

**ERNESTO, FORTUNATA, MONTANO, ZOSIMA, RAMON, GUADALUPE, LUIS, JOSEFINA AND ROSALIA, ALL SURNAMED YTURRALDE, PETITIONERS-APPELLANTS, VS. THE HONORABLE COURT OF APPEALS, HONORABLE ...**

*G.R. No. L-31586. February 28, 1972*

Ponente: MAKASIAR, J.

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**MAKASIAR, J.:**

Petitioners-appellants in this appeal by certiorari seek the reversal of the decision of the Court of Appeals dated December 24, 1969.

The Court of Appeals narrated the facts thus:

"It appears that the spouses Francisco Yturralde and Margarita de los Reyes, owned a parcel of agricultural land located in Guilinan, Tungawan, Zamboanga del Sur, containing an area of 14.1079 hectares, more or less, and registered in their names under Original Certificate of Title No. 2356 of the Office of the Register of Deeds of Zamboanga del Sur. Sometime in the year 1944, Francisco Yturralde died intestate, survived by his wife, Margarita de los Reyes, and their children who are the petitioners herein, Ernesto, Fortunata, Montano, Zosima, Ramon, Guadalupe, Luis, Josefina and Rosalia, all surnamed Yturralde. In 1950, Margarita de los Reyes contracted a second marriage with her brother-in-law and uncle of the petitioners herein, Damaso Yturralde.

"On May 30, 1952, Damaso Yturralde and Margarita de los Reyes executed a deed of sale with right of repurchase in favor of the respondent herein, Isabelo Rebollos, covering the above-mentioned property in consideration of the sum of P1,715.00. The vendors a retro failed to exercise the right to repurchase the property within the three-year period agreed upon, which expired on May 20, 1955. In 1961, Margarita de los Reyes died.

"On May 3, 1965, the respondent, Isabelo Rebollos, filed a petition for consolidation of ownership with the Court of First Instance of Zamboanga del Sur, docketed as Civil Case No. 436 therein, naming as respondents in the case the petitioners herein and Damaso Yturralde (Annex A. Petition). Summons was then issued, and received on June 17, 1965 by the respondent therein, Damaso, Ernesto, Fortunata, Montano, Guadalupe, Luis and Rosalia, all surnamed Yturralde Annexes C and F, Petition). However. summons could not be served on three of the respondents therein, Josefina, Zosima and Ramon Yturralde, as they were no longer residing at their last known addresses (Annexes B, C, and F Petition). The Judge then presiding the Court of First Instance of Zamboanga de Sur, Hon. Dimalanes Buissan, in his order dated October 7, 1965, directed that summons be served upon the the said three respondents, therein (Annex C, Petition). The copies of the petition sent to said three respondents, but returned without service ????? then delivered by Rebollos to the Clerk of Court of the Court of First Instance of Zamboanga del Sur to complete the delivery thereof under Section (of Rule 13, Rules of Court (Annex D. Petition). Thereafter, on motion filed by Rebollos to declare the respondents in the case in default (Annex E, Petition), the Court issued an order dated November 13, 1965, declaring all the respondents therein in default, after which Rebollos presented his evidence (Annexes F and G, Petition). On November 20,

1965, the Court rendered a decision consolidating the ownership of the subject property in favor of Rebollos and ordering the Register of Deeds of Zamboanga del Sur to cancel Original Certificate of Title No. 2356 covering said property and in lieu thereof, to issue a transfer certificate of title in the name of Rebollos (Annex H, Petition).

"On June 3, 1966, Rebollos filed a motion to order the petitioner Montano Yturralde herein to surrender and deliver to the Register of Deeds the owner's duplicate of Original Certificate of Title No. 2356, which motion was granted by Court presided at the time by Judge Antonio Montilla (Annexes I and H, Petition). Due to the failure of petitioner Montano Yturralde to comply with the order (Annex J) and on the motion filed by Rebollos, the Court, then presided by the respondent Judge ordered the arrest of said Montano Yturralde, but the order of arrest was subsequently lifted on motion filed by Montano Yturralde (Annexes K, L, M, N, O, and P, Petition).

