

SPS. HERMINIO DIZON & LIGAYA DIZON, APPELLANTS, VS. DIVERSIFIED REALTY & AGRO- INDUSTRIAL DEVELOPMENT CORPORATION, REPRESENTED BY ITS EXECUTIVE VICE-PRESIDENT JOSEPH ANTHONY I. ...

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

Brought to this Court for review through this appeal under Rule 41 of the 1997 Rules of Civil Procedure is the Decision,[1] dated July 1, 2004, in Civil Case No. 119-M-2001 of the Regional Trial Court, Malolos City, Branch 14, the dispositive portion of which reads as follows:

“WHEREFORE, in view of all the foregoing, judgment is hereby rendered, DISMISSING the complaint. Defendants’ counterclaim is likewise dismissed.

Costs against the plaintiff.

SO ORDERED.”

The present controversy arose as a consequence of the execution of judgment in the case of “Diversified Realty Agro-Industrial Development Corporation vs. Pablito Alejandro, et. al.” for ejectment with damages, docketed as Civil Case No. 1632-95 of the Metropolitan Trial Court (MTC) of Plaridel, Bulacan.

The records disclose the following antecedent facts, which are pertinent in the present appeal, to wit:

On December 29, 1997, The Hon. Judge Luisito Cortez, Presiding Judge of the Municipal Trial Court of Plaridel, Bulacan, rendered his decision in Civil Case No. 1632-95, in favor of herein appellees, ordering the defendants thereat, appellants herein, to vacate the premises and remove the latter’s structures within thirty (30) days from finality of the decision.

On September 15, 1999 a writ of execution[2] was issued addressed to the clerk of court and ordering the sheriff and his deputies to eject the appellants from the property.

On April 25, 2000, Judge Cortez issued an Order of Demolition[3] ordering all the adjudged defendants therein to vacate and remove their respective houses and other improvements in the subject lot not later than May 26, 2000 at twelve noon.

On April 27, 2000, the court issued a writ of demolition,[4] but this time impleaded new defendants and excluded other persons from the coverage of the writ.

On December 1, 2000, by virtue of the writ of execution issued by the Honorable Judge, the appellees caused the demolition of the appellant’s house. Appellants opposed the demolition and explained to the sheriff their house was not included in the ejectment case.

Thus, on February 2, 2001, appellants filed before the court a quo a case for damages against, herein, appellees

including sheriff Junie Jovencio Ipac. In their complaint, appellants alleged that their previous counsel had informed, by way of a letter, the appellees as regards their non-inclusion in the writ. Despite such letter, the appellees, nonetheless, brought about the demolition of their house. According to them, as a consequence of the demolition they suffered damages.

Appellees, on the other hand, alleged that the house of the late Moises Dizon, appellants predecessor-in-interest, was among those scheduled for demolition. By way of special and affirmative defenses, however, appellee corporation, as represented by its vice-president, averred that the appellants are just one of the heirs of the late Moises Dizon, hence, not all indispensable parties were included thereat.

Upon motion by the appellants, the court a quo declared sheriff Ipac in default in an Order dated June 18, 2001. On July 10, 2001, however, appellee sheriff filed a motion to lift the order of default[5] stating that his failure to file his answer was due to excusable mistake. He averred that it was agreed upon by him and appellee corporation that the latter will file an answer for and in behalf of him. Hence, in an Order,[6] dated July 30, 2001, the court a quo granted appellee Ilac's motion to lift the order of default, but when directed to file his answer, appellee Ipac moved that that he was adopting the answer filed by appellee corporation.

After the issues were joined, the appellants presented their evidence. However, when the case was called for the presentation of the appellees' evidence, the counsel for the appellees moved that the presentation of his clients' evidence be deemed waived because he has not heard from his clients.

On July 17, 2003, appellee sheriff moved to re-open the case for the presentation of his evidence, which motion the court a quo granted in an Order[7] dated February 12, 2004.

After both parties, with the exception of the appellee corporation, had presented their respective evidence, testimonial and documentary, the court a quo, as stated at the outset, dismissed the appellant's complaint and the appellees' counterclaim for lack of merit.

On August 26, 2004, the appellants filed their notice of appeal. Appellants now come to this court with the following submissions, to wit:

I

THE HONORABLE COURT A QUO ERRED IN RE-OPENING THE SUBJECT CASE FOR RECEPTION OF EVIDENCE FOR THE DEFENSE

II

THE HONORABLE COURT A QUO ERRED IN DISMISSING THE SUBJECT CASE, BASING ITS DECISION SOLELY ON THE TESTIMONY OF DEFENDANT SHERIFF.

