

**J. M. TUASON & CO., INC., PLAINTIFF-APPELLEE, VS.
RAYMUNDO FAMILARA, DEFENDANT-APPELLANT.**

G.R. No. L-33515. August 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Plaintiff J. M. Tuason & Co., Inc. is the registered owner of a parcel of land situated in Quezon City, covered by Transfer Certificate of Title No. 42774 traceable to Original Certificate of Title No. 735 issued way back on July 8, 1914.

On February 5, 1960, plaintiff filed a complaint against Raymundo Familara before the Court of First Instance of Quezon City to recover possession of a portion of land, about 200 square meters, occupied by the latter. Defendant Familara filed his answer to the complaint denying the material averments therein and interposing affirmative defenses. After trial, the lower court rendered a decision ordering defendant Familara to vacate the premises in question and to remove his house and other constructions thereon with damages.

Defendant Familara interposed an appeal with the Court of Appeals which rendered a decision affirming the judgment of the lower court with the modification that the damages awarded to plaintiff be reduced from P60.00 to P20.00 a month.

The case was remanded to the court a quo for execution of judgment.

On October 19, 1963, the lower court issued an order for the issuance of a writ of execution. The order reads:

"The judgment in this case having already become final and executory, as prayed for, let a writ of execution be issued for the satisfaction of the same.

"SO ORDERED."

The writ of execution was returned unsatisfied by the Sheriff of Quezon City. Whereupon, the lower court issued an order of demolition, the dispositive portion of which reads:

"WHEREFORE, the Sheriff of Quezon City is hereby authorized to demolish the house and other improvements of the defendant in the premises in question effective FEBRUARY 17, 1964, in the event defendant fails to remove the same during the period herein granted.

"SO ORDERED."

When the Sheriff of Quezon City failed to enforce the demolition order, the lower court issued another order dated September 28, 1965, directing the Sheriff of Quezon City to enforce the order within fifteen (15) days from receipt thereof. The order reads:

"Acting on the motion to direct Sheriff to enforce order of demolition dated January 13, 1964, filed by the plaintiff on September 2, 1965, for reasons which the court finds well taken and in order, as prayed for, the Sheriff of Quezon City is hereby ordered to forthwith enforce the order of demolition referred to above, if the

defendant will not voluntarily remove his house and other construction of the lot in question within FIFTEEN (15) DAYS from receipt of this order.

"IT IS SO ORDERED."

On March 24, 1966, defendant Familara filed with the lower court a motion praying that the order dated September 28, 1965 directing the sheriff to enforce the demolition order be held in abeyance or that the case be left in status quo until termination and final resolution by the Supreme Court of Civil Case G.R. No. L-24559, entitled: J. M. Tuason & Co., Inc. vs. Hon. Guillermo E. Torres, et al.

On May 16, 1966, the lower court denied the motion.

On May 27, 1966, the defendant filed a motion to stay execution and/or demolition and to modify judgment. The motion was predicated on the decision of Judge Eulogio Mencias of the Court of First Instance of Rizal in Civil Cases Nos. 3621-3623, entitled: Victor Benin, et al. vs. Mariano Severo Tuason y dela Paz, et al.

On June 4, 1966, the lower court issued an order denying appellant's motion. The order reads:

"Acting on the second motion to stay execution filed by the defendant, through his new counsel Atty. Canonizado, and it appearing that said motion alleges the same grounds as those alleged in the first motion previously filed by Atty. Ruperto, the Court is constrained to deny the same and hereby reiterates its stand in its order of May 16, 1966.

"In the meantime that the order is not yet final, the execution of the judgment herein and or demolition of the property of the defendant in the premises in question is hereby stayed for FIFTEEN (15) DAYS from today.

"IT IS SO ORDERED."

Not satisfied with the aforementioned order, defendant Familara appealed the same to the Court of Appeals.

It is the position of the defendant that in Civil Case No. 3621, entitled: Victor Benin, et al. vs. J. M. Tuason & Co., Inc., et al.; in Civil Case No. 3622, entitled: Juan Alcantara, et al. vs. Mariano Severo Tuason y dela Paz, et al.; and in Civil Case No. 3623, entitled: Diego Pili, et al. vs. Mariano Severo Tuason y dela Paz, et al., all of the Court of First Instance of Rizal, Branch II, Original Certificate of Title No. 735 and all transfer certificates of title emanating therefrom, were nullified and the plaintiffs in the three (3) cases were declared the lawful owners and entitled to the possession of the land covered by said Original Certificate of Title No. 735; that the said three cases were appealed to this Court where they are pending decision.

The Court of Appeals in its resolution dated March 24, 1971 said:

"In the case at bar, the judgment of this Court in CA-G.R. No. 28128-R modifying the lower court's decision had long become final and executory. As a matter of fact, the record of the case had been remanded to the court of origin for execution. The lower court issued orders and directives to have the judgment executed. Said orders particularly that issued on June 4, 1966, denying the defendant-appellant's motion to stay execution are the subject of the instant appeal. No question of fact is raised at this stage to warrant disposition of this case by this Court. As the appeal involves purely a question of law, the case falls within the exclusive jurisdiction of the Supreme Court under Sec. 17 of the Judiciary Act of 1948, as amended.

"WHEREFORE, the records of the instant case are hereby certified to the Supreme Court for decision."

As stated above, basis of defendant Familara's motion to stay execution is the pendency of Civil Case No. L-24559, entitled: J. M. Tuason & Co., Inc. vs. Hon. Guillermo E. Torres, et al. This Court, on July 22, 1981, rendered a decision upholding the validity of Original Certificate of Title No. 735. This Court found and held that:

"x x x if Original Certificate of Title No. 735 is found by this Court to be null and void then petitioner J. M. Tuason will lose all claims of ownership over the lands they are occupying. The intervenors, in alleging that Original Certificate of Title No. 735 is void also invoked the decision of Judge Eulogio Mencias of the Court of First Instance of Rizal in Civil Cases Nos. 3621, 3622, 3623. As mentioned earlier, this decision has been reversed by the Supreme Court and consequently there is no more doubt as to the validity of Original Certificate of Title No. 735. Therefore the intervenors no longer have any interest in the principal case.

"WHEREFORE, the petition is granted, all the orders assailed are declared null and void and the respondent court is hereby ordered to dismiss Civil Case No. 8080 of the Court of First Instance of Rizal against the petitioner, without costs."

ACCORDINGLY, the appealed order, dated June 4, 1966, is hereby maintained, with costs against the appellant.

SO ORDERED.

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

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