"On motion filed by Rebollos, dated January 6, 1969, the respondent Judge ordered the execution of the judgment in Civil Case No. 436 and on January 20, 1969, the corresponding writ of execution was issued\_ (Annexes O, R and S, Petition). The petitioners herein then filed a motion for reconsideration of the order granting execution and for the quashing of the writ of execution, which was denied by the respondent Judge in his order of March 21, 1969 (Annexes T, U, V and W, Petition). On petition filed by Rebollos, the respondent Judge Ordered the demolition of all buildings not belonging to said Rebollos found on the premises in question (Annexes X and Y, Petition). The petitioners then filed a Motion for reconsideration of the order of demolition, which was denied by the respondent Judge, who, however, on motion of said petitioners, directed the respondent Sheriff to defer the implementation of the writ of execution and the order of demolition until after June 23, 1969 (Annexes Z and AA, Petition). Thereafter the petitioners instituted the present proceedings.

"The petition was given due course by this Court, and on June 19, 1969, a writ of preliminary injunction was issued restraining the respondents from enforcing the decision and the orders complained of in Civil Case No. 436, until further orders. In his answer to the petition filed by the respondent, Isabelo Rebollos, he averred that on January 3, 1968, he sold the property in question to Pilar M. vda. de Reyes under a deed of absolute sale and, accordingly, a Transfer Certificate of Title was issued in favor of said vendee covering the subject property by the Register of Deeds (Answers and Annexes 4 and 5 thereto).

"The case before us is one for prohibition. (Section 2 of Rule 65, Rules of Court)." (pp. 16-19, rec.).

The Court of Appeals held that the action for prohibition before it seeking to restrain the enforcement of the decision in Civil Case No. 436 and the implementing orders issued subsequent thereto by the respondent Judge of the Court of First Instance of Zamboanga del Sur, will not prosper; because prohibition is a preventive remedy to restrain the exercise of a power or the performance of an act and not a remedy against acts already accomplished, which cannot be undone through a writ of prohibition, and in the instant case, the judgment of the lower trial court con-solidates the ownership of the entire property involved in Civil Case No. 436 in favor of respondent Isabelo Rebollos, orders the cancellation of the original certificate of title covering the same, and directs the issuance of a new certificate of title in the name of respondent Rebollos.

By virtue of an absolute deed of sale executed on January 3, 1968 by respondent Isabelo Rebollos, a new certificate of title was issued in the name of the vendee, Pilar M. vda. de Reyes (citing Annexes 4 and 5 of the Answer). The respondent Court of Appeals then concluded that "As the thing sought to be restrained had already been done, and since a certificate of title' is conclusive evidence of the ownership of the land referred to therein (Section 47, Act No. 496, as amended; *Aldecoa & Co. vs. Warner, Barnes & Co.*, 30 Phil. 153; *Yumul vs. Rivera*, et. al., 64 Phil. 13), and the same cannot be collaterally attacked, but can only be challenged in a direct proceeding (*Menderson vs. Garrido*, 90 Phil. 624), prohibition in this case is not the proper remedy."

Petitioners-appellants claim that the Court of Appeals erred (1) in sustaining the actuation of the trial court in

allowing service of summons upon appellants Josefina Zosima and Ramon Yturalde by registered mail pursuant to Section 6, Rule 13, of the Rules of Court; (2) in sustaining the ruling of the trial court that it properly acquired jurisdiction over the aforesaid three appellants by virtue of such mode of service of summons; and (3) in not declaring as null and void the decision of the trial court along with its implementing orders, at least insofar as the aforesaid three appellants are concerned on the ground that they were not given their day in court.

The three assigned errors shall be discussed jointly.

## I

The respondent Court of Appeals erred in holding that the petition for prohibition before it will not prosper as the act sought to be prevented had already been performed; because the order for the issuance of the writ of execution, the corresponding writ of execution and the order for demolition respectively dated January 6, 1969, January 20, 1969 and May 15, 1969 in Special Civil Case No. 436 were not enforced by the respondent trial judge, who in his order dated May 26, 1969 directed the provincial sheriff to defer the implementation thereof (Annex "AA", p. 66, record of C.A.G.R. No. 43310; pp. 19-26, rec.). The petitioners herein reiterated that they are still in possession of the property in question, which possession was recognized and protected by the respondent Court of Appeals itself when it issued the writ of preliminary injunction dated June 19, 1969 against private respondent Isabelo Rebollos pursuant to its resolution dated June 17, 1969 (pp. 67-74, rec. of C.A. G.R. No. 43310).

