

**SPOUSES MARIA AND FERNANDO SAMBAJON, PETITIONERS, VS.
HON. JUDGE EDUARDO TUTAAN, PRESIDING JUDGE OF THE COURT
OF FIRST INSTANCE OF RIZAL, BRANCH V, QUEZON CITY, AND
MERRYLAND DE...**

G.R. No. L-43652. March 24, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This certiorari case is an incident in the litigation between Merryland Development Corporation (Merryland for short) and the spouses, Fernando A. Sambajon (a lawyer and labor arbiter) and Maria N. Sambajon, over Lot 16, with an area of 729 square meters, located at Santol, Quezon City and covered by TCT No. 80460 in the names of the said spouses. On that lot, a sixteen-door apartment (now converted into condominium units) was constructed. The antecedents of the case, which were not recited in an orderly manner in the pleadings, are as follows:

1. To finance the construction of an apartment on their aforementioned lot, the Sambajon spouses borrowed P160,000 from the Government Service Insurance System (GSIS). As collateral, they mortgaged the lot and the apartment to the GSIS.
2. In June, 1974 the Sambajon spouses, in order to pay twenty percent of their arrearages with the GSIS, entered into a transaction with Merryland whereby they purportedly sold to Merryland the said property for P65,000 and Merryland assumed their mortgage obligation. (Merryland was not able to register that sale).
3. On the theory that the deed of sale with assumption of mortgage was intended to be a second mortgage, the Sambajon spouses on December 3, 1974 sued Merryland for the reformation of that document (Civil Case No. Q-19557). That case was assigned to the sala of Judge Augusto L. Valencia, Branch 31 of the Court of First Instance of Quezon City.
4. The extrajudicial foreclosure of the GSIS mortgage was scheduled on February 7, 1975. To stop that foreclosure and to compel the GSIS to implement the agreement for the conversion of the apartment into a condominium, the Sambajon spouses on February 5, 1975 sued the GSIS in the Court of First Instance of Quezon City (Civil Case No. Q-19744). That case was also assigned to Judge Valencia.
5. Notwithstanding the filing of Civil Case No. Q-19744, the GSIS proceeded with the scheduled foreclosure. The property was sold to it, as the highest bidder, for P280,560. The certificate of sale was registered on February 17, 1975. The Sambajon spouses amended their complaint in Civil Case No. Q-19744 by assailing the validity of the extrajudicial foreclosure.
6. On the basis of the deed of sale with assumption of mortgage executed by the Sambajon spouses in favor of Merryland, the latter, over the alleged protest of the Sambajon spouses, redeemed the property from the GSIS on April 24, 1975 for P298,558.90. The sheriff issued a certificate of redemption which was registered on April 29, 1975.

7. Pursuant to section 7 of Act No. 3135, Merryland on May 26, 1975 filed in the Court of First Instance of Quezon City an application for a writ of possession. The Sambajon spouses opposed it. Judge (now Justice) Vicente G. Ericta of Branch 18 granted it in his order of June 25, 1975 (Case No. Q-647[75], GLRO Rec. No. 7681). Merryland was placed in possession of the property on July 3, 1975. The writ of possession was assailed by the Sambajon spouses in the Court of Appeals. The writ was upheld by that Court (Sambajon vs. Ericta, CA-G. R. No. SP-04348, January 22, 1976).

8. On January 26, 1976, or within the one-year period for redemption, the Sambajon spouses redeemed the same pro-property from the sheriff of Quezon City for the sum of P328,345.20. The sheriff issued to them a certificate of redemption. It was duly registered. Two days later, or on January 28, the Sambajon spouses mortgaged the property for P350,000 to the spouses, Francia Sambajon and Salvador Cecilio, their daughter and son-in-law, respectively.

9. That redemption triggered in swift succession moves and counter-moves on the part of Merryland and the Sambajon spouses to determine who should possess the property and collect the rentals. Thus, on February 2, 1976 Merryland sued in the Quezon City Court of First Instance the Sambajon spouses, their daughter and son-in-law, the city sheriff and the city register of deeds. Merryland prayed that the redemption made by the Sambajon spouses and the mortgage in favor of the Cecilio spouses be declared void and that the Sambajons and the Cecilios be enjoined from interfering with its administration of the property in question (Civil Case No. Q-20998). That case was assigned to Branch 5, the sala of Judge Eduardo C. Tutaan.

10. On February 9, 1976 the Sambajon spouses filed a motion in Judge Tutaan's sala, praying that Civil Case No. 20998 be transferred to the sala of Judge Valencia for consolidation with Civil Cases Nos. Q-19557 and Q-19744. The Sambajon spouses opposed Merryland's motion.

