

**LIM SE AND BENITO LIM, PETITIONERS, VS. THE HONORABLE
MANUEL A. ARGEL, IN HIS CAPACITY AS PRESIDING JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL, CALOOCAN CITY BRANCH
XXXV; JUA...**

G.R. No. L-42800. April 07, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Atty. Homobono A. Adaza in his "motion to lift the writ of preliminary mandatory injunction" in this case recklessly and sweepingly contended that its issuance "has no legal nor factual basis" and was "unjust and constitutes a serious miscarriage of justice."

To determine whether in employing such vicious, abusive and disrespectful language, he committed direct contempt of court or contempt in facie curiae, it is necessary to summarize briefly the allegations of the verified petition consisting of 209 pages. Those averments underpinned the issuance of the writ and were not traversed by movants-respondents in their motion.

Lim Se and Benito Lim alleged that from 1965 to 1970 Lim Se leased from Venancia Chiombon, through her attorney-in-fact, Francisco San Pedro, the ground floor, mezzanine and basement of the Venancia Building located at 72 Session Road, corner Calderon Street, Baguio City. When that lease expired in 1970, Lim Se leased the same premises from the Estate of Florencio Reyes, Sr. for the period from January, 1971 to June, 1973.

It was also alleged in the petition that in Civil Case No. 2143 of the Court of First Instance of Baguio, an interpleader action instituted by Lim Se and the other tenants of the Venancia Building against Francisco San Pedro and the estate of Florencio Reyes, Sr. (which is the owner of the lot and which claimed to have become the owner of the Venancia Building), it was settled in the court's order of March 16, 1972 that the lessees would pay the rentals to the said estate and not to San Pedro.

On December 23, 1974 Lim Se and his son Benito Lim leased from the Estate of Florencio Reyes, Sr., through its special administrator, Florencio Reyes, Jr., the same premises for a period ending on March 31, 1977. The rental up to April, 1975 had been paid. Benito Lim operated in the premises the New Life Cafe & Restaurant.

Meanwhile, Genaro Bulotano, who claimed to have purchased on December 19, 1970 the Venancia Building from Juana San Pedro-Ocampo (and who in turn allegedly bought it from Venancia Chiombon), filed in May, 1971 an action in the Court of First Instance of Cavite City against Lim Se, the Estate of Florencio Reyes, Sr., Juana San Pedro-Ocampo and Remedios Sarmiento for the recovery of rentals and damages from the said defendants in connection with their occupancy of the Venancia Building (Civil Case No. N-1647).

Without awaiting the outcome of the Cavite case, Genaro Bulotano in May, 1975 filed in the Caloocan City Branch of the Court of First Instance of Rizal against Juana San Pedro-Ocampo and Francisco San Pedro an action to recover possession of Door No. 72 of the Venancia Building, its mezzanine floor and basement, the

premises leased by Lim Se and Benito Lim (as already stated above), and rentals and damages, amounting to P94,800 (Civil Case No. C-3547).

Note that the action, which is a real action to recover real property located in Baguio City, was filed in Caloocan City instead of in Baguio City (Sec. 2[a], Rule 4, Rules of Court). The only circumstance that might justify the laying of the venue in Caloocan City was that the defendants were supposedly residents of Malabon, Rizal. (In Civil Case No. 2143 Francisco San Pedro was alleged to be a resident of 61 Calderon Street, Baguio City).

In Civil Case No. C-3547 defendants Juana San Pedro and Francisco San Pedro in June, 1975 (or about a month after the main action was brought) filed against Lim Se and Benito Lim an unverified third-party complaint (which in reality was an ejectment suit), praying that they be ordered to vacate the ground floor, mezzanine and basement of the Venancia Building and to pay rentals amounting to P71,200. That third-party complaint or ejectment action was based on the termination in 1970 of the 1965 lease contract between Lim Se and Francisco San Pedro. However, it was stipulated in that lease contract that "in case of suit arising out of this contract, venue thereof shall be the City of Baguio".

Lim Se and Benito Lim filed a motion to dismiss the third-party complaint on the ground of improper venue, lis pendens and lack of jurisdiction over the res. Defendants San Pedro opposed the motion. The lower court denied it.

Lim Se and Benito Lim in their answer to the third-party or ejectment complaint reiterated the grounds raised in their motion to dismiss.

