

ROBERTO A. PASCUAL, PETITIONER, VS. HON. WALFRIDO DE LOS ANGELES, JUDGE, COURT OF FIRST INSTANCE OF QUEZON CITY, THE SHERIFF OF QUEZON CITY AND JOSE BANARIA AND FELISA BANARIA, ...*G.R. No. L-27914. July 31, 1978*

Ponente: SANTOS, J.

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In this petition for Certiorari and Prohibition with Preliminary Injunction filed with this Court on August 15, 1967 and a Supplemental Application for Preliminary Injunction filed on September 5, 1967, petitioner seeks -- (1) the review and annulment of respondent Judge's Orders in Civil Case No. Q-8827, entitled "People's Homesite & Housing Corporation, et al., plaintiffs vs. Roberto A. Pascual, et al., defendants", issued on January 4, and April 22, 1967, granting the writ of execution of the decision in said case and authorizing the demolition of defendant's, now petitioner's, construction on the property in question, respectively, and (2) to restrain respondents from executing the said orders, on the ground that the same were ". . . issued in excess of jurisdiction and with grave abuse of discretion." [1] Actually, the issue raised by this petition is whether notice by registered mail of the order denying the motion for reconsideration of the decision in the case below, the first registry notice of which was received on September 22, 1966 by petitioner's counsel, Atty. Teofilo Ogsimer, was proper and effective or not, upon the petitioner herein, defendant in the case below, considering that Atty. Ogsimer's withdrawal as counsel of record was granted by the lower court on September 20, 1966 or two days previous to said receipt.

On September 12, 1967--after reconsidering the resolution of dismissal of August 18, 1967, for failure on the part of petitioner to include certified true copies of the orders subject of this petition--We gave due course to the petition and required respondents to answer, not to move to dismiss, the same. The motion for preliminary injunction was likewise granted conditioned upon the petitioner's posting a bond in the amount of P1,000.00. [2]

Private respondents, the Banaria spouses, filed their answer on October 19, 1967. [3] The case was there-after set for hearing on December 6, 1967 but in lieu thereof, the parties were, on motion, granted leave to file their respective memoranda. [4] Respondents Banaria spouses filed theirs on December 20, 1967; the petitioner filed his much later, i.e. on February 10, 1968. [5]

The facts on record show that on June 7, 1965, the People's Homesite & Housing Corporation (PHHC, for short) and the spouses Jose Banaria and Felisa Banaria, private respondents herein, filed a complaint against Roberto A. Pascual, the herein petitioner and Felisa Deuda for the recovery of possession of Lot 3, Block 148, Psd-68807, with the Court of First Instance of Rizal at Quezon City, docketed as Civil Case No. Q-8827. The case was assigned to Branch IV, respondent Judge Walfrido de los Angeles, presiding. [6]

On June 30, 1965, defendant Pascual, now petitioner, filed his answer to the said complaint, and on July 25, 1966, the court rendered decision adverse to defendants. Defendant moved for the reconsideration of the decision but the same was denied by the trial court in its order of September 10, 1966. The said order was sent by registered

mail to defendant's counsel Atty. Teofilo Ogsimer, who was served with a first notice thereof on September 22, 1966. In the meantime, however, Atty. Ogsimer had withdrawn his appearance, which was granted by the lower court on September 20, 1966.[7]

On January 4, 1967 the trial court issued an order granting the writ of execution[8] over Pascual's opposition. On January 27, 1967, Pascual filed a motion to lift the writ of execution, but the same was denied on March 8, 1967. Since the writ of execution was not satisfied, the lower court issued an order on April 22, 1967,[9] granting the writ of demolition, which gave defendants twenty (20) days from receipt of said order within which to vacate the premises, and to remove voluntarily whatever constructions they made on the property. The order also authorized the Sheriff of Quezon City to demolish the said construction if, after the expiration of the period, defendants failed to remove the same.

