

EMILIANA MOLO-PECKSON, ET AL., PETITIONER, VS. THE HON. PEDRO JL. BAUTISTA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, ATTY. DOMINGO T. DESIERTO, ACTING CLERK OF COURT, ET A...

G.R. No. L-22290. October 25, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action for certiorari, with preliminary injunction, to annul an order of the Court of First Instance of Rizal, dated August 10, 1963.

Petitioners herein are Emiliana Molo-Peckson, her husband, Juan N. Peckson, Pilar Perez-Nable and the latter's husband Carlos E. Nable. The record shows that, as foster children of the childless and deceased spouses Mariano Molo and Juana Juan, Mrs. Peckson and Mrs. Nable had received from the latter[1] - acting in accordance with her wishes and those of her husband, who had died over nine (9) years before[2] - by way of donation inter vivos, in 1948, the bulk of the properties of said couple, among which were ten (10) parcels of land in Pasay City, with an aggregate area of 1, 794 square meters. The donor had, however, imposed upon the domes the condition that they shall sell these lots, at P1.00 each, to Resurreccion de Leon and his sister, Juana de Leon.

On November 13, 1958 - the De Leons - hereinafter referred to as the respondents - brought Civil Case No. 1902-P, of the Court of First Instance of Rizal, against petitioners herein, to compel them either to convey said lots - for the sum of P10.00, which had been deposited in court, free from any lien or encumbrance - to said respondents or, else, to pay them the value of said lots, at the rate of P25.00 a square meter. It appears that, acting without respondents' consent, petitioners herein had, meanwhile, constituted on the afore-mentioned lots, a first mortgage, in favor of the former Rehabilitation Finance Corporation - now Development Bank of the Philippines - in the sum of P260, 000, and a second mortgage, in favor of one Claro Cortez, in the sum of P82,389.53. After appropriate proceedings, said court rendered, on September 21, 1960, a decision from which we quote:

"It is therefore the duty and obligation of the defendants herein to free these ten (10) parcels of land from said mortgages as they have no right nor authority from the deceased Mariano Molo and Juana Juan to alienate or encumber the same.

"Considering all the foregoing, the Court orders:

"1. The defendants[3] jointly and severally, to free the said ten (10) parcels of land from the mortgage lien in favor of the Rehabilitation Finance Corporation (now Development Bank of the Philip-pines) and Claro Cortez, and thereafter to sign and execute in favor of the plaintiffs[4] a deed of absolute sale of the said properties for and in con-sideration of TEN (P10.00) PESOS already deposited in Court after all conditions imposed in Exhibit A[5] have been complied with;

"2. That in the event the defendants[6] shall refuse to execute and perform the above, they are ordered, jointly and severally, to pay the plaintiffs[7] the value of said ten (10) parcels of land in question, the amount to be

assessed by the City Assessor of Pasay City as the fair market value of the same, upon orders of the Court to assess said value;

"3. The defendants[8] jointly and severally to pay the plaintiffs[9] attorney's fees in the amount of P3,000, as defendants[10] acted in gross and evident bad faith in refusing to satisfy the plaintiffs'[11] plainly valid, just and demandable claim, under Article 2208 sub-paragraph 5 of the New Civil Code;

"4. The defendants[12] to render an accounting of the fruits of said ten (10) parcels of land from the time plaintiffs[13] demanded the conveyance of said parcels of land on August 11, 1956 as per exhibits B and C, in accordance with the provisions of Article 1164, New Civil Code which provides that the creditor has a right to the fruit of the thing from the time the obligation to deliver it arises; x x x."

On appeal, we affirmed this decision in L-17809, except as regards petitioners' obligation to render an accounting, which was modified in the sense that it would begin, not from August 11, 1956, as stated in said decision, but from the date on which the decision in G.R. No. L-8774 of this Court - involving the probate of the will of Juana Juan - had become final. The dispositive part of our decision in said L-17809, promulgated on December 29, 1962, reads:

"To recapitulate, we hold: (1) that the document executed on December 5, 1950[14] creates an express trust in favor of appellees; (2) that appellants[15] had no right to revoke it without the consent of the cestui qui trust; (3) that appellants[16] must render an accounting of the fruits of the lands from the date the judgment rendered in G.R. No. L-8774 became final and executory; and (4) that appellants[17] should free said lands from all liens and encumbrances.

"Wherefore, with the modification as above indicated with regard to accounting, we hereby affirm the decision appealed from, without pronouncement as to costs."