Juana S. Ocampo and Francisco San Pedro filed an urgent motion for summary judgment. They attached thereto Bulotano's affidavit, stating that on December 19, 1970 he bought the Venancia Building from Juana San Pedro-Ocampo for P27,000. In the deed of sale, it was stated that the building was constructed on two lots registered in the name of Florencio Reyes but which were under litigation in Civil Case No. 2043 of the Court of First Instance of Baguio entitled "Pedro Carantes, et al. vs. City of Baguio, Florencio Reyes, et al."

Juana and Francisco also annexed to their urgent motion for summary judgment an agreement dated January 12, 1971 between Bulotano and Francisco San Pedro wherein it was stipulated that San Pedro would deliver to Bulotano the possession of the portions of the Venancia Building occupied by Lim Se, Jose T. Zabala and Remedios Sarmiento.

The lower court in its summary judgment dated November 27, 1975 ordered Lim Se and Benito Lim to vacate Door No. 72 of the Venancia Building and its mezzanine and basement. It directed that the case would continue for the assessment of the amount of damages due from Lim Se and Benito Lim.

Juana and Francisco filed a motion for execution dated December 11, 1975 on the grounds that the appeal of Lim Se and Benito Lim would be frivolous and dilatory, that they had been withholding possession of the premises in litigation for the last five years without paying rentals, and that the appeals of Lim Se's co-tenants, Jose Zabala and Remedios Sarmiento, were dismissed by the Court of Appeals.

Lim Se and Benito Lim filed a "motion for reconsideration and to hold case in abeyance" dated January 2, 1976 together with an affidavit of merits. They called the lower court's attention to the fact that the lots on which the Venancia Building was constructed were registered in the name of Florencio Reyes, that they had leased up to March 31, 1977 from the administrator of the estate of Florencio Reyes the ground floor, mezzanine and basement of the Venancia Building, and that they had paid the rentals up to April, 1975.

They also called the lower court's attention to the fact that in July, 1975 the special administrator of the intestate

estate of Florencio Reyes, Sr. filed Civil Case No. 2817 in the Court of First Instance of Baguio against Venancia Chiombon, Francisco San Pedro, Genaro Bulotano, Juana San Pedro-Ocampo, Ricardo Gonzales, Lim Se, Amando Masangkay, Del Rosario Bros. Marketing Corporation, and Remigio T. Sature a complaint to settle once and for all the question as to the ownership and possession of the Venancia Building.

In that complaint it was alleged that Florencio Reyes, Sr. became the owner of the Venancia Building in 1962 upon the expiration of the lease contract between Reyes and Venancia Chiombon, represented by her son, Francisco San Pedro. It was stipulated in that lease contract that the lessor would become the owner of the building.

It was further alleged that Venancia Chiombon and her son, Francisco San Pedro, executed a simulated and fraudulent sale of the Venancia Building to Juana San Pedro-Ocampo in order to prevent the building from becoming the lessor's property. In turn, Juana S. Ocampo executed a simulated sale of the building to Genaro Bulotano. Florencio Reyes, Jr. alleged that the two sales were void because in 1962 the building in question was already the property of Florencio Reyes, Sr.

The lower court in its summary judgment relied on its decisions in Civil Cases Nos. C-1702 and C-1805 (Judge Serafin Salvador of Branch XIV), ejecting Remedios Sarmiento and Jose T. Zabala from the Venancia Building at the instance of Venancia Chiombon. Lim Se and Benito Lim reminded the lower court that in Civil Case No. C-1702 his wife, Li Hua, was sought to be ejected also from the Venancia Building but Judge Salvador dismissed the case as to her. The motion of Venancia Chiombon to receive the case against Li Hua was denied by Judge Salvador in his order of March 14, 1972.

Lim Se and Benito Lim also called the lower court's attention to the order dated March 20, 1973 of the City Court of Baguio in Civil Case No. 2631, an unlawful detainer action filed by the Estate of Florencio Reyes, Sr. against Venancia Chiombon and Genaro Bulotano regarding the Venancia Building. The City Court in dismissing the action held that it was necessary to determine first the ownership of the Venancia Building in a proper action in the Court of First Instance before the question of possession could be resolved.

The lower court or the Court of First Instance of Caloocan City in its order of January 13, 1976 denied the motion of Lim Se and Benito Lim for reconsideration and to hold case in abeyance.

In its ex parte, order of January 29, 1976 the lower court declared its summary judgment final and executory. It found that Lim Se and Benito Lim should have perfected their appeal on or before January 26, 1976. As no appeal was perfected, the lower court ordered that a writ of possession should be issued against Lim Se and Benito Lim.