Appellants first allege that the court a quo erred in granting the motion filed by appellee sheriff to re-open the case and to present evidence. They submit that the motion seeking to re-open the case was filed by appellee sheriff himself and not by the counsel of record. They add that the motion lacked the requisite notice of hearing and there was no affidavit of merit attached therewith. Appellants now question before this court the propriety of granting the motion to re-open the case.

Nothing in the present rules of court sanctions motions to re-open a case after it has been submitted for decision. Nevertheless, albeit the foregoing, the court is not powerless to grant the same. The power of the court emanates from the principle of law more than what the rules do not provide so. Regardless, therefore, of the absence of a specific rule governing motions to re-open a case after it has been submitted for decision, it is within the discretion of the court to grant the same as warranted by the facts and circumstances of the case with a view to

satisfy his mind on matters he has to determine. In other words, courts may grant such motions in order to secure a full and clear understanding of the facts.

There are a number of things, especially in civil cases, that a party may do, the rules not having provided otherwise, which the court, in the exercise of its discretion, may permit him to do in the interest of justice. As previously stated, there is nothing in our present rules or any other law restricting the authority, inherent in a court of justice, to pursue a course of action in matters, specifically the matter obtaining in the case at bar, i.e., appellee sheriff's motion to re-open the case to present his evidence, pertaining to the ascertainment of the truth of the respective allegations of the parties. In that way, the ends of justice would be better served.

From the foregoing, we see no reversible error on the part of the court a quo in granting appellee sheriff's motion to re-open the case, as to him, in order to present evidence in his behalf. In many cases, courts have to hear both sides, and sometimes more than both sides, to reach an intelligent and correct conclusion.

Consequently, the determination, under the facts and circumstances obtaining in the present case, if the motion should be granted or not, rests in the sound discretion of the court a quo.

Appellants, likewise, fault the trial court in granting the motion to re-open the case where it was shown that appellee sheriff signed the same by himself and not by the counsel of record.

Such submission fails to persuade us considering that the rules do not prohibit a party from signing a pleading, motion, or other papers, notwithstanding the fact that a counsel represents him.

Appellants, next, argue that the motion lacked the required notice of hearing and no affidavit of merit was attached therewith. A close perusal of the records, however, would reveal that the assailed motion contained the requisite notice of hearing. As regards the affidavit of merit, the rules do not require that the subject motion be appended with an affidavit of merit.

In its second assigned error, appellants contend that the demolition of their house had no basis from the beginning because their predecessors-in-interest were not party defendants in the ejectment case before the MTC. They submit that the mandate of the writ of execution and demolition does not include their house. Instead, as they claim, appellee sheriff merely relied on the markers provided by appellee corporation. Thus, they aver that the appellees acted in bad faith when the latter, notwithstanding knowledge that the house was not included in the writ, went on to demolish the same.

The contentions are without merit.

Even if appellants were not impleaded as defendants, they are, nonetheless, bound by the judgment of the MTC in the action for ejectment for various reasons as will be discussed hereafter.

First, while it may be true that the names of the appellants are nowhere indicated in the dispositive portion of the decision, or the writs of execution, and, thus, they could not be covered by the writ of demolition without a proper correction, thereon, being first undertaken, appellants are, nonetheless, covered by the writs of execution and demolition because the decision provided the eviction of all the defendants and all persons claiming rights therefrom, including herein appellants. Appellants' ejectment from the disputed land is, therefore, not improper, much less incorrect.

Second, as a rule, no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by the judgment rendered by the court. Nevertheless, a judgment in an ejectment suit is binding not only upon the defendants in the suit but also against those not made parties thereto, if they are:

(a) trespassers, squatters or agents of the defendants fraudulently occupying the property to frustrate the

- judgment;
- (b) guests or other occupants of the premises with the permission of the defendant;
- (c) transferees pendente lite;
- (d) sub-lessees;
- (e) co-lessees; or
- (f) members of the family, relatives and other privies of the defendant.[8]

Prescinding from the aforequoted exceptions laid down by the High Court, appellants' possession of the property on which their house was built rightfully falls under the first exception. The MTC had adjudged the appellee corporation the owner of the subject property having been titled in its name. The documentary evidence, taken as a whole, relied upon by the MTC is the source of appellee corporation's rights and interests. Appellants are unlawfully staying inside the premises. Thus, it is clear that appellee corporation was correct in asking for the ejectment of those occupying the property, including herein appellants.

