

**ERNESTO ESCALER, JOSE ESCALER, JR., FEDERICO ESCALER,
ALICIA E. GANA, ELISA E. PUNO, AND WIVINIA E. TABORA,
PETITIONERS, VS. HON. TOMAS P. PANGANIBAN, IN HIS OFFICIAL
CAPACITY A...**

G.R. No. L-23457. December 16, 1968

Ponente: DIZON, J.

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DIZON, J.:

On February 20, 1964 Severo Lising, hereinafter referred to as private respondent, filed a petition with the Court of Agrarian Relations, 5th Regional District, Branch II (Case No. 26P-64) against herein petitioners. This petition was sub-sequently superseded by an amended petition praying for judgment as follows:

"1. Ordering the respondents, under the first cause of action, to allow the petitioner to redeem his landholding of thirteen (13) balitas, upon payment to them of the sum of P17,500.00, which is based proportionately on the actual selling price of the whole lot No. 3863 described in the Transfer Certificate of Title No. 34482-R, or at such reasonable price and consideration as the Court may decide, pursuant to Section 12 of the Agricultural Land Reform Code;

"2. In the remote possibility that this is not feasible, to hold and declare, under the second cause of action that the deed of sale of the lot subject matter of this litigation, is null and void, inoperative and of no legal force and effect, and/or to annul the same, for the reasons and in view of the consideration mentioned in the second cause of action;

"3. To pay the petitioner the amount of P1,000.00 as attorney's fees and litigation expenses of P1,000.00 and

"4. To award such other remedies as the court may find just and equitable in the premises."

Petitioners, as respondents in the case mentioned above, filed a motion to dismiss the original petition upon the ground that it failed to state a sufficient cause of action, to which the private respondent filed his written opposition. After the filing of the amended petition they filed a supplemental motion to dismiss alleging that the Court of Agrarian Relations did not have jurisdiction over the second cause of action set forth therein.

On July 11, 1964, the respondent judge issued an order deferring resolution of the motions to dismiss "until the trial on the merits in as much as the grounds pleaded there-in, especially those appertaining to the jurisdiction of this court, do not appear to be indubitable (Section 3, Rule 16, Rules of Court)", and ordered herein petitioners to file their answer to the amended petition within ten days from notice of the order. The record of this case does not show whether petitioners have done so. On September 4, 1964, however, they filed the present petition for prohibition claiming that, in deferring resolution on their motions to dismiss until trial on the merits and requiring them to submit their answer to the amended petition, the respondent judge acted without or in excess of his jurisdiction.

Upon the facts set forth above, this court finds no real question of jurisdiction involved. In the first place, it is

obvious from the order complained of that the respondent judge neither granted nor denied the motions to dismiss. In the second place, in deferring action thereon, His Honor might, at most, have committed an error of judgment - in believing that the grounds relied upon were not indubitable - but certainly did not act without or in excess of his jurisdiction. In the third place, the Rules of Court plainly authorize the respondent judge to defer action on a motion to dismiss submitted to him for resolution if in his opinion the ground relied upon therein is not indubitable.

True, by reason of the order complained of, petitioners will be compelled to file their answer and go to trial, but we are of the opinion that the orderly procedure established for the disposal of judicial cases should be followed, there being no clear showing in this case that to do so would cause unnecessary and substantial prejudice to one of the litigants. The facts of the case, as disclosed in the petition under consideration, do not seem to demand a protracted and cumbersome trial.

WHEREFORE, the writ prayed for is denied and the writ of preliminary injunction issued heretofore is hereby dissolved, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Capistrano, JJ., concur.

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