It should be noted that the petition for prohibition filed with the Court of Appeals prayed for the issuance of the writ of preliminary injunction

"enjoining herein respondents from enforcing the Decision dated November 20, 1965, the orders dated January 15, 1969, March 21, 1969, May 15, 1969 and May 26, 1969, Annexes 'H' 'R', 'W', 'Y' and 'AA' hereof, and after due hearing \* \* \* the preliminary writ of injunction be made permanent and so with the writ of prohibition

"Petitioners also pray for such other and further reliefs to which they may be entitled under the law."

While it is true that the decision in Special Civil Case No. 436 was already rendered. Original Certificate of Title No. 2356 was cancelled and a new transfer certificate of title issued in the name of Pilar V. vda. de Reyes by virtue of the deed of absolute sale executed on January 3, 1968 by private respondent Isabelo Rebollos in her favor; the writ of execution and the order of demolition, as heretofore stated, were never enforced by reason of which herein petitioners remain and are still in possession of the land. Moreover, the general prayer for such other reliefs as herein petitioners may be entitled to under the law, includes a prayer for the nullification of the decision of November 20, 1965 as well as the questioned orders abovementioned.

## II

Unlike the old Civil Code, Article 1607 of the new Civil Code of 1950 provides that consolidation of ownership in the vendee a retro of real property by virtue of the failure of the vendor a retro "to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard." In the case of Teodoro vs. Arcenas,[1] this Court through Mr. Justice Jose B.L. Reyes, ruled that under aforesaid Article 1607 of the new Civil Code, such consolidation shall be effected through an ordinary civil action, not by a mere motion, and that the vendor a retro should made a party defendant, who should be served with summons in accordance with Rule 14 of the Revised Rules of Court; and that the failure on the part of the court to cause the service of summons as prescribed in Rule 14, is sufficient cause for attacking the validity of the judgment and subsequent orders on jurisdictional grounds.[2] The Court in said case stressed that the reason

behind the requirement of a judicial order for consolidation as directed by Article 1607 of the new Civil Code is because "experience has demonstrated too often that many sales with right of repurchase have been devised to circumvent or ignore our usury laws and for this reason, the law looks upon them with disfavor (Report of the Code Commission, pp. 63-64). When, therefore, Article 1607 speaks of a judicial order after the vendor shall have been duly heard, it contemplates none other than a regular court proceeding under the governing Rules of Court, wherein the parties are given full opportunity to lay bare before the court the real covenant. Furthermore, the obvious intent of our Civil Code, in requiring a judicial confirmation of the consolidation in the vendee a retro of the ownership over the property sold, is not only to have all doubts over the true nature of the transaction speedily ascertained and decided, but also to prevent the interposition of buyers in good faith while such determination is being made. Under the former method of consolidation by a mere extrajudicial affidavit of the buyer a retro, the latter could easily cut off any claims of the seller by disposing of the property, after such consolidation, to strangers in good faith and without notice. The chances of the seller a retro to recover his property would thus be nullified, even if the transaction were really proved to be a mortgage and not a sale." [3]

The doctrine in the aforesaid case of *Teodoro vs. Arcenas* was reiterated by this Supreme Tribunal through Mr. Justice Jose P. Bengzon in the case of *Ongcoco, et. al. vs. Honorable Judge, et. al.* [4]

The jurisdiction over the persons of herein petitioners Josefina Zosima and Ramon all surnamed Yturralde was not properly acquired by the court because they were not properly served with summons in the manner directed by Rule 14 of the Revised Rules of Court. The said three petitioners cannot therefore be legally declared in default. Rule 13 of the Revised Rules of Court on service and filing of pleadings and other papers with the court, does not apply to service of summons. Rule 14 of the Revised Rules of Court on service of summons, which should govern, provides that "upon the filing of the complaint, the Clerk of Court shall forthwith, issue the, corresponding summons to the defendants" (Section 1, Rule 14), which summons shall be served by the sheriff or other proper court officer or for special reason by any person specially authorized by the court issuing the summons by personally handing a copy of the same to the defendants (Sections 5 & 7, Rule 14). If the residence of the defendant is unknown or cannot be ascertained by diligent inquiry or if the defendant is residing abroad, service may be made by publication in a newspaper of general circulation in accordance with Sections 16 & 17; Rule 14. [5] The sheriff or private respondent Isabelo Rebollos himself should have made a diligent inquiry as to the whereabouts of the three petitioners aforementioned. The trial court could have directed such an inquiry, which would have disclosed that petitioners Josefina, Ramon and Zosima reside respectively at Sibugey in Zamboanga del Sur, Roxas Street in Basilan City, and Washington, D.C., U.S.A. There is no showing that such a diligent inquiry was made to justify a substituted service of summons by publication. The return dated June 18, 1965 of the acting chief of police of Tungawan, Zamboanga del Sur, to the clerk of court and ex-officio provincial sheriff "that Josefina, Zosima and Ramon are no longer residing in this municipality" (Annex "B") to Petition of Court of Appeals, p. 20, rec. of C.A.G.R. No. 43310), does not suffice to indicate that a careful investigation of their whereabouts was made. And even if it did, substituted service of summons by publication should have been required. Aside from the fact that the said return of service is a nullity as it is not under oath, there is showing even that the acting chief of police was especially authorized by the court to serve the summons (Sections 5 & 20, Rule 14, Revised Rules of Court). [6]

