

ATAL MOSLEM AND AMADO MOSLEM, PETITIONERS, VS. ANTONIO M. SORIANO, AND THE HONORABLE COURT OF FIRST INSTANCE OF TAGUM, DAVAO DEL NORTE, BRANCH VIII, SALA I, RESPONDENTS.

G.R. No. L-36837. August 17, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari and mandamus with preliminary injunction to annul the orders and proceedings for contempt before the Court of First Instance of Davao, Branch I at Tagum, in Civil Case No. 5788 for recovery of possession and damages. The prayer that a writ of mandamus be issued directing the respondent court to order the release of the petitioners appears premature because the petitioners were not under detention at the time. Our temporary restraining order also prevents the court's order of arrest from being implemented.

Antonio M. Soriano filed Civil Case No. 5788 against Atal Moslem and Amado Moslem to recover possession of four (4) hectares of land plus damages. In their answer, the defendants specifically denied the material averments of the com-plaint and contended that they entered and peacefully possessed for more than twenty (20) years the area which was known as public land. The defendants filed a counterclaim for P2,000.00 moral damages, P2,000.00 exemplary, damages, and P1,000.00 attorney's fees.

The records show that the following transpired during the pre-trial hearings:

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"During the pre-trial that followed, Atty. Pangilan, who represents the defendants, and Atty. Fernando Contreras, who represents the plaintiff, agreed to have Surveyor Jose Vidua appointed Commissioner for the purpose of relocating the boundaries of the land, subject matter of this complaint, the expenses to be borne by them share and share alike. They also agreed that before relocation, they will deposit with the Deputy Clerk of Court their share of the costs of the survey.

"The defendants, through Atty. Pangilan, also agreed that should the defendants be found within the land, subject matter of this com-plaint, they will leave.

"WHEREFORE, surveyor Jose Vidua is hereby appointed Com-missioner for the purpose of aforesaid.

"Before entering into the performance of his duties, he shall take an oath that he will faithfully perform his duties."

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After the commissioner submitted his report, it was found that the defendants were within the land titled in the name of Soriano. It appears that Atal Moslem and Amado Moslem interposed no objection to the report. The court, therefore, rendered a decision ordering the petitioners to vacate the disputed land and pay the costs.

When the judgment was being executed, the petitioners refused to vacate the land. Soriano filed a motion to

declare them in contempt of court.

The petitioners, assisted by a new counsel, filed an opposition to the motion. Resolving the motion after taking into account the opposition, the respondent court issued an order, the dispositive portion of which reads:

WHEREFORE, the defendants are hereby found guilty of contempt and ordered arrested and imprisoned until they obey the order aforementioned.

A motion for reconsideration of the order was denied.

The petitioners are now raising two issues for resolution, namely -

"1. Whether petitioners can be declared in contempt of court in a case for delivery of possession of real property.

"2. Whether petitioners can be declared in contempt of court pending payments of the improvements in the land under Articles 448 and 546 of the New Civil Code."

The arguments of the parties on whether or not the contempt order is valid revolve around the question as to what section of Rule 39 of the Rules of Court applies in this case.

The petitioners contend that Section 8(d) of Rule 39 is appropriate because the judgment requires delivery of real property. According to them, the refusal to vacate the disputed land is not contempt of court because the judgment is not a special judgment enforceable under Section 9 of Rule 39. The respondents, however, argue that the order of the court is not to deliver possession of land but to vacate it and to pay costs. They would apply Section 9, Rule 39.

The respondents' arguments are sophistic.

A writ of execution under Section 8(d) requires the sheriff or other proper officer to whom it is directed:

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"(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property."

On the other hand, Section 9, which the lower court ruled as applicable, provides:

Writ of execution of special judgment. -- When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

It is plain from the records that the judgment being enforced is an ordinary one. It is not a special judgment. The case filed by Antonio M. Soriano is an ordinary civil action for the recovery of possession of a parcel of land and damages. The judgment directing the petitioner's to vacate the land is nothing but a judgment to deliver possession of real property. A special judgment under Section 9, Rule 39 is one which "requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property."