These orders, in so far as relevant, read as follow –

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"This is a motion for the issuance of the writ of execution filed by the plaintiffs on the ground that the decision has already become final and executory. A perusal of the records revealed that the decision in this case was rendered by this Court since July 25, 1966. The parties were notified by registered mail since August 13, 1966 and the same has never been returned to this Court, it is therefore presumed that the said decision was received by the parties concerned. On September 22, 1966, counsel for the defendant filed a motion for reconsideration of the judgment which was resolved by the court in the order of September 10, 1966. Parties were notified, particularly the defendant of the said order of denial by registered mail. It appears that the defendant's counsel was notified by the Postmaster of Quezon City of the registered mail on September 22, 1966, as shown by his certification and the same letter has not as yet been claimed by the addressee despite such notices. Applying therefore, the provisions of the Rules of Court, particularly Rule 13, Section 8 of the New Rules of Court, the defendant are deemed to have been notified of the said order of September 10, 1966 after the expiration of five (5) days from the date of the first notice which is September 22, 1966, thus on September 27, 1966, the thirty (30) day period to appeal started to run again. Hence, without counting the period that has expired from the date the judgment was received by the defendant up to the time the motion for reconsideration was filed it is evident that the judgment rendered herein has already become final and executory since October 28, 1966, thirty (30) days having already expired from September 27, 1966." (Underscoring supplied)

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"Upon consideration of the 'motion for writ of demolition' filed by the plaintiffs, through counsel, for the reasons therein set forth which the court finds well taken and in order, the same is granted.

WHEREFORE, the defendants are given twenty (20) days from receipt of this order within which to vacate the premises in question and to remove voluntarily whatever constructions the have made on said property. If after the 20-day period herein granted the defendants fail to vacate the premises and remove whatever constructions they have on the lot in question, the Sheriff of Quezon City is hereby authorized to demolish whatever constructions the defendants have introduced on the property in question."

Petitioner alleges that respondent Judge acted in excess of jurisdiction or with grave abuse of discretion in granting the writs of execution and demolition. He argues that while it is true that the order denying the motion for reconsideration was issued on September 10, 1966--prior to the approval of Atty. Ogsimer's withdrawal on September 20, 1966--the order of denial was deemed received on September 27, 1966 only, or after the lapse of five (5) days from receipt of the first notice on September 22, 1966 pursuant to Section 8, Rule 13 of the Revised Rules of Court. Since Atty. Ogsimer was no longer his counsel after September 20, 1966, the notice was sent to the "wrong party" and "to all intents and purposes," he was not notified of said order, denying the motion for reconsideration. There being no notice to him of the denial of the motion for reconsideration, he now contends that the writ of execution and, in effect, the writ of demolition, are null and void, being premature, and were thus issued in excess of jurisdiction or with grave abuse of discretion.

By way of traverse, private respondents--the spouses Banaria--in turn, allege that the writs of execution and demolition were not issued prematurely or in excess of jurisdiction. They aver that the said writs were issued pursuant to law, there being a final and executory decision. With respect to the writ of demolition, they contend that execution thereof took place only after petitioner-defendant refused to voluntarily remove the construction on respondent spouses' property.

In reply to the claim that the order of September 10, 1966 denying the motion for reconsideration of the decision of July 25, 1966, was served on the wrong party, respondent spouses stress that both the issuance of the order of September 10, 1966 and the mailing thereof by registered mail--per Registry Receipt No. 7211--on September 19, 1966 took place while Atty. Ogsimer was still counsel for petitioner-defendant; that he continued to be counsel for petitioner-defendant even at the time the notice of the denial order was sent to him which fact is shown in the "Opposition to Motion for Execution" dated November, 1966;^[10] that they are the absolute owners of Lot 3, Block 148, Psd-68807 which they purchased from the PHHC and which is now registered in their names under TCT No. 91017, Registry of Deed for Quezon City, and which the lower court recognized in its decision of July 25, 1966; that petitioner-defendant is a squatter, having been found in the same decision to have entered the premises without the prior consent of the PHHC; and that petitioner-defendant's construction on the lot had already been demolished by the Sheriff on August 21, 1967 pursuant to the lower court's order of April 22, 1967, after the dismissal of the herein petition on August 18, 1967, but before its reinstatement on September 12, 1967, and, therefore, injunction is no longer the proper remedy.

Petitioner's claim that respondent Judge acted in excess of jurisdiction, or committed a grave abuse of discretion in issuing the questioned orders is without merit.

