

**BENJAMIN SERRANO AND PATERNO SAMANIEGO,
PLAINTIFFS-APPELLEES, VS. JOSELITO B. YOUNG, ADELAIDA B.
BILANO, HEIRS OF LYDIA MERCADO, HEIRS OF REYNALDO
MERCADO AND REGISTER OF DEEDS ...**

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

In this action to recover ownership or to quiet title to property, defendants Heirs of Lydia Mercado appeal the adverse decision rendered on January 31, 2001 by the Regional Trial Court (RTC), Branch 94, in Quezon City. The background facts follow.

Plaintiff Benjamin Serrano commenced this suit to recover the ownership of or to quiet title of the parcel of land described in Transfer Certificate of Title No. 105925 of the Registry of Deeds of Quezon City, located at No. 36 Scout Tobias Street, Quezon City, and its improvements. The defendants were originally Joselito B. Young and Adelaida B. Bilano, the natural children and only surviving heirs of their late mother, Asuncion Ballecer, who had been the registered owner who had sold the property to him by a deed of absolute sale dated March 2, 1985 as.

The complaint was amended on March 11, 1986 to implead Spouses Reynaldo C. Mercado and Lydia Corrales-Mercado and the Office of the Register of Deeds of Quezon City also as defendants. Serrano claimed that the Mercados had acted in bad faith in their acquisition of the property in litis.

The Mercados averred in their answer with counterclaim that they had bought the property in good faith and for valuable consideration by virtue of the extra-judicial settlement of the intestate estate of Asuncion Ballcer with deed of absolute sale dated December 18, 1985, executed by Young and Bilano; that they learned of the adverse claim annotated by the plaintiff on TCT 105925 on January 16, 1986 only after the issuance of TCT 339869 in their name by the Register of Deeds of Quezon City (canceling TCT 105925) and had no notice of any liens and encumbrances on the property prior thereto; that the sale of the same property to the plaintiff was void and lacked the legal requisites for a valid sale; and that the sale was unenforceable against the defendants who had registered their title first and ahead of the plaintiffs and, therefore, had a better right.

As counterclaim, the Mercados claimed that the filing of the baseless and unwarranted case against them entitled them to moral damages of P200,000.00, exemplary or punitive damages whose amount they left to the sound discretion of the court, and attorney's fees of P50,000.00.

The Mercados died during the pendency of the action, Reynaldo on September 10, 1994 and Lydia on March 17, 1998. Reynaldo was substituted by his own children from a previous marriage, namely: Ma. Lourdes M. Castillo; Ma. Asuncion M. Laragan; Ma. Cristina M. Bautista; Ma. Theresa M. Tan; and Ma. Cecilia M. Rosal. Lydia was substituted by her own children from a previous marriage, namely: Norma C. Cervantes, Ma. Cristina C. De Leon, and Renato Carbungco.

For his part, Young filed a so-called sagot sa demanda, containing 2 attachments, a sinumpaang salaysay and a

karagdagaang sinumpaang salaysay. The RTC directed Young to secure counsel that he might be fully represented at the trial, warning him that his failure to do so would lead to the expunging of his pleadings from the records.

The case was later dismissed without prejudice as to Bilano after she could not be served with summons.

Paterno Samaniego, who bought the property in the public auction, executed a compromise agreement with Serrano by assigning the property to the latter. Thereafter, Serrano filed a motion for substitution praying that Samaniego be substituted for the Spouses Mercados within the context of the former Sec. 20, Rule 3, Revised Rules of Court (now Sec. 19, Rule 3, 1997 Rules of Civil Procedure). The Mercados opposed. The RTC denied the motion and declared Samaniego to have voluntarily appeared and that he should be impleaded as a co-plaintiff.

Serrano and the Mercados presented their testimonial and documentary evidence. The RTC's exhaustive summary of the factual aspects of the case, which we adopt herein, follows:

xxx ASUNCION BALLECEER, a widow, died intestate on August 20, 1983, leaving behind her natural children and legitimate heirs—herein private defendants Joselito B. Young and Adelaida B. Bilano. The deceased, at the time of her death, was the registered owner of a parcel of residential land with improvements existing thereon located at No. 36 Scout Tobias Street, Quezon City, covered by Transfer Certificate of Title No. 105925 which is now the subject realty in controversy.

