

ARTURO MANDOCDOC, PETITIONER, VS. HON. LEONCIO M. JANOLO, JR., AS PRESIDING JUDGE, RTC, BRANCH 264, PASIG, CITY, SHERIFF IV RENATO BARON OF BRANCH 264 AND SPOUSES SILVERIO AND F...

Ponente: REYES, J.

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REYES, J.:

This is an original action for certiorari seeking the nullification and setting aside of the order of public respondent Leoncio Janolo, Jr., Presiding Judge of the Regional Trial Court of Pasig City (Branch 264) dated August 30, 2004 granting the private respondents' prayer for a preliminary mandatory injunction (Rollo, pp. 123-124).

Similarly assailed is the order of the same respondent judge dated May 30, 2005 denying the petitioner's motion for reconsideration (Ibid., p. 76).

First, a factual précis.

On August 28, 2000, private respondents Spouses Silverio and Felicidad Cuaresma lodged a complaint for "Declaration of Nullity, Specific Performance with Damages" against their daughter Elvira Cuaresma-Dumangas and her husband Petronillo Dumangas, as well as against Renato Dumangas, Eugenio Cadiao and herein petitioner Arturo Mandocdoc. The case was docketed as Civil Case No. 68055 and was eventually raffled to the sala of herein respondent judge (Ibid, p. 21).

The then plaintiffs Silverio and Felicidad Cuaresma alleged, among others, that they are the owners of a right over an idle property of the Manila Railroad situated in Barangay Tanyag, Taguig, Metro Manila containing an area of about 300 square meters. When the respondent spouses left for the United States to visit their other children and to seek medical treatment, they designated their daughter defendant Elvira Cuaresma-Dumangas as manager of the subject property and collector of rentals thereon. While the latter was instructed to deal with the tenants, she was proscribed from selling or encumbering the said property, as may be gleaned from the penultimate paragraph of their written agreement (Id., pp. 22).

Upon the respondents spouses' return from the United States in 1999, they asked their daughter, defendant Elvira Cuaresma-Dumangas to account for and deliver the rentals she collected so that they could evenly distribute it among the other children. Said Elvira, however, just kept on promising and promising but eventually failed to comply with her parents' request (id).

Suspicious of their daughter's failure to remit the rentals, the respondent spouses later discovered that: (a) the subject property was already sold to one Eugenio Cadiao, without the conformity of the other spouse, respondent Silverio Cuaresma; (b) three months after the sale, Cadiao sold the same property to herein petitioner Arturo Mandocdoc for a lesser amount; (c) the consideration for the sale was not delivered to respondent Felicidad Cuaresma but was instead deposited by Elvira under a joint account and later withdrawn to enable the latter to acquire other properties titled exclusively under her name and her husband; (d) it was Elvira who duped her mother to sign the deed of sale under the pretext that the P300,000.00 was payment to the government for the

improvements introduced on the property; (e) up to the present, Eugenio Cadiao, petitioner Arturo Mandocdoc and Elvira are still in the subject premises, calling the shots, with the first two as dummies (Id., pp. 22-23).

Herein petitioner Arturo Mandocdoc, one of the defendants below, staunchly avers that the respondent spouses have already lost their right over the contested property by virtue of the voluntary transfer of the same to Eugenio Cadiao who, in turn, transferred it to him for a consideration. The petitioner further claims that the signatory to the contract, Felicidad Cuaresma, is presumed to know what she was doing when she signed the Deed of Transfer in favor of Eugenio Cadiao. As for respondent Silverio Cuaresma, his failure to affix his signature and bestow marital consent to the transfer does not invalidate the said sale because his knowledge and consent, allegedly, could also be presumed (Id., pp. 119-120).

Petitioner Arturo Mandocdoc also alleged that he has a better right over the property subject of the litigation because he acquired his right thereto for value and in good faith whereas the respondent spouses are merely “squatters” (Id., p. 12).

