

**SPOUSES ROMEO P. CO AND MARCELITA P. CO, PETITIONERS, VS.
HON. JUDGE SERAFIN SALVADOR, PRESIDING JUDGE OF THE COURT
OF FIRST INSTANCE OF RIZAL, BRANCH XIV, CALOOCAN CITY,
METRO ...**

G.R. No. L-46239. March 18, 1983

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

On September 11, 1974, the herein private respondents, spouses Eduardo R. Memije and Adelaida H. Memije, purchased a house and lot, situated in Concepcion, Malabon, Rizal, from Ruperto Padonan and were issued TCT 457594. But, since "the foregoing land (lot) and house, are still in the actual possession of the Vendor RUPERTO PADONAN and/or the persons claiming under him, and have not relinquished possession of the same to the herein petitioner-spouses," and that "no writ of possession was previously issued in behalf of the petitioner-spouses predecessors," the vendees filed a motion in the original land registration proceedings (GLRO Rec. 1230 of the Court of First Instance of Rizal) for the issuance of a writ of possession and asked to be placed in possession of said property.[1]

The respondent judge, in an order dated December 24, 1976, ordered the issuance of a writ of possession,[2] after the vendor, Ruperto Padonan, interposed no objection thereto, provided that a cash bond of not less than P500.00 be posted to guarantee the expenses for the removal of his personal properties therefrom.[3]

The respondent special Deputy Sheriff Allan Hernandez served the writ of possession upon Ruperto Padonan at the land in question on January 4, 1977,[4] but Ruperto Padonan was no longer residing there. Instead, he found that the property was occupied by the herein petitioners, spouses Romeo and Marcelita Co, who refused to leave the premises. Accordingly, another writ of possession was issued, directing the said spouses to vacate the premises not later than February 25, 1977.[5]

Upon being served thereof, the herein petitioners filed an omnibus motion to quash the writ of possession and to restrain the Sheriff from enforcing the same, claiming that the private respondents, spouses Eduardo and Adelaida Memije, are not entitled to a writ of possession under Act 496 since herein petitioners occupied the lot in question long after the issuance of the decree of registration and not during the land registration proceedings.[6]

The respondent judge, however, denied the motion saying that "the writ of possession was not asked nor issued in a registration case, but in the indefeasible title of the petitioners obtained in a plenary action for possession (accion publiciana) in which the Court of First Instance has full jurisdiction to entertain and decide." [7]

When the petitioners' motion for reconsideration was denied on May 23, 1977,[8] the petitioners filed the present recourse to quash the writ of possession issued by the respondent judge on December 24, 1976.

We agree with the petitioners that the respondent judge was in error. A writ of possession does not lie in registration proceedings when those against whom it is sought to be enforced have acquired and are in possession

of the land, which is the subject of the writ, after the judgment of adjudication was issued.[9] In the present case, the decree of registration was issued in 1908, while the petitioners occupied the property only in 1973 after it was sold to them by Ruperto Padonan prior to its sale to the private respondents, in 1974.

The order of the respondent judge denying the Omnibus Motion for the reason that "the writ of possession was not asked nor issued in a land registration case," is utterly without basis for the ex-parte motion for the issuance of the said writ of possession was filed as an incident in the land registration case.

While under the Land Registration Law (Sec. 46), title to registered land in derogation of that of the registered owner cannot be acquired by prescription or adverse possession, nevertheless, in order to recover the ownership or possession of the land possessed by a third person, it is absolutely indispensable to resort to proceedings established by law. Having been in possession of the disputed parcel of land long after the issuance of the decree of registration, the herein petitioners cannot be ousted through a writ of possession secured by a mere motion. Regardless of any title or lack of title to hold possession of the lots in question, the petitioners cannot be ousted without giving them their day in court in a proper recovery proceedings.

WHEREFORE, the petition is GRANTED and the order of the respondent judge issued on December 24, 1976 is hereby ANNULLED and SET ASIDE. With costs against the private respondents.

SO ORDERED.

Makasiar (Chairman), Abad Santos, De Castro and Escolin, JJ., concur.
Aquino, J., is on leave.

[1] Rollo, p. 11.

[2] Id., p. 24.

[3] Id., p. 15.

[4] Id., p. 31.

[5] Id., p. 32.

[6] Id., p. 33.

[7] Id., p. 42.

[8] Id., p. 50.

[9] Sepagan vs. Dacillo, 63 Phil. 41.

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