Private defendants Young and Bilano, through Jose Verde, offered to sell the questioned real property to plaintiffs Serrano and being an interested buyer, plaintiff went to inspect the lot and house being offered to him for sale. At that time, the subject house in question was found to be with no toilet, no electricity, no water and there were leakages on its roof during rainy days. Also, at the time of inspection, the said house was then occupied by four (4) families, Joselito Young and his wife, Adelaida Bilano and children, one family was renting the master's bedroom and another was renting the garage.

During their initial meeting, defendants Young and Bilano informed plaintiff Benjamin Serrano that the administrator of the subject property was Atty. Prospero Crescini, hence, they all proceeded to the lawyer's law office located at the corner of Timog and Quezon Avenue, Quezon City, wherein the plaintiff intimated to Atty. Crescini that he was interested in buying the house and lot to which the lawyer replied: "Well, you can have it. I will be the one to prepare everything. I am the administrator of it since the time of Aurora Ballecer" (p. t. TSN, September 13, 1988). On the same occasion, Atty. Crescini informed the plaintiff that he would first prepare the extra-judicial partition to be executed by Young and Bilano involving the subject house and lot and assured the plaintiff that he would undertake the publication of the extra-judicial partition and thereafter, upon issuance of the land title in the names of Young and Bilano, he would then prepare the Deed of Sale signed by Young and Bilano with the stipulated purchase price of Four Hundred Thousand Pesos (P400,000.00).

However, prior to the preparation of the documents by Atty. Crescini, plaintiff gave money advances to Young and Bilano upon their request (p. 6, TSN, September 13, 1988) and these cash advances were made on the following occasions:

- a) Exhibit A – Receipt dated November 12, 1984 in the sum of P1,000.00 signed by Joselito and Wilma Young;
- b) Exhibit A-1 – Receipt dated November 23, 1984 signed by Adelaida Bilano and Wilma Young in the sum of P2,000.00;
- c) Exhibit A-2 – Receipt dated December 11, 1984 signed by Wilma Young and Adelaida Bilano in the sum of P2,000.00;

- d) Exhibit A-3 – Receipt dated December 22, 1984 signed by Adelaida Bilano in the sum of P500.00;
- e) Exhibit A-4 – Receipt dated January 30, 1985 in the sum of P38,000.00 signed by Joselito Young and Adelaida Bilano;
- f) Exhibit A-5 – Receipt dated February 15, 1985 in the sum of P6,000.00 signed by Joselito Young and Adelaida Bilano;
- g) Exhibit A-6 – Receipt dated April 3, 1985 in the sum of P250,000.00 signed by Joselito Young and Adelaida Bilano (pp. 8-12, TSN, September 13, 1988).

Corollary, Atty. Crescini also asked the plaintiff to shoulder the payments of the inheritance tax, capital gains tax and the documentary stamps paid for the sale of the subject property to which the plaintiff obliged as he paid P8,648.82 for the inheritance tax (Exhibits B and B-1), capital gains tax in the sum of P3,499.50 (Exhibits C and C-1) and documentary stamps in the sum of P8,642.00 (Exhibits D and D-1) (p. 14, TSN, September 13, 1988)

As promised by Atty. Crescini, Young and Bilano executed an Extra-Judicial Partition (Exhibit F) of the subject property and the same was published in the “Economic Monitor” on June 3, 10 and 17, 1985 (Exhibits G and G-1). The publication expenses in the sum of P3,000.00 was also shouldered by the plaintiff (p. 3, TSN, October 4, 1985).

On March 2, 1985, Joselito Young and Adelaida Bilano executed a Deed of Sale in favor of herein plaintiff Benjamin Serrano whereby the house and lot under Transfer Certificate of Title No. 105925 still in the name of deceased Asuncion Ballecer was sold to the plaintiff (Exhibits E – E-3). However, upon Young’s suggestion, two (2) Deeds of Sale was prepared and executed by the vendor-defendants Young and Bilano, one in the amount of P400,000.00 (Exhibit E) and the other with a consideration of P250,000.00 (Exhibit 1) for purposes of paying the capital gains tax (p. 5, TSN, April 20, 1989). Both documents were signed and executed at Atty. Crescini’s office by the private defendant/vendors Young and Bilano in the presence of the plaintiff, Atty. Crescini and Young’s wife – Wilma.

