

**FLOREND ARIEM, PETITIONER, VS. HON. WALFRIDO DE LOS ANGELES, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY, BRANCH IV; PEOPLE'S HOMESITE & HOUSING CORPORATION ...**

*G.R. No. L-32164. January 31, 1973*

Ponente: ESGUERRA, J.

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**ESGUERRA, J.:**

Petition for certiorari to nullify the order of respondent Hon. Walfrido de los Angeles, Presiding Judge, Court of First Instance of Rizal, Branch IV, Quezon City, dated June 24, 1970, denying the petition of petitioner Florenda Ariem to lift the writ of execution with prayer for a writ of preliminary injunction to restrain respondent People's Homesite & Housing Corporation from executing the judgment in its Civil Case Q-12775 entitled "People's Homesite & Housing Corporation, plaintiff, vs. Nicasio Barles, defendant."

In Civil Case No. Q-12775, the court above-mentioned rendered judgment on December 4, 1969, in favor of the plaintiff therein, respondent People's Homesite & Housing Corporation, and against the defendant therein, Nicasio Barles, ordering the latter to vacate Lot No. 16, Block 15, Psd-57771, situated in Project 6, Quezon City, which is the registered property of said respondent. After the judgment had become final and executory, respondent Judge ordered the issuance of the writ of execution to carry it into effect. The writ of execution was issued by the Clerk of Court on February 16, 1970, ordering the Sheriff of Quezon City to cause the defendant Nicasio Barles to remove his house and other construction built on said lot which is covered by Transfer Certificate of Title No. 34802 of the Register of Deeds of Quezon City issued in the name of the People's Homesite & Housing Corporation.

On May 14, 1970, petitioner Florenda Ariem filed in the same case a petition to lift the writ of execution, with prayer for a writ of preliminary injunction to enjoin the People's Homesite & Housing Corporation, or any other persons acting under its command and/or behalf, from executing the judgment of eviction. The petition was denied by the respondent Judge in his order of June 24, 1970, and from this order petitioner has come to this Court praying that it be nullified and set aside and that respondents and/or any person acting in their behalf be enjoined from executing the judgment in Civil Case No. Q-12775. Basis of the petition is Florenda Ariem's claim that she is the bona fide occupant of the land involved in said case and not defendant Nicasio Barles who was merely left as her caretaker when she left for the provinces.

On July 6, 1970, this Court required the respondents to answer the petition and issued a restraining order to prevent the execution of the judgment, including the demolition of the house and improvements on said land under the order of June 24, 1970, until further orders from this Court.

The sole issue in this case is whether the respondent Judge acted with grave abuse of discretion in denying the petition to lift the order of execution so as to prevent the respondents from carrying into effect the judgment in Civil Case No. A-12775. Petitioner alleges that the respondent Judge committed grave abuse of discretion in

denying her petition on the ground that she is the bona fide occupant or possessor of Lot No. 16, Block 15, Psd-57771, of Quezon City, and not Nicasio Barles. Therefore, she would be deprived of her property without due process of law by the execution of said judgment, citing in support of her claim the cases of Omaña et al vs. Gatulayao, 73 Phil. 66, and Manza vs. Santiago, 96 Phil. 938, and Martinez vs. Diza, 20 Phil. 498.

Petitioner's contention is devoid of merit. Nicasio Barles is the real party-in-interest as he was actually occupying the lot in question and had constructed his house thereon. He was duly summoned to answer the complaint in Civil Case No. Q-12775 but, instead of answering the complaint, he moved to dismiss the same on the ground that he has no interest in the premises and the filing of the complaint against him was erroneous. Accordingly, he prayed that he should not be made liable for the outcome of the Civil Case No. Q-12775. Having failed to answer the complaint after the denial of his motion to dismiss, Nicasio Barles was declared in default and respondent People's Homesite & Housing Corporation was allowed to present its evidence ex-parte. Thereafter, judgment was rendered against Nicasio Barles ordering him to vacate Lot No. 16 and remove his house and other construction thereon.

Nicasio Barles was duly notified of the writ of execution issued to effectuate the same, and on March 10, 1970, he filed a petition for relief from the judgment, wherein he prayed that the order of November 21, 1969, declaring him in default and the decision of December 4, 1969, sentencing him to vacate Lot No. 16 be set aside in order that he could "take the corresponding steps to avail himself of his proper day in court, to present his defense and protect his interests" over said lot. He also prayed for a writ of preliminary injunction to restrain the Sheriff of Quezon City from enforcing the writ of execution. The petition for relief was denied by the respondent Judge in his order of May 13, 1970.