To emphasize, Section 3 of Rule 14 of the Revised Rules of Court commands the service of summons together with a copy of the petition, on each of the defendants who must be specifically named in the summons upon the filing of such petition, like the petition in Special Civil Case No. 436 filed by private respondent Isabelo Rebollos for consolidation of ownership over the lot covered by Original Certificate of Title No. 2356 in the name of "Francisco Yturralde married to Margarita de los Reyes."

### III

The action for consolidation should be brought against all the indispensable parties, without whom no final determination can be had of the action; and such indispensable parties who are joined as party defendants must be properly summoned pursuant to Rule 14 of the Revised Rules of Court. If anyone of the party defendants, who are all indispensable parties, is not properly summoned, the court acquires no jurisdiction over the entire case and its decision and orders therein are null and void.[7]

The pacto de retro sale executed by Margarita de los Reyes "casada en segundas nuptias con Damaso Ituralde" expressly stipulates that she only sold all her rights, interests and participation in the lot covered by O.C.T. No. 2356 (Annex "I"; p. 66, rec.). Margarita therefore, could not, for she had no right to, sell the entire lot, which is registered under O.C.T. No. 2356 "in the name of Francisco Yturalde married to Margarita de los Reyes." Said lot is acknowledged by herein petitioners as the conjugal property of Francisco and Margarita (p. 2, rec. of C.A.G.R. No. 43310). What she validly disposed of under the aforesaid pacto de retro sale of 1952 was only her conjugal share in the lot plus her successional right as heir in the conjugal share of her deceased husband Francisco.

Consequently, the vendee a retro, Isabelo Rebollos, cannot legally petition for the consolidation of his ownership over the entire lot.

But in the petition he filed in Special Civil Case No. 436 on May 3, 1965 against herein nine petitioners as children and heirs of the deceased spouses Francisco Yturalde (who died in 1944) and Margarita de los Reyes (who died in 1961), and Damaso Yturalde, stepfather of herein petitioners, Rebollos prayed for the consolidation of his ownership over the entire lot covered by O.C.T. No. 2356, and not merely over the interest conveyed to him by Margarita. As the petition of private respondent Rebollos sought to divest all of them of their undivided interest in the entire agricultural land, which undivided interest was never alienated by them to Rebollos, herein petitioners became indispensable parties. Rebollos himself acknowledged that they are indispensable parties, for he included them as party-defendants in his petition in order to acquire their undivided interest in the lot. While summons were served properly on all the other defendants in said Civil Case No. 436, herein petitioners Josefina, Zosima and Ramon were not so served. Because of such failure to comply with Rule 14 of the Revised Rules of Court on service of summons on indispensable parties, as heretofore stated, the trial court did not validly acquire jurisdiction over the case; because no complete and final determination of the action can be had without the aforesaid three petitioners Josefina, Zosima and Ramon.

The petition for consolidation filed by herein private respondent Rebollos is similar in effect to an action for partition by a co-owner, wherein each co-owner is an indispensable party: for without him no valid judgment for partition may be rendered.[8]

That the three children, herein petitioners Josefina, Zosima and Ramon, are essential parties, without whom no valid judgment may be rendered, is further underscored by the fact that the agricultural land in question was owned by them in common and pro indiviso with their mother and their brothers and sisters and was not then as now physically partitioned among them.

For attempting to acquire the entire parcel by foisting upon the court the misrepresentation that the whole lot was sold to him, private respondent Isabelo Rebollos must suffer the consequences of his deceit by the nullification of the entire decision in his favor granting the consolidation of his title over the entire land in question. This Court condemns such deception.