On April 3, 1985, upon plaintiff Serrano’s payment of P250,000.00 (Exhibit A-6) to defendants Young and Bilano, he simultaneously transferred some appliances and fixtures at the subject premises in dispute located at No. 36 Scout Tobias St., Quezon City, consisting of a sala set, a dining set, two beds, a TV set, and other appliances (p. 17, TSN, September 13, 1988). A day earlier, Lydia Erasmo, who was renting the master’s bedroom and Estrella Ferre, the one renting the garage, moved out of the premises, whereas Adelaida Bilano and her family transferred to Scout Rallos on April 5, 1985. However, Joselito and Wilma Young asked that they be allowed to stay in the premises in the meantime.

On even date of April 3, 1985, plaintiff also placed in possession of the questioned premises Luis Figueras, Cornelio Rance and one Mendez as his caretakers in the said realty.

Soon after the last publication of the Extra-Judicial Partition in the “Economic Monitor”, the plaintiff visited Atty. Crescini at his law office for the preparation of the appropriate documents in order that he can already transfer the title in his name but Atty. Crescini told him to come back as he had still to talk to Young whom he had not seen for quite sometime. The plaintiff went to visit the lawyer twice thereafter but each time, he was told that Young could not be located so Atty. Crescini told him: “You better see him and talk to him and tell him to go to the office to talk about the matter (p. 4, TSN, October 4, 1988). About November, 1985, the plaintiff saw Young at No. 36 Tobias St., Quezon City, and told the latter to see Atty. Crescini at his office. Later, on December 29, 1985, Bilano and her daughter went to plaintiff’s residence at No. 1140 España, Manila, and asked for an advance payment to be spent for her child’s baptism but the plaintiff told her that he will just go to their place the next day, December 30, 1985, because he wanted to talk to both Young and Bilano after which, he will give the money. As promised, plaintiff met Young and Bilano the next day at the

questioned premises and he gave them P2,000.00 to which the defendants executed a receipt of even date (Exhibit H).

In the meantime, on or about September, 1985, Young met defendants Reynaldo Mercado and Lydia Corrales-Mercado through the latter's son named Rey Carbungco. The defendant-spouses intimated to Young that they were interested to buy the house and lot at No. 36 Scout Tobias St. but Young told them that the house was already sold to "somebody" referring to the plaintiff Serrano. At this juncture, the Mercados asked Young if they can see the title to which the latter obliged and while scrutinizing the said land title, they asked Young again if they can borrow it for verification purpose with the Register of Deeds. Young gave the latter to the Mercados (pp. 3-4, TSN, September 22, 1989). The title was placed in a brown envelope together with some letters of Atty. Crescini to Young as well as a copy of the Deed of Sale to the plaintiff Serrano. The letters referred to by Young are those addressed to him by Atty. Crescini which were dated September 23, 1985 (Exhibit L); October 7, 1985 (Exhibit M); October 10, 1985 (Exhibit N) and October 15, 1985 (Exhibit O).

The letters of Atty. Crescini addressed to Young on various dates were made when the plaintiff was following up at Atty. Crescini's office the transfer of title in his name and these were sent to Young, when despite having told by the plaintiff when they saw each other at the subject premises, sometime in November, 1985 to see Atty. Crescini at the latter's law office, refused to deliver the title and other pertinent documents to the Atty. Crescini. This was the main reason which prompted Atty. Crescini to write those letters, all demanding that Young deliver the documents to him in order that the title could be transferred to plaintiff Serrano.

However, instead of delivering the title and other documents to Atty. Crescini, defendant Young attempted to entice Atty. Crescini with a 20% commission on the purchase price if he could maneuver to render ineffective or cancel the Deed of Sale which he and his sister Bilano had already executed in favor of plaintiff Serrano but Atty. Crescini rejected the offer for being illegal and immoral (p. 9, TSN, October 26, 1990).

The defendant-spouses Mercado did not return anymore the title they borrowed from defendant Young and defendant Reynaldo Mercado even scolded him when Young was trying to retrieve the said title from him.

Sometime in December 18, 1985, the Mercados requested defendants Young and Bilano to sign and execute a Deed of Sale of the subject house and lot at No. 36 Scout Tobias St., Quezon City, in favor of the defendant-spouses although the same was already sold to plaintiff Serrano (p. 6, TSN, June 22; Exhibits P, P-1 and P-2). Simultaneously, Young and Bilano likewise executed an extra-Judicial Settlement of the Intestate Estate of Asuncion Ballecer.