On August 3, 2004, respondent spouses filed a motion for issuance of a temporary restraining order and/or writ of preliminary injunction. Said motion was countered by defendant Elvira Dumangas and herein petitioner Arturo Mandocdoc by way of separate oppositions (Id., p.5).

In an order dated August 30, 2004, the court below granted the respondent spouses’ motion for the issuance of an injunction order. The decretal text of the foregoing order reads as follows:

“WHEREFORE, finding merit in the instant application for preliminary mandatory injunction, the same is hereby GRANTED. Upon the posting by the plaintiffs of a bond in the amount of Three Hundred Thousand Pesos (P300,000.00) to the effect that the plaintiffs will pay the defendants all damages which the latter may sustain by reason of the injunction if it be ultimately decided that the injunction was unwarranted, let a writ of preliminary mandatory injunction issue enjoining the defendants and all persons acting for and in their behalf to:

- Desist and refrain from selling or encumbering subject property;
- Deposit in court starting this month of September, 2004 until this case shall have been finally resolved, all rentals being collected by defendants from the lessees of the subject premises;
- Stop building additional structures inside the subject premises which are open and vacant;
- Desist and stop tearing down the former houses of Francisco Cuaresma and Manolo Cuaresma, and if the same have already been torn down, to deposit their corresponding market value of P210,000.00 in court;
- Allow plaintiffs and all persons acting in their behalf, their seven (7) children and heirs to enter subject premises without threat or bodily harm against them.

SO ORDERED.” (Id., pp. 123 to 124)

The foregoing order was received by petitioner Arturo Mandocdoc on October 20, 2004. On October 29, 2004, his counsel moved to have said order reconsidered. This motion for reconsideration was denied by the trial court in its order dated May 30, 2005. However, counsel for the petitioner was allegedly not served a copy of the said order and was belatedly given a copy only on February 15, 2006 (Id., p. 6).

Meanwhile, on June 27, 2005, the respondent spouses filed a clarificatory motion or motion to require the defendants to comply with the order of the trial court dated August 30, 2004 (Id., p. 141).

On October 25, 2005, the respondent judge issued an order dated October 25, 2005 granting the said clarificatory

motion and ordered the respondent Sheriff Reanto Baron to collect the amount of Seven Hundred Ten Thousand Pesos (P710,000.00) and Two Hundred Ten Thousand Pesos (P210,000) from the defendants, including petitioner Arturo Mandocdoc (Id., p. 7).

Pursuant to the abovepertained order, the respondent Sheriff served upon the defendants in Civil Case No. 68055 a formal demand letter dated December 20, 2005 (Id., p. 7).

On January 10, 2006, petitioner Arturo Mandocdoc filed an urgent motion to revoke the order dated October 25, 2005 and the demand made by the respondent sheriff on the ground that they were allegedly issued in violation of his right to due process (Id.).

On February 15, 2006, the date set for the hearing of the motion to set aside or revoke the order dated October 25, 2005, the trial court was informed that counsel for petitioner Arturo Mandocdoc was yet to be served the order dated May 30, 2005 denying his motion for reconsideration. Thus, in open court, the Clerk of Court was directed to furnish the petitioner's counsel of the said order (Id.).

According to the law, a petition for certiorari should be filed within sixty (60) days from receipt of the motion for reconsideration. Convinced that the said prescriptive period should be reckoned from his belated receipt on February 15, 2006 of the May 30, 2005 order of denial, petitioner Arturo Mandocdoc, by counsel, filed the present petition.

In support of his prayer to reverse the challenged issuances of the trial court, the petitioner argued on the following issues:

I.

WHETHER OR NOT PRIVATE RESPONDENTS HAVE A CLEAR AND UNMISTAKABLE LEGAL RIGHT OVER THE PROPERTY IN QUESTION TO JUSTIFY THE ORDER DATED AUGUST 30, 2004, GRANTING THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.

II.