There is no dispute that the promulgation of the order of September 10, 1966, as well as the mailing thereof on September 19, 1966, took place before Atty. Ogsimer withdrew as counsel for petitioner-defendant on September 20, 1966. As there was a counsel of record, the service of the order on Atty. Ogsimer was in compliance with Sec. 2, Rule 13 of the Rules of Court which requires that "(I)f any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorney or one of them, unless service upon the party himself is ordered by the court." Additionally, it has been repeatedly held that notice to the client and not to his attorney was not a notice in law.^[11] Therefore, notice to Atty. Ogsimer, petitioner-defendant's counsel of record then, was not notice to the wrong party but was, in fact, proper service, binding and effective upon petitioner-defendant.

Other considerations--peculiar to this case--lend support the above conclusion. While it is true that the first notice of the registered order denying the motion for reconsideration was served on Atty. Ogsimer on September 22--two days after his withdrawal was approved on September 20, 1966--it was his duty to pay heed to the urgency and importance of registered letters sent by courts as We had occasion to stress in *Antonio v. Ramos*.^[12] Although the counsel of record did not withdraw his appearance in this cited case, the injunction that "(U)pon lawyers

specially devolve the duty to evaluate the urgency and importance of registered letters coming from the courts where they daily ply their trade," still applies. For the notice was served on Atty. Ogsimer barely two (2) days after his withdrawal was approved, and while he in fact continued to act as petitioner's counsel, despite his "withdrawal", as shown by his filing in November 1966 of the "Opposition to Motion for Execution" in petitioner's behalf,[13] a fact not denied by petitioner-defendant. It will also be noted that in determining when the decision of July 25, 1966 become final, respondent Judge did not include the period which lapsed from the date the decision was received by petitioner-defendant to the time the motion for reconsideration was filed. What respondent Judge considered as the starting date of the 30-day period for the finality of the decision was the presumed date of receipt of the order of September 10, on September 27, 1966 - after the lapse of the 5-day period from September 22, 1966 - when the Postmaster first gave notice to Atty. Ogsimer of the registered order. Therefore, if respondent Judge were to be faulted at all, it would be for his leniency towards petitioner-defendant in the computation of the period within which the aforesaid decision became final.

Finally, the evidence is clear that private respondents are the absolute owners of the lot, and have, there-fore, the actual and substantial interest in the subject lot, the assistance given by the PHHC to the Banana spouses in the filing of the complaint with the court below being merely pursuant to its warranty in the Deed of Sale to deliver immediate possession of said property.[14] Upon the other hand, defendants were mere squatters on the property. The inference, therefore, that the resistance to the action for ejectment below and herein petition are a dilatory tactic and maneuver to deprive respondent spouses of the possession and enjoyment of the lot in question seems ineluctable. Our observations in the landmark decision on squatters in *City of Manila v. Garcia, et al*,[15] quoted in respondents memorandum fortifies Our findings and leaves Us no choice but to deny this petition –

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"Since the last global war, squatting on another's property in this country has become a widespread vice. It was and is a blight. Squatters' areas pose problems of health, sanitation. They are breeding places for crime. They constitute proof that respect for the law and the rights of others, even those of government, are being flouted. Knowingly, squatters have embarked on the pernicious act of occupying property whenever and wherever convenient to their interest - without as much as leave, and even against the will, of the owner. They are emboldened seemingly because of their belief that they could violate the law with impunity. The pugnaciousness of some of them has tied up the hands of legitimate owners. The latter are thus prevented from recovering possession by peaceful means. Government lands have not been spared by them. They know of course, that intrusion into property, government or private, is wrong. But, then, the mills of justice grind slow, mainly because lawyers who, by means, fair or foul, are quite often successful in procuring delay of the day of reckoning. Rampancy of forcible entry into government lands particularly, is abetted by the apathy of some public officials to enforce the government's rights. Obstinacy of these squatters is difficult to explain unless it is spawned by official tolerance, if not outright encouragement of protection. Said squatters have become insensible to the difference between right and wrong. To them, violation of the law means nothing. With the result that squatting still exists, much to the detriment of public interest. It is high time, that, in this aspect, sanity and the rule of law be restored. x x x"

In resume, since the order of September 10, 1966 denying the motion for reconsideration was effective and binding upon petitioner-defendant, the decision of July 25, 1966 became final and executory. Therefore, the issuance of the orders granting the writs of execution and demolition complained of was in order. Respondent Judge having acted pursuant to law, there is no basis for petitioner-defendant's claim that he acted in excess of jurisdiction, or committed grave abuse of jurisdiction.[16] This petition, therefore, must be denied for lack of merit.