Corroboratively, in the "Sinumpaang Salaysay" (Annex 2 of Young's Sagot sa Demanda), he averred under par. 6 thereof the following:

6. Dahil sa paghimok ni G. Mercado, ako ay pumayag. Ang usapan ay babayaran kami ng halagang P600,000.00 Pinirmahan naming ang Deed of Sale para G. Mercado noong bandang Disyembre, 1985. Ito ay bago mag-Pasko. Pinalabas sa dokumento na kami ay nabayaran na ng halagang P500,000.00. Ang katotohanan ay hindi niya kami nabayaran ng ganoong halaga. Isinasama ko sa aking affidavit na ito ang isang dokumento na mula noong Disyembre 22, 1985, may utang siya sa aming na P482,000.00. Ang katotohanan pati ang P8,000.00 na sinasabi sa dokimentong ito ay hindi niya naibigay sa amin.

After Young and Bilano signed the Deed of Sale in favor of the defendant Mercados, the defendant-husband Mercado told him that it was necessary to eject the caretaker of plaintiff named Mendez at the subject premises so that the Mercados can occupy it without difficulty. At that time, plaintiff's other caretakers namely Cornelio Rance and Luis Figueras alternated with Mendez daily in guarding the said premises for the plaintiff who came to visit the place on weekends.

On January 4, 1986, defendant Young met one Ramon Magpayo at Al Gene's Restaurant located at the corner of

Timog and Morato Avenue and near the subject premises where they planned how to convince one of the caretakers Mendez to abandon his job in guarding plaintiff's subject premises. For a while, Magpayo left Young and proceeded to the subject premises and returned with Mendez. At first, Mendez refused to leave the premises in question because he was afraid of the plaintiff but after each of them consumed three to four bottles of beer, Mendez finally agreed to leave for fear of being implicated in the land dispute. After getting his personal effects or belongings at the subject premises, the three of them boarded a Dagupan Bus and alighted in Gerona, Tarlac, where they left Mendez after giving him P100.00. From there, the duo proceeded to Baguio City where they spent the night and about noontime the next day, they came back to Manila and reported to defendant-husband Mercado that Mendez is gone.

On January 10, 1985, two of plaintiff's caretakers namely Luis and Cornelio arrived at the premises in question but Young and his wife stayed there until the early morning next day about 6:30 p.m. when they vacated the premises by loading their belongings into a truck.

At the same time, the defendant-spouses Mercado and some companions were seen by the two caretakers moving their belongings into the said premises and thus, the two caretakers stopped the Mercados from moving into the house. A neighbor, Jose Verde, overheard the discussion between the defendant-spouses and the two caretakers who vigorously prevented the Mercados from entering the premises, hence, he called up the plaintiff to report to him what was happening in the subject house and lot. Immediately, thereafter, plaintiff and his wife hurriedly proceeded to the said place and upon arrival, he explained to the defendant-wife, Lydia Mercado, that the house and lot has been sold to him and that he had authorized the two caretakers to prevent anybody from taking possession of the subject realty.

On January 13, 1986, at around 9:00 a.m., defendant Mercados again attempted to move in into the premises but failed to do because of the two caretakers. This incident was reported to the Galas Police Station by the plaintiff himself at 9:00 p.m. of that same day.

On January 14, 1986 at around 8:00 p.m., defendant-husband Mercado together with mobile patrol cars of Quezon City Police arrived and drove away the plaintiff's caretakers Cornelio Rance from the subject premises. Rance reported the incident to the plaintiff at the latter's residence at around 10:00 p.m. saying that he was hit with an Armalite rifle by one of the policemen when he refused to leave the place. After bringing Rance for medical treatment, plaintiff, his wife, their four (4) children as well as Rance and caretaker Figueras proceeded to the premises in question and upon entering the same, he ordered Mercado's watchmen to leave the premises immediately. Upon learning of plaintiff's presence within the subject premises, defendant-husband Mercado and their houseboy who were at the former's house nearby at No. 12 Scout Tobias found plaintiff and party inside the premises and plaintiff refused to allow defendant Mercado to enter.

Caretaker Figueras was then left behind inside the subject premises while plaintiff together with his family and Rance left for home. Plaintiff and Rance reported the incident to the Galas Police authorities. It was early 3:00 to 4:00 a.m. the next day or on January 15, 1986 when plaintiff finished reporting the previous night's incident. Afterwards, Figueras arrived and reported that he was driven out by some policemen at the subject land in question. The same day, plaintiff and Rance went back to the subject premises and there ensued a struggle for possession of the premises and defendants were able to regain possession.