On January 30, 1976 the Branch Clerk of Court of the lower court issued a "writ of possession" instead of the usual writ of execution. In that writ of possession the City Sheriff of Baguio was ordered to take possession of the premises occupied by Lim Se and Benito Lim, to eject them and anybody claiming under them, and to deliver the possession to Juana San Pedro-Ocampo and Francisco San Pedro.

At around ten-thirty in the morning of February 2, Deputy Sheriff Esteban S. Par addressed an ultimatum to Lim Se and Benito Lim, ejecting them from Door No. 72 of the Venancio Building and giving them "two (2) hours to bring out all your properties from the premises in question", with the warning that if they failed to leave the premises, they would be ousted therefrom.

Par executed the writ of possession "in a most cruel and oppressive manner" according to Lim Se and Benito Lim. (They had stayed in the premises for more than ten years):

"That even before the issuance of said Order of January 29, 1976 was made known to petitioners' counsel, Deputy Sheriff Esteban S. Par of the Office of the Provincial Sheriff in Baguio sought the enforcement of the

same against petitioners in a most cruel and oppressive manner.

"Instead of giving petitioners the usual period of at least five (5) days within which to vacate the premises peacefully, said deputy sheriff gave petitioners only two (2) hours to do so; an impossible demand, since the premises involved constitute petitioners' business establishment – a restaurant – New Life Cafe & Restaurant as well as their residence, so all of petitioners' possessions and properties within the premises cannot be moved out in two (2) short hours.

"And when petitioners failed to comply with said impossible demand, Deputy Sheriff Esteban S. Par with the aid of able-bodied men physically threw out of the premises into the streets some of petitioners' personal properties, forced petitioner Benito Lim, his eight-month pregnant wife, and one year old son, out of the premises into the street, together with the petitioners' other family members and padlocked the premises with most of petitioners' properties still inside the same" (Par. 32, Petition).

The petitioners further alleged that the "writ of possession" was consummated even before their counsel had received a copy of the order of execution.

The petitioners underscored that the lower court acted without jurisdiction or with grave abuse of discretion in rendering summary judgment in an ejectment case, where the venue was improperly laid, and in ordering execution pending appeal. They prayed for an injunction to restrain the lower court from further hearing the ejectment case and to order the sheriff to restore them the possession of the premises in question. They asked for the annulment of all the proceedings in the lower court.

The respondents were directed to answer the petition. A temporary restraining order was issued. After the petitioners had filed a bond in the sum of ten thousand pesos, a writ of preliminary mandatory injunction was issued, directing the City Sheriff of Baguio to place petitioners in possession of the premises from which they had been unceremoniously ousted.

Respondent Bulotano filed his separate answer through his lawyer of record, Atty. Ulysses P. Ortillo. The respondents (presumably including Bulotano also) filed an answer through Atty. Igmidio G. Baclit, the same lawyer of Francisco San Pedro in the interpleader case, Civil Case No. 2143.

On March 16, 1976 Atty. Antonio V. Raquiza and the law office of Adaza, Amante & Tiu, through Atty. Adaza, filed the aforementioned motion for the lifting of the mandatory injunction. The said lawyers, who never appeared in the lower court, apparently acted independently of Bulotano's counsel and of Francisco San Pedro's lawyer who, as already stated, filed an answer for all the respondents.

Atty. Adaza set his motion for hearing on March 22. That circumstance shows his unfamiliarity with appellate court practice. A motion filed in this Court or in the Court of Appeals is usually not set for hearing. Oral argument is not required in support of a motion unless expressly directed by the Appellate Court. The adverse party may file objections within five (5) days from service of the motion, upon the expiration of which the motion is deemed submitted for ruling (Sec. 2, Rule 49 and sec. 1, Rule 56, Rules of Court).

Atty. Adaza, in making it appear that all the respondents had moved for the lifting of the injunction, gave the impression that respondent Judge had participated in that motion. That is another instance showing his inexperience and unawareness of the practice in certiorari and prohibition cases. Trial judges who are made respondents in those special civil actions are only formal or nominal parties. Therefore, a judge in his official capacity should not be made to appear, as a party seeking a reversal of an Appellate Court's unfavorable action on his order or decision (Hon. Alcasid vs. Samson, 102 Phil. 735-6; Taroma vs. Sayo, L-37296, October 30, 1975, 67 SCRA 508, 514).

As noted at the beginning of this resolution, it was brashly and irresponsibly contended in the oft-mentioned motion that the injunction lacked factual and legal basis and constituted a serious miscarriage of justice.

