

CRISANTO SAN MIGUEL, RUFINA SAN MIGUEL, ALEJANDRO SAN MIGUEL, VICENTE SAN MIGUEL, ROSARIO SAN MIGUEL, GLICERIA SAN MIGUEL, AGRIFINO SAN MIGUEL, JOSEFA SAN MIGUEL, LUISITO PEÑA, ...*G.R. No. L-48210. January 31, 1984*

Ponente: DE CASTRO, J.

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Petition for review on certiorari of the decision of respondent Court of Appeals now the Intermediate Appellate Court, dated December 12, 1977 in CA-G.R. No. SP-07186 which dismissed petitioners' petition for certiorari, pro-hibition and mandamus, with preliminary injunction. The petition was denied for lack of merit in the Resolution of this Court dated August 14, 1978[1] but on motion for re-consideration, was given due course as per Resolution dated February 28, 1979.[2]

Records show that on January 29, 1969, Cipriano del Carmen, later substituted by herein private respondent Hermogenes del Carmen, commenced on action in the Court of First Instance of Bulacan, Branch V (docketed as Civil Case No. SM-235) against herein petitioner Rosalinda San Juan-Rafols and the estate of the deceased Romeo San Juan for recovery of the possession and ownership of a 1,300 square meter parcel of unregistered residential lot situated in the Poblacion of Marilao, Bulacan. Judgment was rendered in favor of private respondent Hermogenes del Carmen on January 16, 1970, the dispositive portion reading, thus:

"IN VIEW OF THE FOREGOING, judgment is rendered in favor of the plaintiff and against the defendants, ordering the latter to vacate and to deliver the peaceful ownership and possession of the subject parcel of land to the former; to pay, jointly and severally, the sum of P8.00 a month commencing from the filing of the complaint until they finally vacate the premises; and to pay also, jointly and severally, the sum of P1,000.00 as and for attorney's fees, plus costs of the suit.

"Defendants' counter claim is hereby dismissed for lack of merit."

Appealed to the former Court of Appeals, the decision was affirmed on August 22, 1975. On November 7, 1975, the decision of the Court of Appeals was brought before the Supreme Court which, however, denied the petition in its Resolution of January 15, 1976. The records of the case were remanded to the lower court for execution of the judgment which had become final and executory.

On March 31, 1976, private respondent Hermogenes del Carmen moved for the issuance of a writ of execution. The writ was issued on April 20, 1976, together with an order of demolition.

Before the writ of execution could be enforced and the order of demolition implemented, Ramon Rafols (husband of petitioner Rosalinda San Juan-Rafols) and Crisanto San Miguel filed third-party claims with the Office of the Provincial Sheriff. Private respondent Hermogenes del Carmen opposed the same as defective in form and substance. The lower court disapproved the claim of Ramon Rafols but allowed that of Crisanto San Miguel. It

approved the bond of P25,000 posted by private respondent Hermogenes del Carmen and gave due course to the enforcement of the writ of execution and the order of demolition.

On March 7, 1977, herein petitioners, as plaintiffs, filed a complaint with prayer for preliminary injunction (Civil Case No. 5050) before the Court of First Instance of Bulacan, Branch VII, to annul the judgment rendered by the Court of First Instance of Bulacan, Branch V in Civil Case No. SM-235 based mainly on the fact that the Supreme Court as early as February 15, 1935 in the case of Antonio Bernardino vs. Benito San Juan and Felina del Carmen (G.R. No. 41496) had held that "Cipriano del Carmen was not shown by the record to be the owner of the land which was the subject of the controversy in Civil Case No. SM-235, as the deed of sale executed by Leoncia Aquino in favor of Cipriano del Carmen was not valid, she being already old and senile at the time of the execution of the sale." Civil Case No. 5050 was transferred to respondent court (Branch V) and docketed as Civil Case No. SM-775.

Private respondents, as defendants filed a motion to deny the application for a writ of preliminary injunction and for the dismissal of the complaint on the grounds that the complaint did not state a cause of action and that the supposed cause of action was barred by a prior judgment under sub-section (a), section 49, Rule 39 of the Rules of Court.

On September 22, 1977, respondent Judge issued an order a) denying the motion to dismiss, and b) ordering petitioners to file a bond of P50,000 in favor of private respondents, upon compliance of which, a writ of preliminary prohibitory injunction to suspend enforcement of the writ of execution and order of demolition in Civil Case No. SM-235 shall be issued. Petitioners moved for the reduction of the bond from P50,000 to P5,000 alleging that - a) the only possible damage that may be caused to the defendants (private respondents) by virtue of the injunction is the reasonable value for the use and occupation of said parcel of land; b) of the several plaintiffs in this case, only the plaintiffs Crisanto San Miguel and Rosalinda San Juan-Rafols have houses on the land, occupying about 350 square meters, and this area should be the basis for the fixing of the amount of the bond.

Private respondents opposed the motion to reduce the amount of the bond on the ground that the amount of the bond (P50,000) fixed by the respondent court is not solely nor merely for the use, occupancy or by way of rental of the land held by petitioners but for the value of the property of which private respondents have been deprived, plus whatever damages they may have suffered and such sums the Court may ultimately award the private respondents by reason if not only for having been deprived of ownership and possession but also such other sums they may be entitled to by reason of the filing of the instant case.

