

ADRIANO D. DASALLA, ET AL., PETITIONERS AND APPELLANTS, VS. CITY ATTORNEY OP QUEZON CITY, ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-17338. May 30, 1962*

Ponente: PADILLA, J.

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Appeal from an order entered on 20 May 1960 by the Court of First Instance of Rizal, Quezon City branch, dismissing for lack of merit a petition which sought to prohibit the Attorney of Quezon City or his assistants from proceeding with the preliminary investigation of three criminal complaints for usurpation, grave coercion and estafa filed against the petitioners.

In an amended complaint dated 8 June 1959 filed in the Court of First Instance of Rizal, Quezon City branch, the petitioners alleged that on 28 September 1950 they were induced to sign an instrument mortgaging their two parcels of land situate in Quezon City; that under the terms and conditions thereof the Philippine Bank of Commerce was to grant them a loan of P8,500, and, for and in consideration of P850, the Republic Surety & Insurance Co., Inc. was to guarantee the payment of the loan; that in default of such payment of the surety company bound itself to pay it and was granted the right to foreclose the mortgage on the two parcels of land; that on 9 April 1959 they found out that the Philippine Bank of Commerce had not granted any loan to them and the Republic Surety & Insurance Co., Inc. had not assumed any guaranty obligation; and that on 9 May 1959 the defendants twice attempted to enter forcibly upon their property but failed because of police intervention; and prayed that a writ of preliminary injunction issue to restrain the defendants from entering upon their property; that the instrument purporting to constitute a mortgage on their two parcels of land be declared null and void; that transfer certificates of title Nos. 23595 and 23596 in the name of the Republic Surety & Insurance Co., Inc., issued in lieu of their certificates of title, be cancelled; that the extra-judicial foreclosure of the mortgage by the surety company also be declared null and void; that the defendants Francisco T. Koh and the Republic Surety & Insurance Co., Inc. be ordered to pay them the sum of P10,000 as moral damages and also the costs, and for just and equitable relief (Annex B, civil case No. Q-4328).

On 15 May 1959 the respondent Francisco T. Koh, as president of the Republic Surety & Insurance Co., Inc., filed against the petitioners three complaints for usurpation (LS. No. 1893, Annex A), grave coercion (LS. No. 1894, Annex A-1) and estafa (LS. No. 1895, Annex A- 2). On 18 August 1959 the petitioners asked the Quezon City Attorney to suspend the preliminary investigation of the criminal complaints on the ground that there was a prejudicial question raised in a civil action that had been filed by them and was pending trial in the Court of First Instance of Rizal, Quezon City branch (Annex C). On 1 September 1959 the Quezon Assistant City Attorney set the resumption of the investigation for the 16th day of the same month and notified the parties thereof "in view of certain points which need clarification" and the petition to suspend the investigation would be acted upon after the parties against whom the complaints had been filed shall have been heard (Annex D). On 14 September 1959 the petitioners filed in the Court of Appeals a petition for a writ of prohibition against . the respondents, the Quezon

City Attorney and Francisco T. Koh, docketed as CA-G.R. No. 25313-R (Annex E). " On 26 October 1959 the Court of Appeals denied the petition (Annex F). On 4 November 1959 the Quezon Assistant City Attorney set anew the resumption of the preliminary investigation of the criminal complaints for 27 November 1959 at 2:00 p.m. To prevent him from proceeding with the preliminary investigation, on 16 November 1959 in the Court of First Instance of Rizal, Quezon City branch, the petitioners commenced this special civil action for prohibition against the same parties (No. 4800). On 13 January 1960 the Quezon Assistant City Attorney filed an answer to the petition for prohibition; and on the same day respondent Francisco T. Koh, a motion to dismiss. On 19 January 1960 the petitioners objected to the motion to dismiss. As already stated, on 20 May 1960 the Court dismissed the petition for lack of merit and from that order the petitioners have appealed.

The petitioners insist that there is a prejudicial question brought about by the institution of the civil case that puts in issue the validity of the mortgage and foreclosure of the two parcels of land that precisely are involved in or connected with the criminal complaints for usurpation, grave coercion and estafa .filed against them. They contend that the investigation by the Quezon Assistant City Attorney should be stopped or suspended until after the prejudicial question shall have been determined or decided in the aforementioned civil case, for, they argue, if the mortgage on the two parcels of land referred to and their extra-judicial foreclosure be annulled, the criminal complaints for usurpation, grave coercion and estafa, all in connection with the mortgage of the aforesaid two parcels of land, their extra-judicial foreclosure and the attempts by the complainants to take possession of the parcels of land, would no longer have any ground on which to stand.

Instead of filing a brief, respondent-appellee Francisco T. Koh moved for the dismissal of the appeal on the ground that there is no specific assignment of errors in the petitioners-appellants' brief and that the appeal is frivolous.

Granting that the prejudicial question raised by the appellants be legally correct, still the time or moment to ask for the suspension of the criminal proceedings is not during the period of preliminary investigation by the city prosecuting officer-but after such investigation and after he shall have filed the informations against the appellants. Should the prosecuting officer find that the mortgage on the parcels of land was not really executed, or, if executed, it was through deceit and misrepresentation, he certainly would not file the informations.

The order appealed from is affirmed, without pronouncement as to costs in both instances.

Bautista, Angelo, Concepcion, Barrera, Paredes and Dizon, JJ., concur.

Reyes, J.B.L., concurs in the result.

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