With respect to the fishpond constructed by defendant on plaintiff's land, the plaintiffs may take one of two alternatives. He may elect to refund to defendant the expenses he incurred in constructing said fishpond or the increases in value which the land acquired by reason of the construction of the same. In such a case, defendant has the right to retain the property until he has been reimbursed (Article 546, New Civil Code). Or plaintiff may choose to oblige defendant to buy the land. In the latter case, however, if the value of the land is considerably more than the fishpond, defendant cannot be made to buy the land. If the plaintiff does not wish to appropriate the fishpond after paying the proper indemnity then defendant must pay reasonable rent for the use of plaintiff's land. Plaintiff and defendant shall agree upon the terms of the lease. In case of disagreement, the lower court is hereby instructed to fix the terms thereof (Article 448, New Civil Code).

"Premises considered, the appealed decision is hereby modified as heretofore indicated, without any pronouncement as to costs.

"The court a quo is hereby instructed to appoint a commissioner who shall be present during the survey and division of the land in question. The division thereof shall be accomplished in the following manner: From a point 60 meters west to point 1 (in the plan, Exhibit A), a line shall be drawn northward, which line shall

divide the land into two, such that at the western portion thereof shall have an area of 86,504 square meters, while the eastern portion thereof shall have an area of 39,127 square meters. Considering the plain-tiff's land is much bigger than that of defendant, he shall bear two-thirds of the expenses for survey and division, while defendant Angel Arboleda shall bear one-third of such expenses."

Pursuant to the foregoing judgment, the case was remanded to the trial court for further proceeding. Petitioner Baldesimo elected to refund respondent Arboleda of the reasonable expenses incurred by the latter in the construction of the Fishpond on the land in question, pursuant to the decision of the Court of Appeals. Evidence was presented by both parties regarding the expenses incurred in the construction of the fishpond, and the respondent trial court, on June 29, 1962, rendered a supplemental decision, the dispositive portion of which reads as follows:

"1. Declaring the defendant ANGEL ARBOLEDA entitled to the refund of his expenses for the construction of the fishpond In question in the amount of P2,958.07;

"2. Ordering the plaintiff ENRIQUE BALDISIMO to pay the said defendant the amount aforementioned; and

"3. Without additional pronounce-ment as to costs."

From the above-stated supplemental decision pe-titioner appealed to the Court of Appeals (docketed as CA-G. R. No. 31563-R), alleging that the appraisal by the lower court of the expenses for the construct-ion of the fishpond is excessive and unfair. Respond-ent Arboleda did not appeal from the supplemental de-cision.

On June 22, 1963, or during the pendency of the appeal, petitioner deposited with the respondent court the sum of P2,958.07, which is the amount fixed by said court to be refunded by petitioner to respondent, at the same time notifying the latter of the deposit and urging said respondent to collect said amount so that possession of the land in question may be deli-vered to petitioner. Because respondent Arboleda failed to collect the amount deposited and he refused to deliver possession of the property in question to petitioner, petitioner filed several motions before the respondent court praying that respondent Arboledo be ordered to withdraw the money deposited with the court and that a writ of execution be issued for the delivery of the possession of the land in question to petitioner. These motions having been denied, peti-tioner instituted the instant petition for mandamus before this Court.

We find merit in this petition.

The reason advanced by respondent court in re-fusing to order respondent Arboleda to collect the amount of P2,958.07 deposited by petitioner and in refusing to issue a writ of execution in favor of the latter is the pendency of petitioner's appeal with the Court of Appeals. According to said court, as long as petitioner insists in prosecuting his appeal from the supplemental decision, respondent can lawfully reject the tender of payment by petitioner and that the mate-rial possession of the land in controversy cannot be delivered to the latter.

The stand taken by respondent court cannot be sustained. The appeal of the petitioner from the supplemental decision of respondent court of June 29, 1962 simply involves the reasonableness of the amount fixed as the value of the improvements introduced by respond-ent on petitioner's land, which the latter is ordered to refund to the former. The ownership of the land, and naturally its possession which is an attribute thereto, is not being questioned in the appeal, since the Court of Appeals in its decision dated October 22, 1957 had already declared petitioner the owner of the contro-verted property. And it is this decision of the court of Appeals which petitioner sought to enforce by asking the court a quo to place him in possession of the land, contending that the decision had already become final and executory, and that he had complied with the terms of the judgment regarding the refund of the expenses incurred by respondent Arboleda in the construction of the fishpond on the land in

question.

Under the circumstances, as recited in the fore-going paragraphs, We believe that the petitioner is en-titled to be placed in possession of the entire property under litigation, and in refusing to issue the writ to execute the decision of the Court of Appeals respondent court had unlawfully neglected to perform an act which the law enjoins as a duty resulting from office. It is true that the petitioner had appealed from the supplemental decision, but under Section 9, Rule 41 of the Rules of Court, it is within the power of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated in the appeal. What petitioners asked respondent court - which respondent court neglected or refused to do - was to order the delivery to petitioners of the land where the fishpond is located, a step that was merely designed to protect and deserve the of petitioner regardless of the result the appeal from the supplemental decision - the rights petitioners to posses the land where the fishpond is located not being litigated in said appeal. And this is so in spite of the provision of Article 546 of them Civil Code, as mentioned in the decision of the Court of Appeals, that respondent has the right to retain the possession of the premises until after he is reimburse of his expenses in the construction of the fishpond - he having constructed the fishpond in good faith - be-cause the petitioner had already deposited in court the amount of P2,958.07 which the trial court had declared as the reasonable expenses incurred by respondent Arboleda in the construction of the fishpond, which amount said respondent can collect or withdrawn any time. The fact that the tender was made under protest in the sense that petitioner appealed the appraisal made by the lower court, and petitioner refused to withdraw his appeal, is of no moment as the full expenses for the construction of the fishpond to be refunded to respond-ent Arboleda was already consigned in court and was at his disposal.

As We have adverted to, respondent Arboleda did not appeal from the supplemental decision of the lower court, and so he could not be awarded by the appellate court more than what was ordered refunded to him in said decision. Hence, regardless of the outcome of the appeal, respondent Arboleda cannot be prejudiced if pos-session of the property is delivered to petitioner, be-cause said respondent's rights are duly protected by the amount of P2,958.07 already consigned in court by peti-tioner and made available to him any time. The record shows that petitioner had been deprived of the premises for almost sixteen years up to the time when the judgment of the Court of Appeals was rendered. This is a compelling circumstance that warrants the issuance of the writ of execution prayed for by petitioner. There is, indeed, no excuse to keep petitioner waiting for the outcome of the appeal from the supplemental deci-sion, which obviously will not affect his right to the possession of the property. The respondent court can not, in justice, continue to withhold from petitioner the possession of the land where the fishpond is located. The delivery of the possession of that property to him has long been overdue, and to deny him that possession under the circumstances is to exclude him from the use and enjoyment of a right to which he is entitled. Certainly, the remedy of mandamus should be made available to petitioner, as prayed for by him in the present case.

WHEREFORE, the petition for a writ of Mandamus is granted. Respondent court is commanded to issue a writ of execution to enforce the decision of the Court of Appeals in CA-G. R. No. L-14853-R (Civil Case V-438 of respondent court), by ordering respondent Angel Arboleda to collect the amount of P2,958.07 deposited in court by petitioner Enrique Baldesimo and ordering the delivery to said petitioner of the possession of the whole land involved in said case, including the fish-pond mentioned in this decision. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando JJ., concur.
Benzon, J., on official leave of absence.

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