It should be noted that herein petitioners in 1967 also filed an action against only Isabelo Rebollos for the

recovery of ownership, annulment of judgment, redemption and damages in the Court of First Instance of Zamboanga del Sur docketed as Civil Case No. 944 and entitled "Fortunata Yturalde, et. al. vs. Rebollos" (pp. 76, 84-96 rec. of C.A.G.R. No. 43310).

In their complaint in said Civil Case No. 944 dated May 23, 1967 (pp. 117-124, rec. of C.A.G.R. No. 43310), herein petitioners allege inter alia that the respondent trial court (in Special Civil Case No. 136) had no jurisdiction over their share in the aforementioned lot through a "summary proceedings without notice to them" (pp. 88-89, rec. of C.A.G.R. No. 43310).

Herein petitioners should amend their complaint in Civil Case No. 944 so as to include Pilar V. vda. de Reyes as party defendant therein in order that they can obtain a full and complete valid judgment in the same action; because the vendee is an indispensable party.[9]

It is a curious fact that Rebollos filed his petition for consolidation of title only on May 3, 1965, almost ten years after the redemption period expired on May 30, 1955, and about four years after the death in 1961 of the vendor a retro.

It is equally interesting to note that after herein petitioners filed in 1967 an action against Rebollos for the recovery of ownership, annulment of judgment, redemption and damages, Rebollos sold on January 3, 1968 the land in question to Pilar V. vda. de Reyes, with the deed of sale duly notarized by Atty. Geronimo Pajarito, counsel for Rebollos in Special Civil Case No. 436 (pp. 16-17, 22-25, 31, 42, 44-47, 51, 56, 59, 61-62, 93, of C.A.G.R. No. 43310).

But more intriguing is the fact that, after Rebollos sold on January 3, 1968, the land to Pilar V. vda. de Reyes, Rebollos himself, not his vendee filed:

- (1) a motion dated January 6, 1969 for the issuance of a writ of execution from the judgment in Special Civil Case No. 436, by reason of which the corresponding writ of execution was issued on January 20, 1969;
- (2) an opposition to the motion of herein petitioners for the reconsideration of the aforesaid order of January 20, 1969; and
- (3) a motion dated April 7, 1969 for execution and demolition of the buildings of herein petitioners (pp. 61-62, rec. of C.A.G.R. No. 43310).

WHEREFORE , judgment is hereby rendered reversing the decision of respondent Court of Appeals dated December 24, 1969, and setting aside as null and void.

- (1) the decision of the respondent trial judge dated November 20, 1965;
- (2) the order for the issuance of the writ of execution dated January 6, 1969;
- (3) the writ of execution dated January 20, 1969; and
- (4) the order of demolition dated May 15, 1969 in Special Civil Case No. 436;

without prejudice to the final outcome of Civil Case No. 944.

With costs against private respondent Isabelo Rebollos.

Concepcion, C.J., Reyes. J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] L-15312, Nov. 29, 1960, 110 Phil. 222, 225-226.

[2] 110 Phil. 222, 225.

[3] 110 Phil. 226.

[4] L-20941, Sept. 17, 1965, 15 SCRA 30, 32-33.

[5] Pantaleon vs. Asuncion, L-13141, May 22, 1959, 105 Phil. 761, 764-765; Mabanag vs. Gallemore, 81 Phil. 254; 255-158.

[6] Sequito, et. al. vs. Letundo, July 20, 1959, 105 Phil. 1139-1140.

[7] Section 7, Rule 3, Revised Rules of Court; Leyte-Samar Sales, et.al. vs. Cea, May 20, 1953, 93 Phil. 100, 104-101; Araneta vs. Montelibano, 14 Phil. 117; Raguian, et. al. vs. Raguian, 9 Phil. 527, Garcia de Lara vs. Gonzales de Lara, 2 Phil. 294; Vol. I, Moran, Comment on the Rules of Court, 1970 Ed., p. 180.

[8] Raguian, et. al. vs. Raguian, supra; Leyte-Samar Sales, et. al. vs. Cea, supra; Araneta vs. Montelibano, supra; Garcia de Lara vs. Gonzales de Lara, Vol. I. Moran Comment the Rules Court, 1970 Ed., p. 180.

[9] Alberto, et. al. vs. Mananghala, 89 Phil. 188, 191-192; Ocejio, etc. vs. International, 37 Phil. 631; Lacno vs. Lacno, 12 Phil. 508; Moran, Vol. 1, Comments on the Rules of Court, 1970 Ed., pp. 180-181.

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