

POLICARPIO, LUCIO, JULIAN, CATALINO, BONIFACIO, CONRADA, DOMINGO, PAQUITA, AND LILIA, ALL SURNAMED GALICIA, PETITIONERS, VS. THE HON. WENCESLAO M. POLO, IN HIS CAPACITY AS PRESI...

G.R. No. L-49668. November 14, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking to set aside the summary judgment entered by the then Court of First Instance of Samar, Br. V in Civil Case No. 758-CC entitled, "Policarpio, Lucio, Julian, Catalino, Bonifacio, Conrada, Domingo, Paquita and Lilia, all surnamed Galicia v. Zosima Palajos, Titing Listojas, Alfredo Palajos and Manuelito Rosialda" and to order the trial court to try the above-cited case on the merits.

The facts are undisputed.

On December 15, 1973, a complaint for forcible entry (Civil Case No. 56) entitled "Amancio Palajos v. Policarpio, Perfecto, Victorio, Julian and Eduardo, all surnamed Galicia," was filed in the Municipal Court of Almagro, Samar, alleging that Amancio Palajos is the owner and in actual possession of a parcel of land located at Bacjao, Almagro, Samar, more particularly described as follows:

"A parcel of land with an area of about 4-88--00 hectares, more or less, assessed at P360.00 as per Tax Declaration No. 8547 in the name of Juan Palajos, it is, however, 14.2860 hectares as per approved survey plan, the boundaries of which are: N - Pedro Galicia and the Poblacion of Barrio Bacjao; S - Emilio Carpon, Magno Suico and Teresa Subito; and W - Bernardo Ballarante and Cenon S. Aguilar."

which he acquired by way of donation from his father, Juan Palajos. It is further alleged that defendants (petitioners herein) forcibly entered the northeastern portion of the said property covering an area of about 1 1/2 hectares.

The trial of the case was set several times but was postponed at the instance of defendants (petitioners herein). For the fifth time, i.e., on July 19, 1974, neither the defendants nor their counsel appeared. Accordingly, the court granted a trial ex parte on motion of plaintiff's counsel (Rollo, p. 24).

Subsequently, the municipal trial court rendered judgment against defendants (petitioners herein), the dispositive portion of which reads:

"WHEREFORE, this Court hereby renders judgment ordering defendants Policarpio Galicia, Perfecto Galicia, Victorio Galicia, Julian Galicia and Eduarda Galicia to restore to plaintiff Amancio Palajos the portion of land described in par. 4 of the plaintiff's complaint consisting of one and one-half hectares and which is the northeastern portion of land under Tax Dec. No. 8547 as described in paragraph 2 thereof; ordering the defendants to pay to plaintiff a monthly rental in the amount of FIFTY PESOS (P50.00) on the premises in question for its use and occupation from September, 1973, up to the time when said premises is finally restored

to the plaintiff; and to pay the costs.

"SO ORDERED."

On September 28, 1974, defendants filed a motion for reconsideration and to grant a new trial but was denied in an Order dated October 24, 1974 (Rollo, p. 28).

On November 12, 1974, defendants filed a notice of appeal but the same was likewise denied by the trial court on the ground that it was filed beyond the reglementary period of fifteen (15) days to perfect an appeal.

For failure of the defendants to pay the rentals adjudged in the forcible entry case (CC No. 56), a writ of execution was issued and after levy, the deputy sheriff of Calbayog City, on August 4, 1976, sold at public auction the real property owned by petitioners' deceased father adjoining the land subject of the forcible entry case more particularly described as follows:

"A piece of real estate consisting of coconut and cornland situated at Bo. Bacjao, Almagro, Samar, Philippines, bounded on the NORTH, by Isabelo Palajos; on the SOUTH, by Narciso Paulino; and on the WEST, by Seashore, containing an area of 2-60-00 hectares, more or less, assessed at P180.00, under Tax Declaration No. 12048, in the name of Pedro Galicia (deceased);"

(Rollo, p. 30).

On October 10, 1977, or over 14 months after the execution sale, petitioners filed a complaint for Ownership and Damages against herein respondents in the then Court of First Instance of Samar, 13th Judicial District, Br. V, docketed as Civil Case No. 758-CC, alleging that they are co-owners of a certain parcel of agricultural land (subject of the auction sale) which they inherited from their deceased father, Pedro Galicia, more particularly described as follows:

"A parcel of coconut and corn land located at Bacjao, Almagro, Samar, Philippines, with an area of 26,000 sq. m. and bounded on the NORTH, by Isabelo Palajos; SOUTH, by Narciso Paulino; EAST, by Benedicto Paulino and WEST, by Seashore covered by Tax Declaration No. 12048 in the name of Pedro Galicia."