The allegations of the verified petition, which the movants carelessly ignored, show the flagrant falsity of those contentions. The petitioners made out a strong *prima facie* case for the *ex parte* issuance of a mandatory injunction.

Note that the lower court sitting in Caloocan City ejected them from the premises which they had been occupying for more than ten years and which were located outside the court's territorial jurisdiction. The ejectment was made in spite of their objections to the venue of the action. The ejectment was made at the instance of Francisco San Pedro and Juana San Pedro-Ocampo, brother and sister. Juana, as alleged owner of the Venancia Building, had already sold it to Genaro Bulotano. Francisco was the alleged attorney-in-fact of his mother Venancia Chiombon, who sold the said building to her daughter, Juana. Genaro Bulotano did not care to file the ejectment suit in Baguio City. He was a defendant in Civil Case No. 2817, a pending litigation which was intended to settle the controverted ownership of the Venancia Building.

The lower court ignored the allegations of the petitioners that the ownership of the Venancia Building was involved in Civil Case No. 2817; that the estate of Florencio Reyes claimed to be the owner of the building; that the City Court of Baguio refused to entertain an ejectment suit against Chiombon because of the necessity of adjudicating first the ownership of the building, and that the petitioners had leased the disputed premises up to March, 1977.

The ejectment was made by summary judgment. The petitioners were dispossessed of the premises by means of a writ of possession and not by the usual writ of execution. No basis for the issuance of the writ of possession was shown. And the ejectment was allegedly effected in a ruthless manner.

Thus, the verified petition reveals that the lower court acted without jurisdiction (as far as the venue of the action was concerned) and that the strong arm of the law was used oppressively against the petitioners by means of the writ of possession.

An unbiased lawyer, upon a judicious consideration of the allegations of the verified petition, would not rashly jump to the erroneous conclusion that the mandatory injunction was bereft of any factual and legal basis and was a serious miscarriage of justice.

Movants-respondents invoke section 5, Rule 58 of the Rules of Court which directs that generally a preliminary injunction should be issued upon notice and hearing. They also invoke paragraph 17 (15) of the Canons of Judicial Ethics adopted by the American and Philippine Bar Associations and by the Secretary of Justice in his Administrative Order No. 162 dated August 1, 1946 (42 O.G. 1803).

Those canons were adopted "for the guidance of and observance by all judges under the administrative supervision of the Department of Justice (now this Court), including municipal judges and justices of the peace". Obviously, they do not apply to this Court, a collegiate court. Nor does section 5 of Rule 58 apply to this Court. It applies to trial judges. The purpose is to prevent them from resorting to the arbitrary, corrupt and abusive exercise of the power to issue injunctions.

Atty. Adaza also cites the rule that injunction operates upon unperformed acts but not those already consummated. That ruling refers to preventive injunctions, not to mandatory injunctions which require the performance of a particular act (Sec. 1, Rule 58 of the Rules of Court), such as the mandatory injunction in forcible entry cases (Arts. 539 and 1674, Civil Code; Sec. 3, Rule 70, Rules of Court).

In an ejectment suit, where the petitioners had been ejected by the trial court, this Court in a certiorari action issued ex parte a writ of mandatory injunction to restore them to the possession of the houses from which they had been ousted (*Leduna vs. Hon. Enriquez*, 108 Phil. 141, 147. See *M. E. R. & L. Co. vs. Del Rosario and Jose*, 22 Phil. 433).

It is obvious that Atty. Adaza's characterization of the mandatory injunction as "unjust and a miscarriage of justice" and as devoid of factual and legal basis is unfounded and unwarranted. He treated a resolution of this Court as if it were a pleading of an adversary which he could assail in unrestrained and abrasive language. His unjustified and disrespectful characterization carries with it obvious derogatory implications or innuendos which clearly constitute direct contempt or contempt in facie curiae (Sec. 1, Rule 71, Rules of Court; *Salcedo vs. Hernandez*, 61 Phil. 724, 728; *De Joya vs. CFI of Rizal, Pasay City Branch*, 99 Phil. 907, 916; *Malolos vs. Reyes*, 111 Phil. 1113; *Sison vs. Sandejas*, 105 Phil. 1279).

We hold Atty. Adaza guilty of direct contempt. However, considering his manifest inexperience in appellate court practice, instead of punishing him with imprisonment or fine, he is hereby severely reprimanded and warned that a repetition of the said act would be more drastically dealt with.

A copy of this resolution should be attached to his record in the Bar Confidant's office.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Martin, JJ., concur.

Fernando, J., on leave.

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