On January 16, 1986, plaintiff, in order to protect his right on the subject premises, proceeded to the office of the public defendant Register of Deeds and caused to be annotated and registered at the back of Transfer Certificate of Title No. 105925 a Notice of Adverse Claim (Exhibit J) thereby stating that herein plaintiff claiming to be the vendee of the property therein described has caused the same to be annotated because "the owner refused to

surrender the owner's duplicate copy"; Date of Instrument – January 16, 1986 (Exhibit I); Date of Inscription – January 16, 1986 at 2:30 p.m. (Exhibit I-1). However, despite such Notice of Adverse Claim duly annotated at the back of TCT No. 105925, plaintiff Serrano was informed thereafter that the private defendants Joselito B. Young and Adelaida B. Bilano in connivance with their co-private defendants Reynaldo and Lydia Mercado have sold again and transferred to the defendant-spouses Mercado the same real property described in TCT No. 105925 pursuant to another Deed of Sale in favor of the defendant-spouses Mercado which was previously bought by plaintiff Serrano.

On January 31, 1986, the public defendant Register of Deeds of Quezon City issued Transfer Certificate of Title No. 339869 in the name of private defendant-spouses Reynaldo and Lydia Mercado which title was derived from TCT No. 105925 covering the subject real property in dispute.

It bears stress, however, that at the time the said TCT No. 339869 was issued to the private defendant-spouses Mercado on January 31, 1986, herein plaintiff's Notice of Adverse Claim which was registered ahead and duly annotated at the back of TCT No. 105925 was carried over to the new title issued to the Mercados.

In the meantime, on February 3, 1986, private defendant Reynaldo Mercado filed an ejectment case against herein plaintiff Serrano with the Metropolitan Trial Court of Metro Manila and originally raffled to Branch 38 of the lower Court which is docketed as Civil Case No. 49216, Reynaldo C. Mercado, Plaintiff, versus P/Cpl. Benjamin Serrano and John Does, Defendants, for Forcible Entry with Prayer for Preliminary Mandatory Injunction.

On said date, the lower Court issued an Order setting the initial hearing of the plaintiff's prayer for the issuance of a Writ of Preliminary Mandatory Injunction on February 26, 1986.

After the hearing on March 6, 1986, the Metropolitan Trial Court (Branch 32) issued an Order granting the issuance of the Writ of Preliminary Mandatory Injunction upon plaintiff's posting of a cash bond of P1,000.00 to answer for any damages which the defendant may suffer by reason of the issuance of the said writ and which was satisfied and enforced in full on March 7, 1986 per Sheriff's Return dated March 10, 1986.

After the hearings, Branch 32 of the Metropolitan Trial Court of Quezon City decided the ejectment case in favor of the defendant Serrano who is now one of the plaintiffs in the present case, the dispositive portion of said decision is hereunder quoted:

WHEREFORE, judgment is hereby rendered dismissing the complaint and confirming the right of the defendant (herein plaintiff Serrano) to the possession of the property located at No. 36 Scout Tobias cor. Dr. Lazcano Drive, Bgy. Laging Handa, Quezon City, and ordering the plaintiff to pay the defendant: 1) the sum of P200.00 per day starting March 7, 1986, the date when possession of the subject premises was turned over to the plaintiff and everyday thereafter until possession of the subject premises is returned to the defendant; 2) the sum of P20,000.00 as, and for, attorney's fees; and 3) the costs of suit.

The aforesaid Decision became final and executory, and to satisfy the money judgment in the said Decision, the Deputy Sheriff of Branch 32 on February 22, 1993 levied upon Transfer Certificate of Title No. 339869 which was issued by the public respondent Register of Deeds of Quezon City in the name of herein defendant-spouses Reynaldo and Lydia Mercado.