11. Judge Tutaan in his order of February 17, 1976 denied the motion for transfer and consolidation. He ruled that the cause of action in Civil Case No. 20998 is different from the causes of action in the cases pending in Judge Valencia's sala.

12. In another order dated March 23, 1976 Judge Tutaan directed (a) that, after Merryland had posted a bond in the sum of P50,000, a writ of preliminary injunction should be issued to restrain the Sambajon and Cecilio spouses from disturbing Merryland's possession of the property and to enjoin the register of deeds from recording any transaction relative thereto and (b) that Merryland should deposit in court all the rentals collected from January 26, 1976.

13. The Sambajon spouses in their answer of February 27, 1976 in Civil Case No. 20998 alleged that Merryland invalidly re-deemed the property from the GSIS and fraudulently obtained possession thereof and, once in possession, cannibalized the condominium apartment and that Merryland instituted the action in order to continue its possession of the property.

14. The Sambajon spouses did not remain passive. Instead of litigating the issue of possession in Judge Tutaan's sala, they filed on February 23, 1976 in Judge Valencia's sala in Civil Case No. Q-19744 (Sambajon vs. GSIS, where Merryland is not a party) an ex parte motion for a writ of possession.

15. On March 25, 1976 Judge Valencia issued an order of possession. Pursuant to that order, the branch clerk of court issued a writ of possession dated March 31, 1976, commanding the deputy sheriffs of Branch 31 to place the Sambajon spouses in possession of the property.

16. According to the Sambajon spouses, that writ was implemented on April 3, 1976, but, according to Merryland, it was forcibly enforced on May 14-16, 1976, not by the sheriff but by two armed sergeants of the

Philippine Constabulary. So, Merryland was divested of the possession of the property. The Sambajon spouses obtained possession and have retained it up to this time.

17. On April 5, 1976 Merryland in a certiorari proceeding in the Court of Appeals assailed Judge Valencia's order granting the possession of the property to the Sambajon spouses. On April 7, 1976 the Court of Appeals issued a preliminary injunction requiring Judge Valencia to desist from implementing his order of March 25, 1976 (CA-G. R. No. SP-05262).

18. On the other hand, the Sambajon spouses filed in this Court on April 26, 1976 their own certiorari petition wherein they challenged Judge Tutaan's orders, denying their motion for transfer and consolidation and enjoining them from interfering with Merryland's possession of the property.

19. After Merryland had submitted its comment and after the Sambajon spouses had filed their reply, this Court, in the resolution of the Second Division dated June 30, 1976, dismissed the petition so as "to avoid any unnecessary delay" in the disposition of Civil Case No. Q-20998 and, at the same time, directed the lower court to allow the Sambajon spouses to remain in possession of the property. Said resolution reads:

"L-43652 (Spouses Maria and Fernando Sambajon vs. Hon. Judge Eduardo Tutaan, etc., et al.). - After deliberating on (1) the petition, (2) private respondents' comments, supplementary comments and final supplement to comments, and (3) petitioners' reply, the Court RESOLVED to DISMISS the petition in order to avoid any unnecessary delay in the resolution by the lower court in Civil Case No. Q-20998, "Merryland Development Corporation vs. Vitaliano Valdellon, et al.", of the principal question at issue between the Sambajon spouses and Merryland Development Corporation, which is whether the Sambajon spouses validly redeemed their mortgaged property by paying to the Sheriff of Quezon City the sum of P328,345.20 or whether the redemption price should be P536,134.00, as contended by the said corporation, a question that should be resolved (in case no amicable settlement could be effected during the pre-trial) after hearing and in the light of section 30, Rule 39 of the Rules of Court and the pleadings and evidence of the parties.

"However, respondent Presiding Judge of Branch V of the Quezon City CFI is directed to maintain the status quo with respect to the possession and the rentals of the mortgaged property and not to enforce his order of March 23, 1976 (enjoining the Sambajon spouses and their daughter Francia from interfering with the corporation's possession of the mortgaged property and enjoining the Register of Deeds from registering any transaction concerning the property) since that order is in apparent conflict with the order dated March 25, 1976 of Hon. Judge Augusto L. Valencia of Branch 31 of the same Court in Civil Case No. 19744, directing that the Sambajon spouses be placed in possession of the mortgaged property, an order that was implemented by the Sheriff thus rendering moot the said order of respondent Judge. (Justice Barredo did not take part. Justice Concepcion Jr. is on leave. Justices Muñoz Palma and Martin were designated to sit in the Second Division)"

20. Two weeks later or on July 15, 1976 the Court of Appeals rendered a decision setting aside Judge Valencia's order awarding possession of the property to the Sambajon spouses. That Court noted that the Sambajon spouses sought the writ of possession in Civil Case No. Q-19744 so that Merryland could not oppose it. (Merryland Development Corporation vs. Valencia, CA-G. R. No. SP-05262). The petition in this Court of the Sambajon spouses for an extension of time within which to seek a review of the decision was denied because it was filed out of time (L-45119, Sambajon vs. Court of Appeals).

