

FLORANTE ILETO, EX AL., PETITIONERS VS. HON. HERMOGENES, CALUAG, ET AL., RESPONDENTS.*G.R. No. L-22440. July 30, 1966*

Ponente: REYES, J.B.L., J.

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Petition for a writ of prohibition, with preliminary and mandatory injunction against the respondents, Hon. Hermogenes Caluag, Judge of the Court of First Instance of Rizal, Branch IV, J. M. Tuason and Company, Inc., and the sheriff of Quezon City to restrain them from issuing or acting on any writs of execution and demolition of houses that may be issued in Civil Case No. Q-4033, entitled "J. M. Tuason & Co. vs. Onofre Villacorte", of the Court of First Instance of Rizal (Quezon City Branch) during the pendency, and until final resolution, of Civil Case No. 6714, entitled "Celestino, et al., vs. J. M. Tuason & Co., et al., of the same court (Pasig, Rizal).

The petition was captioned for, and filed in, the Supreme Court on 10 February 1964 but its petitory portion was erroneously addressed to the Court of Appeals; this, notwithstanding, this Court gave due course to the petition but, on 10 April 1964, after respondents' answer and petitioners' reply were filed, denied the writ of preliminary injunction or a protective order to stay execution, prayed for by the petitioners in their motion of 6 March 1964.

In Civil Case No. Q-4033, J.M. Tuason & Company had sued Onofre Villacorte, as sole defendant, for the recovery of possession of a parcel of land allegedly within its Transfer Certificate of Title No. 1267 (37686-Rizal) of the Register of Deeds of Quezon City (more popularly known as the Tatalon Estate) and the removal of certain constructions thereon. The respondent court rendered judgement by default on 5 May 1959 and, thereafter, on 24 February 1960, issued a writ of execution. The writ was returned unsatisfied, whereupon, on 28 April 1960, the company filed a motion for demolition. On 5 May 1960, the said Onofre Villacorte, together with Florante Iletto, filed in the Court of Appeals a petition, docketed as CA-G.R. No. 27433-R, for prohibition and certiorari with preliminary injunction against the same respondents herein to stop them from carrying out the final judgment in said Civil Case No. Q-4033. On 27 July 1961, the Court of Appeals decided for the petitioners in a consolidated decision (involving 89 cases in all); but the Supreme Court, on 30 September 1963, in its cases G. R. Nos. L-18932-34, L-19024-35 and L-19036-44, annulled and set aside the Court of Appeals decision "without prejudice to the appropriate action on the part of the lot occupants to enforce whatever other rights they might have, if any, against J. M. Tuason and Company".

On the strength of the aforequoted no-prejudice clause in the Supreme Court decision, Florante Iletto, along with other plaintiffs, sued J. M. Tuason & Co. and Gregorio Araneta, Inc., for specific performance and/or reconveyance in the Court of First Instance of Rizal and docketed therein as Civil Case No. 6714. The cause was dismissed by that court.

By means of the present petition, the petitioners seek to prohibit the respondents, Hon. Hermogenes Caluag, Judge of the Court of First Instance of Rizal, Branch IV, J. M. Tuason & Co., Inc. and the sheriff of Quezon City from executing the final judgment in Civil Case No. Q-4033 pending the termination of Civil Case No. 6714, upon the

ground that any relief that may be rendered in their favor in the latter case would be rendered nugatory and without effect by the execution of the judgment in the former case.

It appearing, however (Answer to the Petition, Annex "A"), that said Civil Case No. 6714, of the Court of First Instance of Rizal, was dismissed on 3 February 1964, this Court, as already stated, declined to issue a writ of preliminary injunction. And there being no showing that since then up to the present the said order of dismissal has been reversed on appeal, or otherwise set aside, the basis for the action at bar has disappeared.

Wherefore, the writ of prohibition and injunction originally prayed for is denied, with costs against petitioned.

Concepcion, C. J., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Writ denied.

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