One last relevant observation. It appears that petitioner's construction on the subject lot was demolished by

respondent Sheriff on August 21, 1967 -- after the dismissal of the present petition on August 18, but before its reinstatement on September 12, 1967. This fact was, in all probability, the reason why, as adverted to earlier, petitioner did not bother to file the required bond of P1,000 for the issuance of the writ of preliminary injunction prayed for and granted on September 12, 1967.[17] It can safely be assumed then-- prescinding from our finding that this suit is a dilatory maneuver--that petitioner, who is a mere squatter on the holding, has no more interest in the lot and even in the outcome of this petition, except to harass respondent spouses. For to paraphrase, the Court's pronouncement in *City of Manila vs. Garcia* quoted above, their (the squatters) objective is to tie up the hands of legitimate owners . . . prevent them from repossessing their holdings . . . because they have become insensible to the difference between right and wrong . . . and to them violation of the law means nothing. The dismissal of this petition then would be a pyrrhic and empty victory on the part of respondent spouses, who have been prevented from taking possession of and making meaningful use of their property since 1965,--or fully thirteen (13) years ago--when petitioner squatted on their titled lot purchased from PHHC. Clearly, and as a measure of redress for the delay occasioned by this petition, this judgment--in the exercise of our equity jurisdiction--can be ordered immediately executory, to the end that respondents spouses, who have been denied access to their lot as a result of the protracted proceedings, may now devote their property, without further delay, to useful purpose as envisioned under current martial law decrees on proper utilization of land resources.

IN VIEW OF ALL THE FOREGOING, THIS PETITION IS HEREBY DISMISSED FOR LACK OF MERIT AND THIS DISMISSAL IS HEREBY DECLARED IMMEDIATELY EXECUTORY, WITH DOUBLE COSTS AGAINST PETITIONER.

SO ORDERED.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

Barredo, J., concurs in a separate opinion.

[1] Rollo, pp. 1 and 4. (Petition).

[2] *Id.*, pp. 9, 18. The records, however, do not show that petitioner filed said bond.

[3] *Id.*, pp. 19-22.

[4] *Id.*, p. 30.

[5] *Id.*, Memoranda, pp. 31-34; pp. 42-52.

[6] *Id.*, p. 1 (Petition).

[7] *Id.*, p. 3.

[8] *Id.*, p. 15, Annex "A".

[9] *Id.*, p. 17, Annex "B".

[10] *Id.*, pp. 23-24.

[11] *Pabiling v. Parinacio*, L-22682, July 23, 1968, 24 SCRA 100; *JJ.M. Javier Logging Corporation v. Mardo*, L-28183, August 27, 1966, 24 SCRA 776.

[12] L-15124, June 30, 1961, 2 SCRA 731.

[13] This pleading was signed thus - "s/t ALFARO & OGSIMER, counsel for defendants, Suites 601-602, Trinity

Bldg., T.M. Kalaw Avenue, Ermita Manila"; Rollo, p. 23; emphasis supplied.

[14] Id., p. 19 (Answer).

[15] No. L-26053, Feb. 21, 1967, 19 SCRA 413, emphasis supplied.

[16] See *Alafriz v. Nable*, No. 47780, June 10, 1941, 72 Phil. 280 (1941).

[17] See footnote 2, *supra*.

CONCURRING OPINION

BARREDO, J.:

I concur, for the reasons hereunder stated.