On October 18, 1977, respondent Judge denied the motion for reduction of bond in the Order^[3] reading as follows:

"The grounds for and against the partial reconsideration to reduce injunction bond raised in plaintiffs' motion and defendants' opposition, respectively, having been considered; and its appearing that plaintiffs' counsel in his pleadings dated September 13, 1976 and October 2, 1976 in a related case docketed as Civil Case No. SM 235 pending before this Court, represented the market value of the properties of two-third party claimants to be P50,000, which representation was accepted by Branch VII of this Court such that when only the third-party claim of Crisanto San Miguel was given cognizance by the same Court, it required defendants (plaintiffs there) to post a P25,000 bond to answer for such third-party claim as a pre-condition for the issuance of the writ of execution and order of demolition, which bond defendants subsequently posted and accordingly the said writ and order were issued but whose enforcement was held in abeyance pending outcome of the petition here for issuance of preliminary injunction; and considering that even on the bases alone of the said third-party claims, not to mention the market value of the land subject matter of the suit, in that Civil Case, the market value of the properties amounted already to P50,000; the Court, finding the amount fixed for the bond in the instant case to be reasonable, denied the motion, and hereby orders that the bond, fixed at P50,000 to answer for any and all

damages that may be suffered by defendants, be filed not later than seven (7) days from today; otherwise the writ of execution and order of demolition issued in Civil Case No. SM-235 shall immediately be enforced upon expiration thereof."

Petitioners, then, filed with the respondent Court of Appeals a petition for certiorari, prohibition and mandamus, with preliminary injunction to annul, and set aside the Orders dated September 22 and October 18, 1977 of respondent Judge in Civil Case No. SM-775 and to order him to fix at P5,000 the amount of bond to be put up by petitioner for the issuance of the writ of preliminary injunction in said case.

On December 12, 1977, respondent Court of Appeals rendered a decision dismissing the petition for certiorari, prohibition and mandamus filed by petitioners, holding that:

"We see no reason, therefore, to set aside the questioned orders of respondent Judge in fixing the amount of the bond for the issuance of a writ of preliminary injunction at P50,000 since the determination of the amount was not done whimsically, arbitrarily or without basis for the prerogative writs sought herein to lie." [4]

A motion for reconsideration was filed by petitioners but the same was denied by respondent Court of Appeals in its Resolution dated April 26, 1978.[5] Hence, this present recourse, petitioner alleging that respondent Judge acted with grave abuse of discretion in fixing the bond for the issuance of the writ of preliminary injunction at P50,000 considering that the damage which may be claimed by private respondents is only the reasonable compensation for the use and occupation of the land which is legally measured by the fair rental value of the property.

The sole issue to be resolved in this case is whether or not respondent Judge acted with grave abuse of discretion in requiring petitioners to post a bond for the issuance of a writ of preliminary injunction at P50,000 and subsequently refusing to reduce it to P5,000, as prayed for by petitioners.

Section 4 (b), Rule 58 of the Rules of Court provides:

"Sec. 4. Verified complaint and bond for preliminary injunction. A preliminary injunction may be granted only when:

"(a) x x x

"(b) The plaintiff filed with the clerk or judge of the court in which the action is pending a bond executed to the party enjoined, in an amount to be fixed by the court, to the effect that the plaintiff will pay to such party all damages which he may sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto."

Under the above rule, the posting of a bond is a condition sine qua non in order that the writ of preliminary injunction may issue, the purpose of the bond being to secure the defendant against whatever damages he may suffer as a result by reason of the injunction if the same should be declared as wrongly issued.[6] However, the amount of the bond to be posted is addressed to the sound discretion of the trial court which should not be interfered with except in case of grave abuse of such discretion. Hence, the trial court may fix any amount for the bond so long as it is not done arbitrarily, capriciously, or without basis.

Petitioners do not claim-and they cannot claim-that in fixing the bond for the issuance of the writ of preliminary injunction at P50,000 and refusing to reduce it to P5,000 as prayed for by them, respondent Judge acted in a despotic or arbitrary manner. On the contrary, the amount of the bond required by respondent Judge is reasonable and justifiable under the circumstances obtaining in the instant case. Firstly, in fixing the amount of the bond at P50,000 respondent Judge took into consideration the market value of the subject property which is admittedly P50,000 and the fact that when only the third-party claim of petitioner Crisanto San Miguel was given cognizance

by the court, private respondent Hermogenes del Carmen was required to post a bond of P25,000 in order that the writ of execution be enforced and the order of demolition implemented.[7] Secondly, as correctly pointed out by respondent Court of Appeals, the damages which private respondents may suffer by virtue of the issuance of the writ of preliminary injunction are not limited to the rent due for the use and enjoyment of the 350-square meter portion occupied by petitioners Crisanto San Miguel and Rosalinda San Juan Rafols but include those that may arise from their inability to enjoy the ownership and possession of the subject lot, with a market value of P50,000, pursuant to the final and executory decision in Civil Case No. SM-235 in favor of private respondents.

We, therefore, hold that respondent Judge did not act with grave abuse of discretion in requiring petitioners to file an injunction bond in the amount of P50,000 and refusing to reduce it at P5,000 as prayed for by petitioners.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, without pronouncement as to costs. In granting the motion for reconsideration in order to give due course to their petition already denied for lack of merit on August 14, 1978, petitioners got a breathing spell of considerable length. SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Aquino, J., no part.

[1] p. 70, Rollo.

[2] p. 100, Rollo.

[3] Annex "G" to the Petition, pp. 51-52, Rollo.

[4] p. 32, Rollo.

[5] p. 34, Rollo.

[6] *Commodity Financing Co. Inc., vs. Jimenez*, 91 SCRA 57, 66.

[7] p. 3, Annex "F" to the Petition, p. 49, Rollo.

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