

PRIMO ZUÑIGA, PETITIONER-APPELLANT, VS. PABLO MARQUEZ AND EMILIA QUIOGUE, RESPONDENTS-APPELLEES.*G.R. No. L-24148. October 20, 1970*

Ponente: RUIZ CASTRO, J.

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This is an appeal from the order of the Court of First Instance of Rizal of February 8, 1964, in civil case 6190, denying the petitioner-appellant Primo Zuñiga's petition for a writ of possession over a residential lot he purchased at an extrajudicial foreclosure sale.

Zuñiga was the mortgagee and buyer at an extrajudicial foreclosure sale of a parcel of land located in Parañaque, Rizal, covered by Transfer Certificate of Title 94479 of the Registry of Deeds of Rizal in the name of Enrique Legarda, Jr. During the period for redemption, Zuñiga filed with the lower court a petition praying that a writ of possession over the said property issue in his favor. This petition, unopposed by Legarda, was granted, and on May 24, 1963 a writ of possession was issued in Zuñiga's favor.[1]

Enforcement of this writ was however stayed by a preliminary injunction issued by the Pasay City Branch of the Court of First Instance of Rizal in civil case 477-R, filed by the spouses Pablo Marquez and Emilia Quiogue (oppositors-appellees herein) against Legarda and Zuñiga, for the annulment of a contract of sale with mortgage as well as a deed of cancellation of mortgage over the above-mentioned property executed by the said spouses in favor of Enrique Legarda, Jr. The injunction was, however, subsequently lifted, and on September 2, 1963 an alias writ of possession was, upon motion of Zuñiga, issued by the court a quo.

In the meantime, on August 27, 1963, the spouses Marquez moved to dissolve or suspend the writ of possession issued on May 24, 1963, alleging that they are the owners of the property registered in the name of Enrique Legarda, Jr. and that the latter succeeded in registering in his name the said property through his and Zuñiga's fraudulent acts and misrepresentations.[2]

On September 7, 1963 the spouses Marquez executed a letter authorizing Zuñiga to take possession of the property in question, and the latter accordingly assumed possession thereof. On October 19, 1963, however, the spouses Marquez filed with the court below a "Motion to Admit Memorandum" in which they (1) alleged that they left the property only to avoid harassment against members of their family, and (2) argued that third persons in honest adverse possession of a piece of property may not be dispossessed by a writ of possession. The court below at first denied the motion, but subsequently reconsidered and granted it on February 8, 1964, over the vigorous objection of Zuñiga who, invoking the provisions of sections 6 and 7 of Act 3135, as amended by Act 4118, contended that the writ of possession having already been executed, the lower court no longer had jurisdiction to cancel the writ (or, for that matter, issue another writ of possession) because the one-year period of redemption had expired on January 31, 1964.

On June 29, 1964 Zuñiga lodged the present appeal, failing twice to secure reconsideration of the order of February 8, 1964.[3]

On January 26, 1966, after this appeal was submitted for decision, a completely radical development ensued. Assisted by counsel, Pablo Marquez, for himself and as guardian of his two minor children (his wife Emilia Marquez had died in the meantime), filed a motion with this Court praying (a) that the order a quo of February 8, 1964 and all orders related thereto be set aside, and (b) that judgment be rendered declaring Zuñiga the absolute and exclusive owner of the property in question. This motion bears the conformity of Zuñiga and the latter's counsel.

On February 1, 1966 this Court issued a resolution granting the first prayer, but deferring action on the second until consideration on the merits. This resolution has rendered moot and academic and purposeless a further discussion of the merits of the orders issued by the court a quo.

On the other hand, the prayer that Zuñiga be declared the owner of the property involved in this litigation cannot be granted in this appeal, since it asks for a judgment upon an issue not only not litigated below but as well completely irrelevant to the orders of the lower court subject of this appeal.

ACCORDINGLY, the present appeal is hereby dismissed. No pronouncement as to costs.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., on official leave.

[1] The order for issuance of the writ of possession is dated May 8, 1963.

[2] It was alleged that on December 19, 1961, the spouses entered into a "Contract of Sale with Mortgage" with E. Legarda, Jr. for P40,000, 50% of which was to be paid upon the execution of the contract and the balance within the year; that the checks tendered by Legarda for the down payment were all dishonored; that Zuñiga, who Legarda told them was a bank investigator, assured the spouses that a loan being applied for by Legarda at his bank would be a proved if the mortgage annotation on the certificate of title was cancelled, for which reason they executed a "Deed of Cancellation of Mortgage;" and that they learned later that Zuñiga was not a bank investigator and that Legarda had never filed loan application.

[3] The first motion for reconsideration dated February 18, 1964 was denied on March 18, 1964; the second motion for reconsideration dated April 16, 1964 was denied on June 11, 1964.

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