On January 31, 2001, the RTC rendered judgment, to wit:

WHEREFORE, prescinding from the foregoing considerations, judgment is hereby rendered in favor of the plaintiff Benjamin C. Serrano and against the private defendants Joselito Young, the deceased defendant spouses Reynaldo C. Mercado and Lydia Corrales Mercado, now herein represented by their respective legitimate children and legal heirs by:

- DECLARING Transfer Certificate of Title No. 339869 issued by the public-defendant Register of Deeds of Quezon City in favor of deceased defendants Reynaldo C. Mercado and Lydia Corrales Mercado as NULL and VOID;

- DECLARING the plaintiff Benjamin C. Serrano as the absolute owner of that parcel of land with improvements thereon covered by Transfer Certificate of Title No. 339869 (formerly covered by TCT No. 105925 in the name of Asuncion Ballecer);

- ORDERING the public defendant Register of Deeds of Quezon City to register the Deed of Absolute Sale executed by defendants Joselito B. Yong and Adelaida B. Bilano in favor of the plaintiff Benjamin E. Serrano dated March 2, 1985;

Accordingly, the same Register of Deeds of Quezon City is hereby ordered to cancel the aforesaid TCT No. 339869 in the name of the defendant-spouses Mercado and in lieu thereof, to issue a new Transfer Certificate of Title in favor of Benjamin E. Serrano pursuant to the aforestated Deed of Absolute Sale involving the residential lot with improvements thereon denominated as No. 36 Scout Tobias Street, Brgy. Laging Handa, Quezon City;

- ORDERING the plaintiff Benjamin E. Serrano to pay to the defendants Joselito B. Yong and Adelaida B. Bilano the remaining balance from the purchase price of the subject premises which is in the sum of Seventy Nine Thousand Seven Hundred Nine Pesos and 68/100 centavos (P79,709.68) after deducting plaintiff's advance payments as shown in Exhibits "A" to "A-6" in the sum of P297,500.00 and miscellaneous expenses advances by the plaintiff (Exhibits "B", "C", "D", "F" and "G", inclusive of submarkings).

- ORDERING the defendants Joselito B. Young, Reynaldo Mercado, now deceased, and Lydia Corrales-Mercado, now deceased, both herein represented/substituted by their respective legitimate heirs to pay plaintiff jointly and severally the sum of P25,000.00 as attorney's fees and cost of suit.

- DISMISSING the defendant Mercado's Counterclaim for lack of merit.

SO ORDERED.

Hence, this appeal.

The appellants submit that the RTC committed reversible error:

- xxx IN HOLDING THAT PLAINTIFF IS THE ABSOLUTE OWNER OF THE SUBJECT PROPERTY COVERED BY TCT NO. 339869 AND DECLARING TCT NO. 339869 IN THE NAME OF THE MERCADOS NULL AND VOID AND ORDERING THE REGISTER OF DEEDS OF QUEZON CITY TO REGISTER THE DEED OF ABSOLUTE SALE BETWEEN YOUNG AND BILANO IN FAVOR OF SERRANO AND ISSUE A NEW TITLE IN HIS NAME, AND IN ORDERING THE HEIRS OF MERCADO TO PAY PLAINTIFF THE SUM OF P25,000.00 AS ATTORNEY'S FEES AND COST OF SUIT.

- xxx IN NOT DISMISSING THE CASE, DESPITE THE ABSENCE OF AN INDISPENSABLE PARTY – ADELAIDA BILANO, WHO WAS DROPPED FROM THE CASE FOR FAILURE TO SERVE HER THE SUMMONS AND COMPLAINT, AND NOT DISMISSING THE CASE AGAINST JOSELITO B. YOUNG, WHO FAILED TO HIRE THE SERVICES OF COUNSEL DESPITE AN ORDER FROM THE COURT AND THEREFORE ALL HIS STATEMENT OR TESTIMONIES MUST BE EXPUNGED FROM THE RECORD;

- xxx IN HOLDING THAT THE SPOUSES MERCADOS (NOW REPRESENTED BY HEIRS OF LYDIA MERCADO) ARE NOT ENTITLED TO THEIR COUNTERCLAIMS.

The decisive issue is which between Serrano and the Mercados had the better right to the property located at No. 36 Scout Tobias Street, Quezon City.

The RTC ruled for Serrano, declaring that:

Regardless of the results of this litigation, there is no doubt that the property in controversy belongs to plaintiff Serrano. Granting *arguendo* that the subject property is owned by the defendant-spouses Reynaldo and Lydia Mercado (both deceased), the plaintiff is still the owner of the same because whatever rights and interest they may have over the property has already been sold in a Sheriff's auction sale to the highest bidder or auction buyer – Paterno Samaniego – who in turn has assigned all his rights to Benjamin Serrano, herein plaintiff.[1]

We sustain the RTC. We find that the decision of the RTC accorded with the law and the evidence; that the dropping of Bilano as a party was correct; that Young's not being assisted by counsel was not a reversible error; and that the dismissal of the counterclaim of the Mercados was also not a reversible error.