The complaint further alleged that pursuant to Civil Case No. 56 (forcible entry case), respondents were able to take possession of the land in question as said case was heard ex-parte; and that a decision was rendered in respondents' favor and said decision was executed sometime in 1976 (Rollo, p. 36-37).

In their Answer, respondents (defendants below) countered that they were able to take possession of the land described in the complaint by virtue of the decision and later, execution of the decision in the forcible entry case, which, by petitioners' (plaintiffs below) averment in their complaint is an admission of an existing judgment that would constitute res judicata; that they are the lawful owners of the disputed land the same having been subjected to levy and execution in 1975 thru a sale in favor of respondents' predecessor-in-interest, Juan Palajos.

The issues having been joined, the case was set for pre-trial by respondent judge Hon. Wenceslao M. Polo. At the pre-trial, counsel for private respondents moved for time within which to file a motion for summary judgment which was granted by respondent judge in his order dated June 28, 1978.

Defendants' (private respondents herein) motion for summary judgment was filed on July 7, 1978 (Rollo, p. 43) alleging that no genuine issue exists in the case at bar after the pre-trial was conducted and admission of facts were had (Rollo, p. 44), while plaintiffs (petitioners herein) filed their opposition to the motion for summary judgment dated July 17, 1978 alleging among others, that genuine issues exist (Rollo, pp. 45-47).

On August 11, 1978, the court a quo rendered the assailed summary judgment dismissing petitioners' complaint (Rollo, p. 48-53), the pertinent portion of which reads:

"As demonstrated by the parties, there is no question that the land in dispute is that parcel described in paragraph 3 of the complaint, a portion of which was a subject in a forcible entry case before the Municipal Trial Court of Almagro, Samar (Exhibit 1, 2 and 3) with the defendants now as successors-in-interest of the Plaintiff, and most of the herein plaintiffs as defendants.

"The pleadings also show that upon the death of the primitive owner, Pedro Galicia, the plaintiffs as children and grandchildren possessed and owned this land pro-indiviso, until the possession of said portion was transferred to the defendants when the decision in that forcible entry case was executed in 1976 (Exhibit 7) such being the case, therefore with respect to this portion of the land in dispute, the possession is settled, which would constitute as a bar to this action.

xxx xxx xxx

"With respect to the other portion of the land in dispute, the plaintiffs admit that possession was transferred to the defendant by virtue of a sale executed by the sheriff; the one year period having elapsed without exercising their right of redemption, as a result a final deed of sale was issued. The legality of the sale not having been assailed by them, for all intents and purposes, ownership on this land have been vested on the defendants as heirs of Juan Palajos.

"WHEREFORE, premises above considered, judgment is hereby rendered ordering the dismissal of the plaintiffs' complaint, without pronouncement as to cost."

A motion to re-open the case for trial on the merits was filed by plaintiffs but was denied in an order dated November 27, 1978 (Rollo, p. 62). Hence, this instant petition.

Petitioners contend that the trial court erred when it decided Civil Case No. 758-CC by summary judgment when there are several genuine issues involved therein which require a trial of these issues on the merits, such as:

"(A) WAS THE EXECUTION SALE CONDUCTED BY DEPUTY PROVINCIAL SHERIFF EUFROCINO T. OLIFERNES OF LOT NO. 1363 OF THE LATE PEDRO GALICIA, PETITIONERS' FATHER, VALID TO CONFER UPON THE DEFENDANTS IN SAID CASE A JUST TITLE OVER SAID REALTY?

"(B) WERE THE UNDIVIDED SHARES AND PARTICIPATIONS OF JULIAN GALICIA AND CATALINO GALICIA WHO WERE TWO OF THE LEGITIMATE CHILDREN OF PEDRO GALICIA NOT IMPEADED AS PARTIES IN CIVIL CASE NO. 56 IN THE MUNICIPAL COURT OF ALMAGRO, OVER LOT NO. 1363, AFFECTED BY THAT EXECUTION SALE?

"(C) WERE THE UNDIVIDED SHARES AND PARTICIPATIONS OF EDUARDA GALICIA AND PERFECTO GALICIA OVER LOT NO. 1363, BUT WHO WERE NOT IMPEADED AS PARTIES IN CIVIL CASE NO. 758-CC OF THE COURT OF FIRST INSTANCE OF SAMAR (CALBAYOG CITY) AFFECTED BY THE DECISION OF THE LATTER COURT ON SUMMARY JUDGMENT?" (Rollo, p. 10).

The crucial issue in this case is whether or not the trial court erred when it decided Civil Case No. 758-CC by summary judgment.