WHETHER OR NOT THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN JURISDICTION IN ISSUING THE ORDER OF AUGUST 30, 2004, ORDER OF MAY 30, 2005 DENYING THE MOTION FOR RECONSIDERATION, AND ORDER OF OCTOBER 25, 2005 DIRECTING THE SHERIFF TO IMPLEMENT THE ORDER OF AUGUST 30, 2004. (Id., pp. 200-201)

The petition failed to sway.

After a perusal of the records, this Court is not poised to accept petitioner Arturo Mandocdoc's claim that his counsel failed to seasonably receive a copy of the order denying their motion for reconsideration dated May 30, 2005. While the petitioner asserts that they obtained a copy of the denial of his motion for reconsideration almost nine months after its promulgation, specifically on February 15, 2006, there are pieces of evidence on record that suggest otherwise.

Indubitably, the name and signature of Atty. Pastor Mendoza, petitioner's counsel, appear at the dorsal side of the certified true copy of the contested May 30, 2005. This goes to show that the petitioner's counsel had already received the said resolution as early as June 3, 2005 (Id., p. 179, dorsal portion). Indeed, this readily belies the assertion that neither the petitioner nor his counsel was timely served a copy of the said resolution.

Likewise, the petition itself casts serious doubt on whether the petitioner and/or his counsel indeed were not furnished a copy of the said order of denial. In fact, the following averment, suggesting an even earlier service of

the said resolution, is lifted from the petitioner's own pleading:

"13. On May 31, 2005, petitioner was served with a copy of the order dated May 30, 2005 together with the Writ of Preliminary Mandatory Injunction dated May 31, 2005 xxx." (Id., pp. 8 to 9)

Whichever of the two foregoing dates is used to reckon the prescriptive period, the simplest calculations will nevertheless lead to the inescapable conclusion that the petitioner filed the instant petition dated March 13, 2006 way beyond the sixty days allowed by law within which to institute certiorari proceedings.

In the light of the foregoing premise, the petition suffers from a fatal technical infirmity and therefore invites outright dismissal.

It ought to be stressed that certiorari is an exceptional remedy (*Morales vs. Court of Appeals*, 285 SCRA 337). That being the case, a party who seeks to avail of this recourse must observe the rules laid down by the law, and non-observance of the said rules may not be peremptorily be brushed aside as "mere technicality" (*Sea Power Shipping Enterprises, Inc. vs. Court of Appeals*, 360 SCRA 173).

Then again, even if for the benefit of argument, we opt to turn a blind eye on the foregoing procedural lapse, the petition remains devoid of merit.

The issuance of a writ of preliminary mandatory injunction requires the concurrence of the following: (a) that the complainant has a clear legal right; (b) that his right has been violated and the invasion is material and substantial; and (c) that there is an urgent and permanent necessity for the writ to prevent serious damage (*Pelejo vs. Court of Appeals*, 117 SCRA 665). We believe the foregoing requisites attend the present case.

The petitioner alleges that the respondent judge's preliminary finding that the respondent spouses have a "clear legal right" over the property amounts to grave abuse of discretion inasmuch as the said spouses are "mere squatters". In a convenient fit of amnesia, the petitioner is too quick to forget that whatever right he asserts over the same piece of land is drawn precisely from the purported sale between one of the respondent spouses, Felicidad Cuaresma. Therefore, whenever the petitioner addresses the respondent spouses as "mere squatters", he, in truth, christens himself with the same damaging label, for how could a purchaser derive a greater right than that bestowed by his predecessor-in-interest?

Said the trial court on this matter:

"Against plaintiffs' claim of right over subject property, defendant Mandocdoc counters that plaintiff are squatters to it, notwithstanding that the very right he now enjoys over (the) same property emanated from the contested Deed of Transfer between plaintiff Felicidad Cuaresma as vendor and Eugenio Cadiao as vendee. Defendant Mandocdoc allegedly bought the right over subject property from Eugenia Cadiao through an instrument denominated as "Pagbebenta at Pagsasalin ng Karapatan" dated 15 December 1999.