The records truly establish that Serrano was legally entitled to be preferred to the Mercados both as to the possession and ownership of the property in *litis*. He regularly acquired the property from Young and Bilano as the children and only heirs of Asuncion Ballecer, the deceased registered owner. Young and Bilano executed the deed of sale on March 2, 1985 in his favor, after which he took over the possession of the property on April 3, 1985 by placing there 3 persons as his caretakers. The fact that Young failed to turn over TCT No. 105925 to Serrano, despite originally promising to do so, did not negate Serrano's acquisition of the property, considering that the sale was consensual.

The Mercados came into the picture in respect of the property in *litis* only much later on. They first met Young in September 1985 and intimated to him their interest to acquire the property. Young told the Mercados about the sale of the property to Serrano but the Mercado nonetheless pressured Young into lending to them the TCT. Receiving the TCT from Young, the Mercados thereafter withheld it and worked on Young and Bilano to sell the property in *litis* instead to them. The pressure reached the point where they convinced Young to see Atty. Crescini, their late mother's administrator, to entice Atty. Crescini with an offer of a 20% commission on the purchase price if the lawyer would help in cancelling the sale to Serrano but Atty. Crescini rejected the illegal and immoral enticement. A few months later, that is, on December 18, 1985, the Mercados succeeded in having Young and Bilano execute a deed of sale in their favor.

The bad faith of the Mercados attendant to their acquisition was made worse because in the aftermath of their supposed purchase, the Mercados realized that they could not take actual possession of the property due to the presence of Serrano's caretakers in it. In early January 1986, therefore, they had Young plot with a cohort by the name of Ramon Magpayo how to convince the caretakers to leave the property. Magpayo succeeded only as to caretaker Mendez. As soon as the other caretakers returned to the property on January 10, 1986, however, the ruse of the Mercados was discovered and the remaining caretakers prevented the Mercados from taking over the property. The caretakers immediately brought the ruse to the attention of Serrano who did not lose time to go himself to the property, where he and Mrs. Lydia Mercado met for the first time. At that meeting, Serrano explained to her that he had bought the property. Nonetheless, the ruse was brought to the attention of the police authorities in Galas Police Station.

What subsequently happened evinced the intensive attempts of the Mercados to take the actual possession of the property from Serrano and his caretakers, going to the extent of using police presence to drive by force the caretakers of Serrano out of the premises. It was during that tug-of-war for the possession that Serrano decided on January 16, 1986 to annotate a notice of adverse claim on TCT No. 105925 in the Register of Deeds, stating in his notice that the owner had refused to turn over the TCT to him despite his purchase of the property.

On January 31, 1986, the Register of Deeds issued TCT No. 339869 to the Mercados by cancelling TCT No. 105925 but Serrano's notice of adverse claim was carried over to the Mercados' TCT No. 339869.

On February 3, 1986, the Mercados commenced against Serrano the action for ejectment, applying for a writ of mandatory injunction, which the MeTC allowed. The writ was enforced against Serrano on March 7, 1986, dispossessing him.

In the end, however, the MeTC rendered judgment, dismissing the complaint, confirming the right of Serrano to the possession of the property, and ordering the Mercados to pay P200.00/day as reasonable compensation since March 7, 1986 until the possession was restored to Serrano, plus attorney's fees of P20,000.00 and costs of suit. After the judgment became final, the sheriff levied upon the property in litis (TCT No. 339869 of the Mercados) on February 22, 1983 and sold the lot at public auction held on May 25, 1993 to Samaniego as the highest bidder. The sheriff issued to Samaniego the final deed of sale dated June 8, 1994.

On April 22, 1997, Samaniego renounced and waived all his rights to the property in favor of Serrano for valuable consideration. It was for this reason that the RTC correctly ruled that the Mercados had lost all claims or interest in the property.

Still, the appellants insist that the auction sale of May 25, 1993 was invalid because it was re-scheduled without republication. They also state that the publication of the notice of auction sale was for "less than twenty (20) days before the scheduled auction sale 18 May 1993"; that the publication of the notice of sale was only for 2 consecutive weeks, not 3 weeks as required by Sec. 3, Act No. 3135; that the newspaper The Guardian did not appear to be a newspaper of general circulation; and that the assignment of Samaniego to Serrano was apparently without any consideration or was simulated.