21. On July 19, 1976 Merryland filed in this Court a motion for the reconsideration of the second part of the aforementioned resolution of June 30 on the grounds that it is incompatible with the dismissal of the petition and that the status quo to be maintained is Merryland's possession, especially considering that the Court of Appeals nullified the order of possession issued by Judge Valencia in favor of the Sambajon spouses.

In resume, the situation here is that the Sambajon spouses mortgaged their property to the GSIS. Then, they sold it to Merryland. They sued Merryland in order to declare the sale an equitable mortgage (Civil Case No. Q-19557). They sued also the GSIS in order to require it to transform their apartment into a condominium and, later, to invalidate the foreclosure (Civil Case No. Q-19744).

The GSIS foreclosed the mortgage on February 7, 1975. It bought the property at the auction sale. Merryland redeemed the property from the GSIS. It obtained possession of the property by means of a writ of possession. The Sambajon spouses redeemed the property from the sheriff over Merryland's opposition and mort-gaged it to their daughter and son-in-law, the Cecilios.

Then, Merryland sued the Sambajons and the Cecilios in order to annul the redemption made by the Sambajons (Civil Case No. Q-20998). The Sambajons were able to wrest possession of the property from Merryland by means of a writ of possession issued in Civil Case No. 19744. The Court of Appeals voided that writ of possession.

In Civil Case No. 20998 the court ordered the Sambajons not to disturb Merryland's possession of the property and denied the Sambajon's motion to consolidate that case with the two prior cases. Those orders are under review in this certiorari case.

Which of the two redemptions should prevail, that made by Merryland or that made by the Sambajons? The ultimate issue is who should be adjudged the owner of the property.

A preliminary issue is whether the merits of the petition could still be reexamined although the parties have not questioned the dismissal thereof and although Merryland has sought reconsi-deration only of the addendum or qualification engrafted on the said dismissal.

A casual perusal of the said resolution of dismissal shows that the first paragraph thereof, dealing with the dismissal, and the second paragraph, dealing with the maintenance of the status quo as to the possession, are intimately connected.

The petition could have been given due course. But to do so would entail delay in the adjudication of the case. On the other hand, when the petition was filed, the Sambajon spouses, the re-gistered owners of the property, had allegedly obtained possession of the property.

It was assumed in that dismissal resolution that the trial court could have expeditiously dispatched the case and resolved easily the question of possession once the propriety of the redemp-tion made by the Sambajon spouses was passed upon. That expecta-tion turned out to be illusory.

The parties have extensively discussed the merits of the case in their pleadings. The issue as to who should have posses-sion of the property during the pendency of the three cases is the core of the petition. The other issue is what branch of the lower court should try the three cases.

To do justice in this case, it is necessary to consider anew the merits of the petition. Hence, the aforequoted resolution of June 30, 1976 is hereby set aside.

Considering the decisive supervening fact that the Court of Appeals nullified Judge Valencia's order awarding possession to the Sambajon spouses, and, therefore, their contention that they should possess the property pendente lite has no leg to stand on and considering the equally decisive fact that, as a result of the redemption made by Merryland, it secured a writ of possession which was eventually upheld by the Court of Appeals:

The Court resolved that, in the present posture of the three cases and in the orderly administration of justice, there is no alter-native but to restore the possession of the property to Merryland. However, it should deposit in court

rentals to be received by it.

Common sense and convenience dictate that the three related cases should be tried jointly by one Judge. For this purpose, the Executive Judge of the lower court is directed to raffle the three cases to one branch but excluding Branches 5 and 31 in the raffle.

WHEREFORE, the order of Judge Tutaan dated February 17, 1976, denying the motion of the Sambajon spouses for transfer and consolidation, is set aside.

The Executive Judge of the Court of First Instance of Quezon City is ordered to raffle Civil Cases Nos. Q-19557, Q-19744 and Q-20998 to any of its branches but excluding Branches 5 and 31. The branch to which the case is raffled should expedite trial of the said cases.

The order of injunction of Judge Tutaan dated March 23, 1976 is affirmed with the clarification that the rentals to be deposited in court by Merryland are those collected by it from the time it is restored to the possession of the property and that after Merryland has posted the bond of P50,000, the writ of preli-minary mandatory injunction should be issued and the Sambajon spouses should relinquish the possession of the property to Merryland. No costs.

SO ORDERED.

Fernando, Teehankee, Makasiar, Antonio, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.
Castro, C.J., and Barredo, J., no part.

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