After the appealed decision, in said Civil Case No. 1902-P of the Court of First Instance of Rizal, as modified by Us, had become final, or on March 3, 1963, the lower court ordered its execution, on motion of respondents, whereupon, the corresponding writ was issued on March 16, 1963. Although the dispositive parts of said decisions of the trial court and the Supreme Court,[18] were quoted in the body of said writ, the decretory portion thereof did not state that petitioners could pay the value of said property, if they did not want to part with the latter. Indeed, said portion was of the following tenor:

"Now, therefore, we command you to execute said decisions in accordance with the terms and tenor thereof, in the manner required by law, together with your lawful fees for the service thereof, which plaintiffs[19] Resurreccion de Leon and Justa de Leon, assisted by her husband Artemio Tenorio, recovered in this Court in its decision, dated September 21, 1960 and the decision of the Supreme Court in this case promulgated on December 29, 1962, particularly as follows:

"1. That the defendants[20] be jointly and severally ordered or required to free the ten (10) parcels of land subject to this case (Transfer Certificate of Title No. 2649 of the Registry of Deeds of Pasay City) from all liens and encumbrances and thereafter to sign and execute in favor of the plaintiffs[21] a Deed of Absolute Sale over the same, for and in consideration of the amount of TEN (P10.00) PESOS, deposited in Court, as per Official Receipt No. D-8456658;

"2. That the defendants[22] be jointly and severally ordered or required to render an account-ing of the fruits of the said parcels of land from January 7, 1959 up to the time of the filing of the said accounting, and thereafter to turn over to the plaintiffs[23] the said fruits of the said ten parcels of land, plus interest at the legal rate;

"3. That the Sheriff of Pasay City be ordered or required to attach a Copy of the judgment to the Writ of execution and served upon the defendants[24] under Section 9, Rule 39 of the Rules of Court, so that the

defendants[25] may be punished for contempt if they disobey the enforcement of the judgment;

"4. That ten (10) days from receipt of the writ of execution by the defendants[26] be the time specified therein which the defendants[27] must comply to do and perform all the acts required of them by the judgment, as provided in Section 10, Rule 39 of the Rules of Court; and

"5. That the Sheriff of Pasay City be required to execute against the defendants,[28] jointly and severally the amount of P3, 000.00 as attorney's fees, plus interest at the legal rate; and to make a return of this writ together with your proceedings indorsed thereon, within sixty (60) days from receipt hereof."

In compliance with said writ, petitioners paid the sums of P3, 000.00, as attorney's fees, and P459.00 as interest thereon, but did not (a) submit an accounting, (b) free the land from the encumbrances thereon, or (c) execute the required deed of sale. On April 30, 1963, respondents moved, therefore, that petitioners be cited for contempt of court. Petitioners objected thereto, alleging that the order requiring them to submit an accounting and to execute a deed of conveyance was premature, because they were entitled to choose to keep the lots in question, provided they paid the value thereof. The Pecksons expressed, however, their readiness to execute a deed of sale of their undivided share. Moreover, petitioners herein expressed their willingness to execute the requisite deed of sale "upon the fulfillment of the conditions precedent set forth in Exhibit A, if and when there are no legal impediments to the execution" of said deed. They further alleged that "circumstances beyond their control" prevented them temporarily from freeing the land from the encumbrances existing thereon; that the amount collected from them by way of interest on the attorney's fees should be refunded, no such interest being imposed by the decisions above referred to; and that said decisions gave them the right to pay the appraised value of the lots in question, if they refused to sell the same to respondents.

Acting upon said motion for contempt, on May 25, 1963, the lower court issued an order directing petitioners herein -

"1. To jointly and severally free the ten (10) parcels of land subject of this case (Transfer Certificate of Title No. 2649) of the Registry of Deeds for Pasay City from all lien and encumbrances, and thereafter to sign and execute in favor of the plaintiffs[29] a Deed of Absolute Sale over the same, for and in consideration of the amount of TEN (P10.00) PESOS, already deposited in Court, as per official receipt No. D-8456658; and

"2. To jointly and severally render an accounting of the fruits of the said parcels of land from January 7, 1959, up to the time of said accounting, and thereafter to turn over to the plaintiffs[30] the said fruits of the said ten parcels of land, plus interest at the legal rate."

with the admonition that they would be dealt with for contempt of court, should they fail to comply with said order.

