

AMALIA VDA. DE SUAN, JACOBO SUAN, CAMILA SUAN, RIZALINA SUAN, BENJAMIN PARILLA, FE SUAN AND ULPIANO ALVARICO, PETITIONERS, VS. THE HONORABLE VICENTE N. CUSI, JR., JUDGE OF THE C...

G.R. No. L-35336. October 27, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Records show that respondent Judge Vicente N. Cusi, Jr., decided Civil Case No. 5654, entitled "Amalia Vda. de Suan, et al. vs. Segundo Empasis, et al.," for cancellation of document, recovery of possession and damages, against plaintiffs, now the herein petitioners. The decretal portion of the decision reads:

"WHEREFORE, judgment is hereby rendered:

"1. Dismissing the complaint;

"2. Finding the plaintiffs jointly and severally liable to defendant Segundo Empasis in the amount of Five Thousand Pesos (P5,000.00) as moral damages and another Five Thousand Pesos (P5,000.00) as exemplary damages;

"3. Finding the plaintiffs jointly and severally liable to defendant Lorenzo L. Eviota in the amount of Five Thousand Pesos (P5,000.00) as moral damages and another Five Thousand Pesos (P5,000.00) as exemplary damages, and

"4. Finding the plaintiffs jointly and severally liable to defendants Segundo Empasis and Lorenzo L. Eviota for Three Thousand Pesos (P3,000.00) as attorney's fee, with costs." (p. 11, Rollo)

The above judgment became final and executory when the then Court of Appeals dismissed the appeal of herein petitioners due to failure on their part to pay the docketing fee and to file a printed record on appeal. As a consequence, the provincial sheriff levied on execution -

(1) a parcel of land with an area of 11 hectares, more or less, covered by Tax Declaration No. 1022-5499 in the Office of the Municipal Treasurer of Malalag, Davao del Sur and assessed at P3,350.00;

(2) a parcel of land with an area of 8 hectares, more or less, covered by Tax Declaration No. 7532 and assessed at P2,250.00; and

(3) a parcel of land with an area of 154 square meters more or less, with one (1) residential house, both assessed at P1,620.00.

Said properties were sold at public auction by the Sheriff's Office in favor of herein private respondents, Lorenzo L. Eviota and Mariana Eviota, who were the highest bidders. A "Provisional Certificate of Sale" covering the three parcels of land was issued by the sheriff in favor of the Eviotas; and, thereafter, they were the recipients of an "Absolute Deed of Sale" which was registered in the Office of the Register of Deeds of Davao del Sur,

pursuant to Act No. 3344.

Petitioners claim that they did not have any knowledge about the execution and sale at public auction of the above-mentioned properties, so much so that they entered into a milling contract with the Davao Sugar Company, Inc. and planted sugarcane thereon; and, that it was only after they had been served with the writ of possession that they came to know about the aforesaid levy and sale. Whereupon, petitioners filed an action against herein private respondents for annulment of the auction sale and writ of possession, with prayer for the issuance of a preliminary injunction. The case was docketed as Civil Case No. 528 before the then Court of First Instance of Digos, Davao del Sur. The pre-trial of said case, according to the private respondents in their memorandum, was held in abeyance until after this Court shall have resolved the instant petition for certiorari (p. 100, Rollo).

In the meantime, private respondents filed in Civil Case No. 5654 an "Ex-Parte Motion to Authorize the Provincial Sheriff of Davao to Execute an Absolute Deed of Sale of Lot No. 6124, Cad. 275, in the Name of Amalia Tigdo (Amalia Vda. de Suan) in Favor of Lorenzo L. Eviota and Mariana Eviota," with the prayer that the Original Certificate of Title No. (P-13390)-2379 covering the said lot issued in the name of Amalia Vda. de Suan be cancelled and a new Transfer Certificate of Title be issued by the Register of Deeds of Davao in their favor. Private respondents contend that Lot No. 6124 is the same parcel of land covered by Tax Declaration No. 1022-5499 and mentioned in the certificate of sale and deed of sale executed by the sheriff in their favor. Respondent Judge, finding the aforesaid motion to be correct, issued an order, dated July 1, 1972, granting it. (p. 33, Rollo) Hence, the filing of this petition for certiorari with preliminary injunction, petitioners alleging that (1) the lower court had no jurisdiction over the case since the land involved is situated in the Province of Davao del Sur and therefore the proper court to try the case should be the Court of First Instance of Davao del Sur; and, (2) the court a quo abused its discretion by not allowing the herein petitioners to file their opposition to the ex-parte motion mentioned.

This Court issued a temporary restraining order enjoining respondent judge from enforcing and/or executing his order granting the ex-parte motion filed by the private respondents and authorizing the provincial sheriff of Davao to execute the absolute deed of sale of Lot No. 6124 in favor of said private respondents.

The petition is without merit.

With respect to the first question raised, that of jurisdiction (should be venue), petitioners are in estoppel because they were the ones who filed Civil Case No. 5654 in the then Court of First Instance of Davao, Branch I. If what they now claim is true, that the then Court of First Instance of Davao del Sur should be the one to have tried the case because the lands involved are situated in that area, why did they not file the case in said court? When they filed the case in Davao, they voluntarily submitted to its jurisdiction and waived the issue on venue. A contrary rule would encourage the undesirable practice of parties submitting their case in one court in expectation of favorable judgment, but with intent of attacking its jurisdiction/venue should the decision be unfavorable. Stated differently, a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, failing to obtain it repudiate or question the same. Such a practice cannot be tolerated - a party accepting a judgment if favorable, and attacking it for lack of jurisdiction when adverse. Besides, the Court of First Instance of Davao was just one of the branches of the trial courts in Davao and there is no material and/or legal impediment for any of its branches to try the case.

As to the second ground of the petition, suffice it to say that the decision of respondent judge in Civil Case No. 5654 has become final and executory. As a consequence, the auction sale was made after due publication, and the order of respondent judge granting an ex-parte motion filed by the private respondents was only one of the effects thereof. The contention that petitioners were not given the opportunity to oppose the ex-parte motion is without

merit, for, why did petitioners not file a motion for reconsideration? At any rate, respondent judge did not commit grave abuse of discretion in granting the motion.

WHEREFORE, the petition is DENIED, and the tempo-rary restraining order issued by this Court is hereby DISSOLVED.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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