

ONOFRE P. GUEVARA, PETITIONER, VS. JUSTINO HERMOSO, COURT OF FIRST INSTANCE OF MALOLOS, BULACAN, AND THE EX-OFFICIO PROVIN-CIAL SHERIFF OF MALOLOS, BULACAN, RESPONDENTS.*G.R. No. L-28241. August 06, 1971*

Ponente: TEEHANKEE, J.

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An original action of certiorari to set aside a final judgment of respondent court of first instance of Bulacan and to enjoin its execution.

The seemingly plausible and urgent allegations of petitioner in his petition filed on November 7, 1967, averred that petitioner was deprived of the ownership of a parcel of land under the judgment of September 4, 1963, rendered by respondent court in Civil Case No. 2187 thereof entitled "Justino Hermoso, plaintiff vs. Onofre P. Guevara and Bartolome Barcelino, defendants" up-holding private respondent's therein complaint as plaintiff against herein petitioner as defendant, and declaring respondent as absolute and exclusive owner of the land (lot 567-A of the Malinta estate in Polo, Bulacan, evidenced by transfer certificate of title No. T-18603 issued in respondent's name) and ordering defendants to vacate the premises and to pay jointly and severally the sum of P500.00 as attorney's fee; that the judgment was rendered after ex-parte hearing (respondent court having arbitrarily denied petitioner's counsel's telegraphic request for postponement of the scheduled hearing despite numerous previous postponements granted to respondent), and decreed respondent to be the owner of the disputed property "on the basis of (his) lone uncorroborated testimony"; and that petitioner was never served a copy of the decision and it was only when the court below had issued a writ of execution and demolition of the house in the property that the herein petitioner knew of the decision, and it was already very, very much too late for an ordinary appeal in the ordinary course of law; hence this petition for certiorari."

The Court accordingly required respondents to answer the petition, and upon petitioner's filing of a P1,000.00-injunction bond, issued on December 8, 1967 a writ of preliminary injunction restraining enforcement of the writ of execution and demolition issued in the case below.

The answer filed by respondent and the memoranda (in lieu of oral argument) submitted by the parties, however, do not bear out petitioner's version and tell a different story.

Thus, it is brought out that while respondent had obtained some four postponements of the case, they were apparently for good reasons and were granted without objection on petitioner's part,[1] while the other postponements were to afford the parties ample time to work out a possible settlement[2] or upon petitioner's motion due to stomach trouble[3] or for lack of proof of notice to petitioner.[4]

At the hearing set by the parties' agreement for August 20, 1963, neither petitioner nor his counsel appeared, and respondent court in its order given in open court[5] designated its deputy clerk to receive respondent's evidence. Respondent's assertion that the telegraphic request of petitioner's counsel for postponement of the hearing must have arrived late on the morning of the hearing and after respondent had finished the presentation of his evidence

and must have been therefore properly disregarded by respondent court, must be accepted in the light of the record. Neither the order of August 20, 1963 designating the clerk to receive the evidence nor the decision of September 4, 1963[6] makes any reference to the alleged telegram for post-ponement. No copy thereof is submitted here by petitioner. Neither does petitioner allege here what steps, if any, he or his counsel took afterwards to ascertain the court's action thereon and to seek reconsideration of its denial per respondent court's order of August 20, 1963,[7] copy of which petitioner does not even disclaim having received in due course.

Contrary to petitioner's assertion, respondent court's decision complained of was not merely based on respondent's "lone uncorroborated testimony" but traced by documentary evidence respondent's chain of title to the property from the time of its original certificate of title No. 374 embracing several parcels down to December 16, 1938, when respondent purchased the lot (now known as lot 567-A with an area of 14,785 square meters, evidenced by TCT No. T-28603 issued in respondent's name) from Brigida Hermoso, who in turn had acquired the same on June 16, 1932 by purchase under pacto de retro from Bartolome Barcelino and consolidated ownership thereto in the land registry since March 9, 1935. Said Bartolome Barcelino, petitioner's co-defendant, "allowed himself to be defaulted, not having anymore interest in the land" according to the petitioner[8] and is claimed by petitioner to be the same source of his claimed title to the land, by an alleged purchase from him only in 1955. Petitioner has, however, not submitted any muniments of title nor deed of sale to substantiate his claim of title and show a superior right than respondent's.

At any rate, petitioner has not here disputed nor denied respondent's averment that copy of respondent court's adverse decision was duly served on him (petitioner) by registered mail on September 6, 1963, under registry receipt No. 5392 at his law office in Dagupan City, where all previous court notices and orders were duly served on him. The records further show, according to respondent and petitioner makes no denial, that respondent filed his motion for execution of judgment on December 7, 1965, "copy of which was served personally upon (petitioner) Guevara at his office at the Department of Labor in Manila, he being then the Secretary of Labor;"[9] and that petitioner took no steps to properly contest the motion for execution, which was duly granted.

Under these circumstances, petitioner is clearly barred by his own inaction and laches for more than four years after the judgment, from seeking to avail of the present special action of certiorari to set aside the adverse judgment of respondent court and to restrain enforcement of the writ of execution and demolition. Petitioner failed to avail of the adequate remedies in the ordinary course of law, viz, timely move for reconsideration of the judgment and ask for new trial or file a petition for relief from judgment and in either case, appeal from the judgment and from the order denying new trial or relief from the judgment. Furthermore, all the questions raised by petitioner, such as the denial of his motion for postponement and the correctness of respondent court's judgment, raise questions of errors of law which should be taken up in an appeal and do not involve jurisdictional errors which may properly be raised and corrected by certiorari. It is settled dogma that where appeal as an adequate remedy has been lost through petitioner's fault or negligence, he will not be permitted to avail of certiorari as a substitute for an appeal.[10] It is finally patent that petitioner has failed to make out a clear case of respondent court having acted in the premises without or in excess of jurisdiction or with grave abuse of discretion, that would render void the challenged judgment.[11]

ACCORDINGLY, the petition is dismissed and the writ of preliminary injunction heretofore issued is dissolved. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., on leave.

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- [1] Annexes D-3, D-4, D-5 and D-6, petition.
 - [2] Annex D-1, petition.
 - [3] Annex 2, answer.
 - [4] Annex D-2, petition.
 - [5] Annex E, petition.
 - [6] Annex F, petition.
 - [7] Annex E, petition.
 - [8] Petition, par. 4.
 - [9] Respondent's memorandum, p. 4; Annex 4, Answer.
 - [10] Rule 65, sec. 1; Vide 3 Moran's Comments, 1970 Ed. p. 168 et seq.
 - [11] Vide Fernando vs. Vasquez, 31 SCRA 288 (January 30, 1970).

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