Petitioners moved to reconsider the same, but, before the court could pass upon the motion for reconsideration, or on June 11, 1963, the Pecksons had executed, in favor of respondents herein, a deed of absolute sale of their (Pecksons') undivided share in the property, free from all liens and encumbrances, for the sum of P5.00. The Pecksons, likewise, submitted the required accounting to respondents who, in turn, refunded to the former the amount of the interest paid on the attorney's fees. Inasmuch, however, as these acts constituted merely a partial compliance with the writ of execution, on August 10, 1963, the lower court denied the motion for reconsideration and ordered the donees:

". . . jointly and severally to free the ten (10) parcels of land (T.C.T. No. 2649-Pasay City) subject-matter of this litigation, from all liens and encumbrances, and thereafter to execute in favor of plaintiffs[31] a deed of absolute sale for the same, for a consideration in the sum of TEN (P10.00) PESOS. However, should defendants[32] fail to comply therewith within thirty (30) days from service of this order, the Court hereby

appoints Atty. Domingo T. Desierto, Acting Clerk of Court, to levy on other properties of the defendants,[33] and thereafter, to sell said properties at public auction and the moneys realized therefrom to pay the mortgage liens and/or encumbrances on said ten (10) parcels of land, and to execute a deed of absolute sale over the same in favor of plaintiffs,[34] for and in consideration of the sum of TEN (P10.00) PESOS, which amount was already deposited in Court.”

A reconsideration of this order having been denied, on December 3, 1963, by the lower court, then presided over by Hon. Pedro JL. Bautista, petitioners commenced, against herein respondents, and said Judge Bautista, as well as the Acting Clerk of Court, and the Sheriff of Pasay City, the present action for certiorari, with a prayer for a writ of preliminary injunction, which we issued on January 10, 1964.

It should be noted that the Pecksons have already paid the attorney's fees, and rendered an accounting, as well as conveyed their undivided share in the lots in question, free from one-half of the amount guaranteed by the liens or encumbrances existing thereon. As a consequence, the unsatisfied portion of the writ of execution issued by the lower court is limited to the other half of the amount thus guaranteed by said lien or encumbrance and the conveyance of the undivided share of the Nables in said lots.

On June 25, 1968, respondents filed a "motion for leave to admit supplemental pleading" and a "petition to dismiss" the present case, upon the ground that the same has "become academic." In support thereof, respondents allege that petitioners herein had voluntarily fulfilled or complied with the aforementioned writ of execution, insofar as the same directs them to free the lots in question from all liens and encumbrances; that, accordingly, said lots are now free from said liens and encumbrances; that the question whether or not petitioners may be compelled to remove said encumbrances, has thereby become moot and academic; and that the only matter left to be done in this case is the conveyance of the undivided share of the Nables to the respondents, which conveyance may be made by the Clerk of the lower court, should the Nables fail to do so. On September 19, 1968, counsel for the petitioners received copy of our resolution, dated July 8, 1968, requiring them to comment on the said petition and motion of respondents herein, within ten (10) days from notice. Said period expired on September 29, 1968, and yet, the petitioners have not, up to the present, submitted the required comment.

Considering that, as alleged in respondents' aforementioned petition and motion to dismiss, the issues herein have become moot and academic, owing to the aforementioned acts performed by the petitioners, and there being no objection on their part, this case is hereby dismissed, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] Who died on May 28, 1950.

[2] On January 24, 1941.

[3] Petitioners herein.

[4] Respondents herein.

[5] A deed executed by Mrs. Peckson and Mrs. Nable, on December 5, 1950, whereby they agreed to convey - pursuant to "the verbal wish of the late Don Mariano Molo y Legaspi and the late Doña Juana Francisco Juan y Molo" - five (5) of the lots in question to Justa de Leon and the other five (5) lots to Resurreccion de Leon.

- [6] Petitioners herein.
- [7] Respondents herein.
- [8] Petitioners herein.
- [9] Respondents herein.
- [10] Petitioners herein.
- [11] Respondents herein.
- [12] Petitioners herein.
- [13] Respondents herein.
- [14] The aforementioned Exhibit A.
- [15] Petitioners herein.
- [16] Petitioners herein.
- [17] Petitioners herein.
- [18] In Civil Case No. 1209-P of the Court of First Instance of Rizal and L-17809 of the Supreme Court.
- [19] Respondents herein.
- [20] Petitioners herein.
- [21] Respondents herein.
- [22] Petitioners herein.
- [23] Respondents herein.
- [24] Petitioners herein.
- [25] Petitioners herein.
- [26] Petitioners herein.
- [27] Petitioners herein.
- [28] Petitioners herein.
- [29] Respondents herein.
- [30] Respondents herein.
- [31] Respondents herein.
- [32] Petitioners herein.
- [33] Petitioners herein.
- [34] Respondents herein.

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