The appellants' insistence is not supported by the law and the established facts. After the sale was set on May 18, 1993, the notice of the sheriff's sale was published in The Guardian once for 2 consecutive weeks, i.e., on April 24, 1993 and May 1, 1993. Such publication accorded with Sec. 18, (c), Rule 39, Rules of Court, for the first publication was on April 24, 1993, which was at least 24 days prior to the sale set on May 18, 1993. The appellants wrongly insist on following Act No. 3135, which requires publication once a week for 3 weeks, simply because the sale was not by virtue of an extra-judicial foreclosure of a mortgage. The rescheduling of the sale set on May 18, 1993 on May 25, 1993 was due to the fact that only 2 bidders had appeared and the sheriff desired to allow other interested bidders the opportunity to participate. Republication of the notice was not required by the Rules of Court due the earlier publication of the notice for the original schedule of the sale and considering that the sheriff had the authority to adjourn the sale as necessary under the circumstances. The appellants did not competently and satisfactorily prove that The Guardian was not a newspaper of general circulation. What is on record is that The Guardian was duly accredited by the Office of the Clerk of Court of the RTC in Quezon City and qualified as such to participate in the raffle of legal notices. We presume therefrom that such newspaper was of general circulation.

The validity of the public sale could not be assailed by the appellants without them proving herein competently that the proceedings of sale were attended by serious irregularities. If such validity was to be put in question, the manner for doing so should be by direct action, not collaterally, as in this case.

The appellants categorize the assignment and waiver by Samaniego to Serrano as simulated, yet they presented no evidence to that effect that would establish absence of consideration. At any rate, they were not the proper parties in interest to thereby assail such transfer.

The sale of the property in litis in favor of Serrano by Young and Bilano was registered on TCT No. 106925 in the form of a notice on January 11, 1986,[2] but the appellants registered their deed of sale only later on, that is, on January 31, 1986. Serrano's prior registration furnished constructive notice to the Mercados of Serrano's preferred position vis-à-vis the property in litis. The Mercados did not only have constructive notice; worse, they

had, as already indicated, actual notice of Serrano's ownership. Hence, the appellants could not prevail.

The appellants posit that Bilano's discharge without prejudice after she could not be served with summons and Young's not being assisted by counsel constituted reversible error.

We do not agree.

Bilano's discharged should be a non-issue because she was obviously not an indispensable party. The proper reliefs would still be afforded to the remaining parties even after her discharge considering that the judgment to be rendered would not affect her rights or interests in the property. Her continuing presence in the action was not necessary at all in order to determine the issues between the other parties. For sure, the indispensable parties were Serrano and the Mercados (the latter for meanwhile registering the property in *litis* in their names). Otherwise put, there would still be a final determination of the case even without her.

Thus, as explained in *Philippine National Bank v. Heirs of Estanislao Militar and Deogracias Militar*:^[3]

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' (interest) that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.^[4]

Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. He is not indispensable if his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation.^[5]

There are two essential tests of an indispensable party: (1) can relief be afforded the plaintiff without the presence of the other party?; and, (2) can the case be decided on the merits without prejudicing the rights of the other party? There is, however, no fixed formula for determining who is an indispensable party; this can only be determined in the context and by the facts of the particular suit or litigation.^[6]

Young's being without counsel did not render the proceedings defective for that reason. He opted to go into the action without a counsel, filing his own supposed written answer to the complaint. A party like him had the freedom to obtain the assistance of his counsel to assist him in civil litigation. Needless to mention, there is neither rule nor law nor practice nor jurisprudence to support the appellants' contention.

In fine, the RTC committed no error, least of all reversible, that warrants a modification or reversal of the judgment *a quo*. Affirmance follows as a matter of course.

WHEREFORE, the decision is AFFIRMED.

SO ORDERED.

Villarama, Jr., (Chairman) and Librea-Leagogo, JJ., concur.

[1] Decision, p. 17.

[2] Exhibit J.

[3] G. R. No. 164801, August 18, 2005; 467 SCRA 377, 384.

[4] Citing *Bank of the Philippine Islands v. Court of Appeals*, 450 Phil. 532, 541; 402 SCRA 449, 455 (2003).

[5] Citing *Bank of Philippine Islands v. Court of Appeals*, *supra*.

[6] Citing *Republic v. Sandiganbayan*, G. R. No. 152154, July 15, 2003; 406 SCRA 190, 269-270.

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