From these then, there is semblance of right by plaintiffs over the subject property. For how can they dispose of something that is not theirs in the first place or at the very least, recognized as such by those who bought said right from them, defendant Mandocdoc's assignor included? Still, such right or the lack of it shall be determined with finality and is within the office of the main case, trial proper for which is forthcoming.

What is apparent at the moment is that there has been a supposed transfer of right over subject property by plaintiff Felicidad Cuaresma without the signature of her spouse Silverio Cuaresma on the disputed deed." (Id., p. 121)

Anent the deed of transfer between Felicidad Cuaresma and Eugenia Cadiao, suffice it to state that there are reasons to inquire into its validity. As pointed out by the court a quo, the subject property is legally presumed to

be conjugal. That said, failure to secure the signatures of both spouses opens the sale to question.

Also, the written agreement designating Elvira Cuaresma as a manager of the property clearly sets out the intention of the respondent spouses over the subject property. The said agreement categorically prohibits the sale or disposal of the subject property since they intend to pass it on to their children upon their demise, to wit:

WHEREAS, the SECOND PARTY shall have no right to sell or encumber the property or any part thereof;

WHEREAS, upon the demise of the FIRST PARTY, the property shall be divided equally among their eight (8) children, namely: JULIETA C. GABAY, married to Teodoro Gabay, FRNACISCO CUARESMA, married to Eufemia Cuaresma, ELVIRA S. CUARESMA, married to Petronillo Dumangas, ERNESTO S. CUARESMA, married to Yolanda Cuaresma, TEODORO CUARESMA, married to Morena Cuaresma, MANUEL S. CUARESMA, married to Nena Cuaresma, SILVERIO S. CUARESMA, married to M. Menchie Cuaresma, and MA. THERESA S. CUARESMA, married to ROGER LIM. xxx” (Id., p. 28)

As for the necessity of securing the injunction order, the trial court ratiocinated thus:

“In the Affidavit of merit attached to the instant motion, plaintiffs, through their son and Attorney-in-fact Francisco Cuaresma, alleged that defendants are about to sell the right to dwell in the subject premises or to mortgage the same to make it harder, if not impossible for the plaintiffs to regain or enforce their right to dwell in the subject property in case of a favorable decision by the court in their favor. More and more structures are being built on the vacant portions of the subject premises which now amount to not less than P100,000.00 collected and enjoyed by the defendants. The former garage of Francisco Cuaresma, and the two-storey house of maolo Cuaresma are being torn down to give way to stalls of would be lessee. xxx.” (Id., pp. 122-123)

In any event, it would be downright arrogant for us to dwell on the merits inasmuch as the trial court is yet to decide the main case.

Be that as it may, it should be stressed that the sole office of a writ of certiorari is the correction of error of jurisdiction and does not include a review of public respondent’s evaluation of the evidence and factual findings (Oro vs. Diaz, 361 SCRA 108). Questions that may be entertained in a petition for certiorari must not involve an examination of the probative value of the evidence presented by the litigants (Western Shipyard Services, Inc. vs. Court of Appeals, 358 SCRA 257).

Indeed, it is enough to say that the respondent judge was well within the reasonable limits of his discretion when he granted the injunction order. The assailed orders cannot be deemed as whimsical strokes of the judicial pen. Ample evidence, after all, exists on record to support such issuances.

It should be stressed that for this writ to lie, mere abuse of discretion is not enough. (Santos v. Commission on Elections, G.R. No. 155618, March 26, 2003, 399 SCRA 611). The extraordinary remedy of certiorari may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility (Ala-Martin vs. Sultan, 366 SCRA 316). Again, this degree of abuse of discretion, we failed to see in the issuance of the assailed orders.

WHEREFORE, in the light of the premises above conveyed, the present petition is hereby DISMISSED.

SO ORDERED.

Reyes, Jr. and Lanzas, JJ., concur.

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