How is an ordinary judgment enforced? Section 13 of Rule 39 provides:

How execution for the delivery or restitution of property enforced. -- The officer must enforce an execution for

the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution.

We applied the above rule in *Rom v. Cobadora* (28 SCRA 758) and declared that the mere refusal or unwillingness on the part of the defeated party to relinquish the property would not constitute contempt. The proper procedure must be followed in the execution of the judgment.

Chinese Commercial Company v. Martinez, et al. (6 SCRA 848) is clear that:

"x x x Under Section 8(d) of Rule 39, if the judgment be for the delivery of the possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejectment the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may the loser be charged with and punished for contempt under paragraph (h) of Section 3, Rule 64."

A similar ruling was rendered in *Fuentes, et al., v. Leviste, et al.*, (117 SCRA 958), where this Court held:

"Under Sec. 13, Rule 39 of the Rules of Court, it is not enough for the sheriff, in the enforcement of a judgment for delivery or restitution of property, to merely direct the defeated party to effect such delivery or restitution. The refusal of the defeated party to surrender the property to the winning party upon the order of the sheriff does not constitute contempt. The sheriff himself must oust the defeated party from the property and effect the delivery or restitution by placing the winning party in possession of the property (*U.S. v. Ramayat*, 22 Phil. 183)." x x x.

Under the second issue in this petition, the petitioners allege that they have entered, occu-pied, and were in peaceful possession of the land in question which according to them was public land, for more than twenty (20) years, and that their legal possession is evidenced by Tax Declaration No. 3068 issued by the Office of the Provincial Assessor on October 11, 1960. Having introduced considerable improvements on the land in question before anybody laid claim to it, the petitioners state that they are builders and planters in good faith and are thus entitled to the retention of the improvements pending payment under Articles 448 and 546 of the Civil Code. With this right of retention, the petitioners contend that their refusal to vacate the premises cannot be punished as contempt.

The lower court did not find this explanation satisfactory. The respondents have not discussed the builder in good faith argument but have limi-tered themselves to insisting that the refusal to vacate and to pay costs is contemptuous defiance of the court orders.

The records of this case are rather sketchy. The petitioners did not submit any evidence to prove their assertions of being builders and planters in good faith. The matter was not mentioned in their an-swer. Only after they were required to show cause why they should not be held in contempt did their new counsel explain that the petitioners had been in possession of the land since before World War II, that under the Civil Code they are entitled to reimbursement of all their improvements and that pending payment of said improvements, they cannot be held in contempt of court. Without explaining the basis of its ruling on this point, the lower court found it unsatisfactory.

Under ordinary circumstances, the petitioners' contentions on the second issue they raised would not receive serious consideration. During pre-trial, their first counsel agreed that a court commissioner would survey the land

and if they are found within the property of the private respondent, they would leave.

There are special reasons, however, why the builder in good faith issue should not be ignored or considered closed inspite of the finality of the decision in the recovery of possession case.

In the first place, the petitioners have the presumption of good faith under Article 527 of the Civil Code in their favor. In the drafting of the answer and during pre-trial, the petitioners do not seem to have had the benefit of counsel, in the real meaning of its availability. The petitioners' first counsel limited the issues to ascertaining whether or not the two defendants were inside the titled property of the plaintiff. Atal and Amado are members of a cultural minority group. They appear not even to have any surname. Their family name "Moslem" appears to be more of a descriptive appellation than a surname. There is nothing in the records before us to show whether or not Atal and Amado were mere squatters who entered land already titled in someone else's name. It is not also shown whether the two were already working and cultivat-ing land which they thought was public land when the same was titled by a person more knowledgeable in acquisition of real estate. The builder in good faith argument is, therefore, a valid one insofar as this contempt case is concerned. The petitioners are not precluded from pursuing further legal steps to be reimbursed for their improvements if their claim is supported by satisfactory proof.

WHEREFORE, the orders of the respondent court finding the petitioners guilty of contempt and ordering their arrest and detention are hereby REVERSED and SET ASIDE. The temporary restraining order earlier issued is made PERMANENT. Costs against the private respondent.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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