The pivotal question before Us in this case relates in effect to the fact that while the order dated September 10, 1966 denying petitioner's motion for reconsideration was issued or mailed on September 19, 1966, the first notice of the registered mail containing said order was received by petitioner's lawyer of record in the case, Atty. Teofilo Ogsimer, on September 22, 1966, which under the rules became effective as service upon said lawyer, who did not claim the same within five days, only on September 22, 1966. In other words, Atty. Ogsimer may be deemed to have been served with notice of the said denial order after he had already withdrawn his appearance, and what is more, after the court had approved the said appearance on September 20, 1966. Thus, he was served with the order of denial when he was no longer the counsel of record of the petitioner.

I am not aware of any tacit rule or any judicial precedent, and the main opinion cites none, squarely applicable to the above situation. The provision of Section 2 of Rule 13 and the jurisprudence on service upon counsel instead of upon the party as the legally effective one do not seem to me to be very relevant here. Indeed, even if Atty. Ogsimer had been diligent enough to attend to the first notice sent to him of the registered mail and had actually read its contents after June 20, 1966, the legal point in issue would not be different. Still, the question would persist, how could petitioner be bound by the service of an order upon a lawyer who had already been permitted by the court to withdraw and to thereby stop representing him? And the fact that "private respondents are the absolute owners of the lot (in dispute) and have, therefore, the actual and substantial interest in the subject lot" and "upon the other hand, defendant(s) (petitioner) is (are) a mere squatter(s) in the property" is, to my mind, not really controlling, considering said petitioner is entitled to proper notice, which is indispensable to due process.

But I am not for unduly prolonging this litigation. In fact, I cannot see why it was not terminated finally below in the very year it was filed. Indeed, it is high time the inferior courts who have exclusive jurisdiction over cases of forcible entry and unlawful detainer devised appropriate ways and means within the law and the rules that should enable them to terminate such proceedings, purposely designed to be summary and speedy, within not more than one month from the date issues are joined. Readily disposable technicalities, most of the time plainly untenable, should be apparent to adequately knowledgeable judges and should be dealt with accordingly without waste of time. Hackneyed and clearly transparent dilatory tactics should never be wittingly tolerated. The procedure of ejectment has been made a special civil action precisely to disencumber it from the usual formalities of ordinary actions, to the end that there may be more stability in the legal possession of real property which is the pillar of any orderly society living under a rule of law.

Accordingly, I concur in the conclusion that the judgment of eviction here in dispute was already final and executory when the order of demolition of April 22, 1967 was issued by the inferior court. I hold that

considerations both practical and of sound judicial policy militate against the posture of petitioner in relation to the service upon Atty. Ogsimer of the order denying his motion for reconsideration of the judgment against petitioner. Without necessarily imputing malice to said attorney, but guided by experience and common sense as well as my awareness of how apparently legal but actually devious tactics are resorted to in ejectment cases just so the defendant may prolong his illegal possession of the premises concerned, I am not for allowing a party to side-track the ordinary course of an ejectment proceeding, particularly, by the untimely withdrawal of counsel for the defendant after adverse judgment has already been promulgated against his client, albeit not yet officially served on said counsel. I note in this case that the decision in question was actually promulgated on September 19, 1966. I venture to say that it was not impossible for Atty. Ogsimer to have known of it. That he filed his withdrawal of appearance on September 20, 1966 is to me too much of a coincidence, considering how easily accessible the City Court of Quezon City to the lawyers who usually practice therein. And his failure to claim the registered mail was evidently a deliberate omission.[1] But what has ultimately exposed counsel's obvious attempt to make a mockery of the proceedings is the fact that in subsequent stages of the same litigation, Atty. Ogsimer reappeared without any plausible explanation on record as counsel for the petitioner.

The Court cannot and should not be deceived by such deplorable maneuver. But because the Court is informed that Atty. Ogsimer has already died, it is not possible to take any disciplinary action against him. The members of the Bar may, however, be admonished to take note of the above observations so they will be careful to avoid committing any similar fault.

[1] Had Atty. Ogsimer claimed his mail on time, and on the assumption that he had withdrawn his appearance for petitioner before the promulgation of the judgment but thru oversight it was nevertheless served on him, the least that said counsel should have done pursuant to his duty of candidness to the courts was to advise the court of the erroneous service in order that the proper one may be made. Then, had that been done, the period for the finality of the judgment would not have run until such proper service could be completed.

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