Third, appellant's protestation that their non-inclusion as party defendants in the ejectment case, as well as their non-inclusion in the writs of execution and demolition, is a bar to their eviction is an inaccurate statement, if not altogether false. Appellants' connection with the case filed before the MTC rests on nothing more substantial than their alleged ownership of the land. It is apparent that appellants' claim of title to the particular lot of appellee corporation is so tenuous and conjectural as to be practically nonexistent.

Undeniably, when asked during his testimony if he has proof of ownership over the said premises, appellant Dizon could not provide one, but merely stated that his late father had bought the land in installment.

As compared to the clear, actual and existing legal right of the appellee corporation to the possession of the subject property as the registered owner thereof, appellants' mere allegation of being owners of the property does not impress us as being endowed with legal or logical support.

Appellants' continued stay, then, makes this court suspicious and wary of imputing any legitimacy and validity to their title over the land.

Fourth, certain facts obtaining in the present case would provide some basis for the omission of the appellants as party defendants in the case of ejectment filed before the MTC. The names of the appellants were presumably omitted from the list of defendants because the lot on which their house was constructed is the proposed playground of the subdivision. It bears stressing that the property in question is composed of several lots, including that where the appellants' house was built.

Fourth, since the purpose of formally impleading a party is to assure him a day in court and accord him due process, it cannot be said, however, in the case at bar, that the appellants were denied due process because the very issue in the ejectment case before the MTC is possession and ownership of almost the entire subdivision, with the exception of some. It must be noted that the defendants thereat were mostly his immediate neighbors. Appellants, therefore, could not feign ignorance as regards the ejectment case filed against his neighbors in as much as it had already become a public knowledge.

As previously stated, the house of the appellants was erected on the proposed playground of the subdivision. Their omission in the list of party defendants, therefore, could be logically supported by this peculiar circumstance. As in any subdivision plan, a house or dwelling cannot be constructed on a proposed playground, save for some structures necessary on a park.

Additionally, had appellants exercised diligence in the preservation of their rights, their knowledge of the ejectment case should have placed them on guard that in the event the decision in the ejectment case was in favor

of the plaintiffs therein, it would have meant execution of the decision and would also have meant the demolition of the houses of the defendants in the said case.

In fact, during the time when appellee sheriff was already effecting the demolition, they did nothing to protect their rights other than their strong opposition against the demolition and their bare allegation that their predecessor-in-interest had bought the property in installment. Yet, even after appellee sheriff had given them ample time, specifically ten days, to secure injunctive relief to put to a halt the scheduled demolition, appellants, through their counsel, merely wrote appellee corporation a letter[9] stating that their house should be excluded from the demolition.

Fifth, the propriety of the order authorizing execution of the ejectment judgment against the appellants cannot be gainsaid upon the MTC's proper finding that the lots in question rightfully belongs to herein appellee corporation.

Lastly, there appears neither patent irregularity nor arbitrariness on the part of appellee sheriff in enforcing the writ of demolition. It must be noted that once a writ of execution or demolition is placed in his hands, it becomes his ministerial duty to proceed with reasonable celerity and promptness to execute it with its mandate.[10] Unless restrained by a court order, he is bound to see to it that the execution of judgment directed by the judge is not unduly delayed.[11] In the absence of a clear showing to the contrary, a presumption exists that a sheriff has acted in good faith in the performance of his official duty. Again, we find no such irregularity in the performance of the sheriff's official duties in the case at bar.

We deem it necessary, at this point, to reiterate that sheriffs and deputy-sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice.[12]

Consequently, the burden of proof is on the appellants to establish their case by the requisite quantum of evidence. If appellants claim a right, they must prove their claim by competent evidence submitted in support thereof. In the case at bench, appellants miserably failed to buttress their claim for damages.

WHEREFORE, premises considered, the appealed decision is, hereby, **AFFIRMED**.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

[1] Rollo, p. 17-26.

[2] Records, Volume V, pp. 87-92.

[3] Ibid., pp. 97-100.

[4] Ibid., pp.93-96.

[5] Records, pp. 37-38.

[6] Ibid., p. 42.

[7] Ibid., pp. 127-129.

[8] Lao v. Lao, 458 SCRA 539 548.

[9] Records, p. 8.

[10] *Francisco v. Cruz*, 340 SCRA 76.

[11] See *Marisga v. Villamar* 305 SCRA 132.

[12] *Borsanal, Jr., vs. Montes*, 280 SCRA 181, citing *NBI vs. Tuliao*, 270 SCRA 351 and *Vda. de Abellera vs. Dalisay*, 268 SCRA 64.

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