After defendant Nicasio Barles had failed in his attempt to frustrate the judgment, then comes petitioner Florenda Ariem who moved to intervene in Civil Case Q-12775 by claiming that she was unaware all along about the pendency of said case and the proceedings had in connection therewith. But her pretense is too flimsy to be seriously considered. Nicasio Barles is her son-in-law and in the ordinary course of things she would have been duly notified if she was the real possessor or bona fide occupant of Lot No. 16. Any claim on her part that she is so with respect to Lot No. 16 and Nicasio Barles is merely her overseer or caretaker, smacks of an eleventh hour attempt to save Barles from eviction. It was Nicasio Barles who filed the motion to dismiss the complaint, which was denied. When judgment by default was rendered against him and he came to know it, he filed a petition for relief to set aside the judgment. These circumstances evidently show that he is the real party-in-interest actually in possession of Lot No. 16. If Nicasio Barles had absolutely no interest in the property, he would not have taken the steps he took in Civil Case Q-12775 "to protect his interest" therein. Any claim of herein petitioner Florenda Ariem that she is the bona fide occupant or possessor of the lot in question against whom no judgment could be validly rendered concerning the same, as she was not a party to the ejectment case, is idle and unavailing. Petitioner resorted to the filing of this petition simply to delay the execution of the judgment and to prolong the possession of the premises by Nicasio Barles, his son-in-law. It is unfortunate that petitioner willingly allowed herself to be a docile instrument for making a mockery of judicial processes and for trifling with the rule of law.

Even granting that petitioner Florenda Ariem is occupying the land involved, nonetheless, she is bound by the judgment against Nicasio Barles who is her relative. The family, relatives, and other privies of the defendant are as much bound by the judgment in an ejectment case as the party from whom they derive their possession. As was said by this Court in *Gozon vs. De la Rosa*, 77 Phil. 915, 925:

"El demandado y todos los miembros de su familia, como esposa, hijos, parientes, juntamente con sus criados, empleados y sus sub-arrendatarios que ocupan la finca por su consentimiento, pueden ser ordenados a desalojar la finca al verificarse la orden de ejecucion. [Freeman on Executions, Section 475; *Huerstal vs. Muir*, 63 Cal.,

450; Gray vs. Numan, 63 Cal., 220; Saunders v. Webber, 39 Cal., 287; Fiske vs. Chamberlain, 103 Mass., 495; Johnson vs. Fullerton, 44 Pa. St., 466 (Note No. 17 in 1 Freeman on Judgments, p. 1049).] Las recurrentes que son parientes de Amparo Gozon y que consiguieron vivir en la casa por la simple hospitalidad de esta, no pueden alegar posesion de buena fe y pueden ser echadas juntamente con la demandada Amparo Gozon en una orden de lanzamiento."

The cases cited by the petitioner to bolster up her claim that she cannot be deprived of the land involved without prior hearing to determine the extent of her right thereto, are not in point. They deal with rights of possessors in good faith who were not parties to the action involving title to the property and, hence, not bound by the judgment. Such possessors were not relatives or privies of the defendants and did not derive their right from the latter. Here, petitioner Florenda Ariem is a privy to Nicasio Barles who is her son-in-law. The respondent Judge in the hearing of the petition to lift the writ of execution gave ample opportunity to the petitioner to be heard as regards her alleged bona fide possession. But the Court did not believe her, it being evident that her claim was merely a pretext to frustrate the execution of the judgment ousting Barles who is a squatter on the land owned by respondent People's Homesite & Housing Corporation.

It is Our opinion that the respondent Judge did not abuse his discretion in denying the petition to lift the order of execution and in ordering the demolition of the house and other construction of Nicasio Barles on the land involved.

WHEREFORE, the petition is dismissed with costs against the petitioner. The restraining order issued by this Court on July 6, 1970, is hereby set aside.

Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, and Antonio, JJ., concur.  
Concepcion, C.J., did not take part.

Barredo, J., In the result. While petitioner cannot have the execution against Barles sustained, the judgment and execution against Barles are without prejudice to her right to litigate regarding her own rights as the real party in interest.

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