It is the contention of petitioners that the trial court erred in deciding their complaint (CC No. 758-CC) by summary judgment when there are several genuine issues involved therein which require a full trial on the merits. Among other things, petitioners contend that the execution sale conducted by the Deputy Provincial Sheriff was null and void and would have merited a trial on the merits. Moreover, it is further contended that as between Civil Case No. 56 and Civil Case No. 758-CC, there can be no *res judicata*, considering that there is no identity of parties, cause of action and subject matter between the two actions.

After a thorough review of the records, the Court finds no cogent reason to disturb the summary judgment

rendered by respondent judge.

The Rules of Court authorizes the rendition of summary judgment if the pleadings, depositions and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no issue as to any material fact and that the moving party is entitled to a judgment as a matter of law (Sec. 3, Rule 34). Conversely, summary judgment is not proper where the pleadings tender vital issues the resolution of which call for the presentation of evidence (*Villanueva v. NAMARCO*, 28 SCRA 729 [1969]; *Guevarra, et al., v. CA, et al.*, 124 SCRA 297 [1983]).

Summary judgment "is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. The very object is 'to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of trial.' The test, therefore, of a motion for summary judgment is – whether the pleadings, affidavits, and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding as a matter of law that there is no defense to the action or the claim is clearly meritorious" (*Estrada v. Hon. Consolacion, et al.*, 71 SCRA 523 [1976]).

In addition, summary judgment is one of the methods sanctioned in the present Rules of Court for a prompt disposition of civil actions wherein there exists no serious controversy. The procedure may be availed of not only by claimants, but also by defending parties who may be the object of unfounded claims. A motion for summary judgment assumes that scrutinizing the facts will disclose that the issues presented by the pleadings need not be tried because they are so patently unsubstantial as not to be genuine issues, or that there is no genuine issue as to any material facts or where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits (*Singleton v. Philippine Trust Co.*, 99 Phil. 91 [1956], cited in *Bayang v. CA*, 148 SCRA 91 [1987]).

Examining petitioners' complaint, the Court finds that the disputed property is the same parcel of land, which adjoins private respondents' lot which was the subject of the forcible entry case and from which petitioners were ordered to vacate. When petitioners (then defendants), failed to satisfy the rentals adjudged in the forcible entry case, said adjoining parcel of land was sold at public auction to Juan Palajos (respondents' predecessor-in-interest) as the highest bidder in the execution sale to satisfy the monetary judgment rendered therein. The property so described in petitioners' complaint (Rollo, p. 36) squarely fits what has been levied upon and sold at public auction (Rollo, p. 30), the owners of which are now private respondents upon the demise of their predecessor-in-interest.

There is thus no question that issue of ownership of the disputed land subject of the present petition has long been foreclosed in the forcible entry case which culminated in the public auction sale of the parcel of land now sought to be recovered. Having failed to redeem the property sold at the public auction sale within the reglementary period of twelve (12) months (Sec. 30, Rule 39 of the Rules of Court), petitioners cannot now claim that they still own said property. Petitioners' complaint for Ownership and Damages is but a belated and disguised attempt to revive a judgment debtors' right of redemption which has long expired. There being no issue as to any material fact raised in the pleadings, summary judgment may be rendered.

Neither can the issue of the validity of the execution sale help petitioners' cause. Well-settled in this jurisdiction, is the rule that issues not raised and/or ventilated in the lower court cannot be raised for the first time on appeal (*Rebodos v. WCC*, 6 SCRA 717 [1962]; *DBP v. CA*, 116 SCRA 636 and a long line of cases). A review of the records of the case shows that petitioners failed to directly assail and raise as issue, the validity of the aforementioned auction sale in their complaint. It was only when the respondent judge noted such omission in his decision dismissing Civil Case No. 758-CC dated August 11, 1978 (Rollo, p. 48-53) that petitioners later filed a

separate action for Annulment of Auction Sale and Damages on October 4, 1978 (Civil Case No. 837-CC; Rollo, p. 31-35). The validity of the execution sale not having been raised and/or litigated in the case subject of the present appeal, the Court, at this stage, cannot pass upon the same for the purpose of determining the propriety of the summary judgment. Objections to the execution sale cannot be considered in the Supreme Court inasmuch as it was not raised in the lower court (*Ramiro v. Graño*, 54 Phil. 744 [1930]; citing *Tan Machan v. de la Trinidad*, 3 Phil. 684 [1904] and *U.S. v. Inductivo*, 40 Phil. 84 [1919]).

WHEREFORE, the instant petition is hereby DENIED for lack of merit. Costs against petitioners.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

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