

ALEJANDRO ABAO, ET AL., PLAINTIFFS AND APPELLANTS, VS. J.M. TUASON & CO., ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-16796. January 30, 1962*

Ponente: CONCEPCION, J.

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Appeal from an order granting several motions to dismiss and, accordingly, dismissing plaintiffs' complaint, with costs against the latter.

In said complaint, plaintiffs—numbering 67—allege that they are occupants and/or owners of residential lots, situated in Tatalon, Matalahib and Masambong, Quezon City, purchased by them from several persons named in said pleading and collectively designated therein as Deudors; that said residential lots are covered by a Torrens title in the name of J.M. Tuason & Co., Inc.; that by virtue of a compromise agreement dated March 16, 1953, the Deudors sold, transferred and conveyed to J.M. Tuason & Co., Inc. and Gregorio Araneta, Inc. a parcel of land of 50 "quiñones", including said residential lots occupied and/or owned by plaintiffs, for a valuable consideration stated in said agreement; that despite the recognition therein of the rights of the Deudors—and hence, of those of plaintiffs herein, as successors and assigns of the Deudors—in and to said residential lots, the aforementioned J.M. Tuason & Co., Inc. and Gregorio Araneta, Inc. instituted, in the Court of First Instance of Rizal, Quezon City Branch, numerous suits against the plaintiffs to eject them from said residential lots; and that, as a consequence of these suits, said corporations contemplate and threaten, unless restrained by a writ of preliminary injunction, to proceed with the ejectment proceedings and/or oust and force the plaintiffs to vacate the lots they had respectively purchased from the Deudors.

Plaintiffs prayed, therefore: a) that judgment be rendered: (1) declaring that they are entitled to enforce their respective contracts with the Deudors against said corporations, and, accordingly, to step into the shoes of the Deudors, in respect of the rights of the latter, under the aforementioned Compromise Agreement, with regard to the residential lots above referred to, and that said corporations cannot demand from plaintiffs payment of a price higher than that fixed in the contract between the latter and the Deudors or, else, that the increase in the price, if any, should be deducted from the amount due to the Deudors under said compromise agreement; and (2) ordering said corporations to execute the corresponding deeds of sale in favor of the plaintiffs; and b) that, meanwhile, said corporations and the Sheriff of Quezon City be enjoined from further proceedings in the aforementioned ejectment suits.

Soon after the filing of said complaint, plaintiffs filed an urgent ex-parte motion for a writ of preliminary injunction, to which the main defendants objected, and which was eventually denied by the lower court.

In due time, J. M. Tuason & Co., Inc. and Gregorio Araneta, Inc. filed separate motions to dismiss on various grounds, one of which was that venue had been improperly laid. These motions were granted upon the last ground, the residential lots in question not being located wholly or partly in the City of Manila. The order of the lower court to this effect is now assailed by plaintiffs-appellants upon two (2) grounds, namely: (1) that this is a

personal action, for specific performance, which was properly instituted in Manila, where defendant corporations have their main offices; and (2) that venue had been waived by said defendants.

There is no merit in this pretense. Plaintiffs' action is predicated upon the theory that they "are occupants, landholders", and "most" of them "owners by purchase" of the residential lots in question; that, in consequence of the compromise agreement adverted to above, between the Deudors and defendant corporations, the latter had acknowledged the right and title of the Deudors in and to said lots, and hence, the right and title of the plaintiffs, as successors in interest of the Deudors; that, by entering into said agreement, defendant corporations had, also, waived their right to invoke the indefeasibility of the Torrens title in favor of J. M. Tuason & Co., Inc.; and that defendants have no right, therefore, to oust plaintiffs from the lots respectively occupied by them and which they claim to be entitled to hold. Obviously, this action affects, therefore, not only the possession of real property, but, also, the title thereto. Accordingly, it should have been instituted in the Court of First Instance Of the Province of Rizal in which said property is situated (Rule 5, section 3, Rules of Court).

Plaintiffs' second argument is premised upon the allegation that in Civil Case No. 36303 of the Court of First Instance of Manila, entitled "Philippine Sugar Estates Development Co., Ltd. vs. J. M. Tuason & Co., Inc. and/or Gregorio Araneta, Inc.", which is allegedly, "similar and identical" to the case at bar, defendant corporations had not objected to the venue. Not being parties in said case No. 36303, it is obvious that plaintiffs herein cannot avail themselves of the waiver therein allegedly made by said corporations, which, at the first opportunity, have expressly objected to the venue in the present case.

Plaintiffs insist that the lower court should have issued the writ of preliminary injunction prayed for by them, but, the venue having been improperly laid, it is clear that plaintiffs' contention has no leg to stand on.

Wherefore, the order appealed from is hereby affirmed, with costs against plaintiffs-appellants. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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