

ERNESTO DORIA, PETITIONER, VS. THE HONORABLE JUDGE ARTEMON D. LUNA, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH I, SILAY CITY; & MANUEL OXIMER, RESPONDENTS.

G.R. No. L-47270. April 15, 1988

Ponente: YAP, J.

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YAP, J.:

In this petition for certiorari, petitioner seeks to annul the order of the Court of First Instance of Negros Occidental, Branch I, dated June 30, 1977, dismissing the amended complaint against defendant Manuel Oximer (herein private respondent), for specific performance with damages, docketed as Civil Case No. 707, entitled "Ernesto Doria vs. Arcadia Doria, Angelina Bedonia and Manuel Oximer"; to declare that there is a valid cause of action against respondent; and to order the respondent judge to try the case on the merits.

It appears from the questioned order: 1) that the defendant Arcadia Doria owned three (3) lots, Lots Nos. 362, 365-A and 368-A of the cadastral survey of Saravia, situated in E. B. Magalona, Negros Occidental, covered by TCT Nos. T-4150, T-4151 and T-4152, which she leased to plaintiff for a period of seven (7) crop years, starting with crop year 1973-1974 up to 1979-1980 with an annual rental of P1,500.00; 2) that Arcadia Doria leased the same lots to Angelina Bedonia on January 10, 1973, for a term of four (4) agricultural years, covering crop years 1973 to January 1976 with an annual rental of P9,000.00, of which a downpayment of P6,000.00 was made upon the execution of the contract, and by virtue of which lease contract Angelina Bedonia took possession of the property; (3) that on July 24, 1975, Arcadia Doria sold the property in question to defendant Manuel Oximer (herein private respondent) for P67,500.00, the receipt of which was acknowledged by Doria, and on condition that vendee would take possession of the property only after the expiration of the lease contract with Angelina Bedonia; 4) that on August 25, 1975, plaintiff had his lease contract annotated at the back of the certificates of title covering the lots in question; 5) that on November 26, 1976 defendant Manuel Oximer registered the deed of sale in his favor, by virtue of which new transfer certificates of title were issued in his name, which carried the annotations of plaintiff's lease contract appearing in the cancelled certificates of title; 6) that on September 25, 1975, plaintiff filed his complaint against defendant Arcadia Doria for specific performance with damages, which he amended on November 17, 1976 to include Angelina Bedonia and Manuel Oximer as defendants; 7) that defendant Arcadia Doria in her answer alleged that her non-delivery of the leased property to plaintiff was due to the latter's failure to pay the lease rental agreed upon; that defendant Manuel Oximer on his part maintained that he bought the properties in good faith and for valuable consideration without being aware of any lease, except that of Angelina Bedonia, and that plaintiff had no cause of action against him as he was not a party to the lease contract sought to be enforced by the plaintiff. In dismissing the complaint against defendant Manuel Oximer, the court a quo stated:

“x x x Unless a lease is recorded, it shall not be binding upon third persons. Considering that when lots 368-A and 362 covered by TCT Nos. T-71274 and T-71275 were sold to defendant Oximer on July 24, 1975, the 1st

lease contract was not yet annotated at the back of the TCT'S aforesaid and it was only a month afterwards, or on August 25, 1975 that the said 1st lease contract was registered, inevitably, the said lease shall not be binding upon third persons including defendant Manuel Oximer."

Instead of appealing from the above order of dismissal, the petitioner has chosen to file the instant petition for certiorari. But we have time and again held that the extraordinary remedy of certiorari can not be a substitute for appeal. The petitioner should have appealed the challenged order to the proper appellate court, i.e., the Court of Appeals, where alleged errors of fact and law can be corrected.

Accordingly, the petition is hereby dismissed for lack of merit.

SO ORDERED.

Yap Chairman, Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

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