

J. M. TUASON & CO., INC., REPRESENTED BY ITS MANAGING PARTNER, THE GREGORIO ARANETA, INC., AND HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (QUEZON CITY, BR...

G.R. No. L-16836. January 30, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Application for review of a decision of the Court of Appeals (Sixth Division), in its Case No. 26805-R, setting aside the orders of execution and demolition issued by the Court of First Instance of Quezon City in its Civil Case No. Q-3519, and ordering said Court to hold in abeyance such execution until final judgment is rendered in Civil Case No. 4809, pending before the same. We granted certiorari on July 26, 1960.

The following facts appear of record: Respondent Bienvenido Sanvictores occupies, a portion of the so-called Tatalon Estate, of which petitioner J. M. Tuason & Co., Inc. is the registered owner holding a Torrens certificate covering it. Said portion is designated as Lot 49 of the Veteran's Subdivision plan, and appears to have been purchased in 1949 by Sanvictores from one Pedro Deudor, who claimed title to the estate as against the registered owners. Sanvictores had been in possession since then, and erected a house and made other improvements estimated at P20,000, more or less.

Litigation between the Tuasons, as registered owners, and Deudor culminated in a deed of compromise executed on March 16, 1953, wherein Deudor recognized the title of Tuason over the estate, and the latter agreed to pay certain compensation. The agreement expressly mentioned the rights of the previous vendees of Deudor, the latter agreeing to make them recognize the Tuason ownership and sign new contracts of purchase of their respective lots at the current prices and terms specified by the Tuasons in selling lots of their Sta. Mesa Heights Subdivision.

On November 20, 1958, Tuason & Co. filed in the Court of First Instance an ejectment action (accion publiciana) against Sanvictores to reeover Lot 49 (Case No. Q-3519). After due trial, judgment was rendered on March 30, 1959, declaring Sanvictores without right to the possession of the lot and ordering him to vacate.it. No appeal was taken, hence the judgment became final and executory. On July 29, 1959, a writ of execution was issued.

Upon motion of defendant (now respondent) Sanvictores, the Court of First Instance, by order dated September 26, 1959, suspended execution of its judgment, granting Sanvictores 60 days within which—

"to voluntarily remove his house and other constructions therefrom as well as to make proper negotiations with the plaintiff in connection therewith, after which period the correspondent writ of demolition will be accordingly issued."

It seems that since May of 1959, Sanvictores had been bargaining for the purchase of Lot 49, but no contract was ever concluded because the parties could not agree as to the price. Wherefore, on November 20, 1950, six days before the suspension period expired, Sanvictores filed another case (Q-4809) in the same Courts asking that a fair

and equitable price be fixed for Lot 49, and that Tuason & Co. be compelled to convey the lot to him, as preferential purchaser under the Deudor-Tuason compromise of 1953. Five days later, the same party moved in the ejectment case (No. Q3519) for indefinite suspension of the execution. This motion was denied on December 2, 1959. Thereupon, Sanvictores sought out a writ of certiorari in the Court of Appeals, and the latter, after due hearing, granted it as noted at the beginning of this opinion.

Not satisfied with the decision, Tuason & Co. resorted to this Court.

We find the appeal meritorious.

Assuming, without deciding, that the Tuasons had really bound themselves to recognize the alleged preferential rights of the vendees of Deudor, it is more than remarkable that appellee Sanvictores, one of the vendees, did not take steps to enforce his supposed preference until after the adverse decision of the Court of First Instance in the possessory action had become final and executory in 1959, six years after the Deudor-Tuason compromise was made. This inaction of Sanvictores is all the more strange when we consider that he could have set up such preferential rights as a defense against the suit filed by appellant Tuason & Company against him. If he really was entitled to purchase the contested lot, the claim was in the nature of a compulsory counterclaim under section 6 of Rule 10, since it was necessarily connected with the right of possession asserted by the Tuasons, and did not require the presence of third parties for its adjudication. Both under section 6 of Rule 10, as well as section 10 of Rule, 9, the failure to set up such rights resulted in a waiver thereof, and they became barred after the judgment in the possessory action became final. It was, therefore, error on the part of the Court of Appeals to consider that the determination of appellee's alleged preferential right constituted a prejudicial question to the execution of the final judgment of ouster against appellee.

And if it be considered that the action of Sanvictores to compel Tuason & Company to sell him the lot is completely independent of the possessory action filed by the Tuasons, because it concerned title and not possession, then with greater reason will the pendency of the first action be irrelevant to the execution of the final judgment of ouster.

It is also worthy of note that the compromise between Deudor and Tuason, upon which Sanvictores predicates his right to buy the lot he occupies, has been validly rescinded and set aside, as recognized by this Court in its decision in *Deudor vs. Tuason*. 112 Phil., 63,. 59 Off. Gaz, 217,

Finally, no questions of fact were raised in connection with the execution of the final judgment of the Court of First Instance of Quezon City in G. R. No. Q-3519 of that Court. The only question was one of law, whether or not execution should be further suspended because of the pendency of Sanvictores' suit for specific performance (Case No. Q-4809). No appeal, therefore, could have been taken thereon to the Court of Appeals; and as the writs of certiorari, prohibition, etc. can only be issued by that Court in aid of its appellate jurisdiction, it becomes plain that the Court of Appeals had no jurisdiction to entertain Sanvictores' petition for certiorari wherefore, the decision of the Court of Appeals, now under review, was null and void (*Tuason & Co., Inc., etc. vs. CA. and Republic vs. Tuason. et al.,* both decided jointly and reported in 113 Phil., 673. and cases therein cited),

In view of the foregoing, the decision of the Court of Appeals is reversed and set aside. Costs against appellee, Bienvenido Sanvictores.

Bengzon, C. J., Padilla, Bautista, Angelo, Labrador, Concepcion, Barrera, Dizon, and De Leon, JJ., concur.

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