

RODOLFO C. DURAN, REYNALDO DURAN, DOLORES DURAN-CENAS, TONTON DURAN, MARINELI DACANO, JANET CONCON, ARNOLD CONCON, EDGIE ALCOJEDO, SUSAN GENERALAO, AND GIL GENERALAO, PETITIONER...

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BORJA, J.:[*]

This treats of petitioners' Urgent Motion/Application for the Issuance of Temporary Restraining Order or Maintenance of Status Quo and/or Preliminary Injunction[1] to enjoin the implementation of the Order[2] dated March 14, 2014 of the Regional Trial Court (Branch 15), Davao City which granted the Motion for Execution filed by Plaintiff-Appellee (now Respondent before this Court) Tangaro and ordered the issuance of a Writ of Execution.

Petitioners allege –

(1)

THERE IS A GREAT NEED TO MAINTAIN THE STATUS QUO AT THIS TIME CONSIDERING THE FACT THAT THE TWO COURTS (MTCC AND RTC) FROM WHICH THE PROCEEDINGS ORIGINATED NEVER EXERTED EFFORTS TO VERIFY EVIDENCE OF THE PLAINTIFF-RESPONDENTS AS ALLEGED IN THE COMPLAINT. THE FIRST-LEVEL COURT UNQUESTIONABLY RENDERED DECISIONS BASED ON GENERAL AVERMENTS OF THE COMPLAINT, AND ACCEPTING THE SAME AS ACTUAL FACTS HOOK, LINE, AND SINKER, DISREGARDING JURISPRUDENCE ON THE MATTER;

THE TWO COURTS NEVER CONSIDERED THE FACT THAT – BASED ON THE EVIDENCE SUBMITTED BY DEFENDANTS-PETITIONERS – SEVERAL STANDING CROPS AND STRUCTURES HAVE LONG BEEN IN EXISTENCE IN THE AREA SOUGHT TO BE POSSESSED BY PLAINTIFF-RESPONDENT, AS SHOWN BY THE EXHIBITS IN THE MAIN PETITION FOR CERTIORARI. THESE EVIDENCE SHOW THAT DEFENDANTS-PETITIONERS HAVE BEEN IN THE AREA SOUGHT TO BE RECOVERED WAY LONG BEFORE THE PLAINTIFF-RESPONDENT FILED THE INSTANT COMPLAINT AND FOR MORE THAN ONE YEAR. HENCE, AN EJECTMENT CASE SHOULD NOT HAVE BEEN GIVEN DUE COURSE.

(2)

THE COMPLAINT FILED WITH THE FIRSTLEVEL COURT FAILED TO SPECIFICALLY AVER FACTS CONSTITUTIVE OF FORCIBLE ENTRY OR UNLAWFUL DETAINER, AS WHERE IT DOES NOT STATE HOW THE ENTRY WAS EFFECTED OR HOW THE DISPOSSESSION TOOK PLACE. IN EFFECT, THE ACTION BY PLAINTIFF SHOULD RIGHTLY BE CONSIDERED AN ACCION REINVINDICATORIA AS RULED BY EXISTING JURISPRUDENCE. YET, THE SECOND-LEVEL COURT FAILED TO SEE AND CONSIDER THIS CIRCUMSTANCE.

(3)

UNTOLD GREAT AND IRREPARABLE INJURY WOULD RESULT TO THE DEFENDANTSPETITIONERS IF THE WRIT OF EXECUTION ISSUED BY COURT A QUO BE ENFORCED, HENCE, A TEMPORARY RESTRAINING ORDER AND/OR AN ORDER FOR THE MAINTENANCE OF STATUS QUO AND PRELIMINARY INJUNCTION SHOULD BE ISSUED BY THIS HONORABLE COURT.

FURTHER, IF IN ANY EVENT THE MAIN PETITION WOULD BE RULED IN FAVOR OF THE PETITIONERS AND IF A DEMOLITION HAVE BEEN IMPLEMENTED BY THE COURT A QUO, BY THE TIME THE RENDERING OF THE DECISION BY THIS HONORABLE COURT, THE APPLICANTS WOULD HAVE ALREADY SUFFERED GREAT INJUSTICE AND IRREPARABLE INJURY AS THEY WOULD BE IMMEDIATELY DISPOSSESSED FROM THEIR LANDS WITH IMMEASURABLE CONSEQUENCES. [3]

Considering that the ponente of the instant case is on official leave, this Court will act upon this motion pursuant to Section 5 of Rule VI of the 2009 Internal Rules of the Court of Appeals (RIRCA), which provides, viz:

Sec. 5. Action by a Justice. – All members of the Division shall act upon an application for temporary restraining order and preliminary injunction. However, if the matter is of extreme urgency and a Justice is absent, the two other justices shall act upon the application. If only the ponente is present, then he/she shall act alone upon the application. The action of the two Justices or of the ponente shall, however, be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

After a careful consideration of the grounds raised by petitioners in their motion, this Court denies their prayer for injunctive relief.

Essential to the grant of an injunctive writ is the existence of an urgent necessity for it in order to prevent serious damage. Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately and before the writ of preliminary injunction could be heard.[4] In addition, Section 4 (a) of Rule 58 of the Rules of Court is clear with regard to the procedure to be followed in the issuance of writs of preliminary injunction, i.e., a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded.[5] In sum, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[6]

Upon a perusal of the petition and its supporting documents, this Court finds that petitioners failed to sufficiently establish the elements necessary for the grant of an injunctive relief. For one, the institution by Tangaro of an action for ejectment against the plaintiffs (now petitioners) gives this Court “an impression that the right claimed by [petitioners] as basis for asking an injunctive relief is far from clear. While it is not required that the right claimed be conclusively established xxx, it is nevertheless necessary to show, at least tentatively, that it exists and is not vitiated by any substantial challenge or contradiction.”[7] As all the above-mentioned elements must concur, and petitioners’ right over the property was not clearly established, the injunctive relief cannot therefore issue.

ACCORDINGLY, the Court DENIES the prayer for the issuance of a temporary restraining order.

SO ORDERED.

Borja and Badelles, JJ., concur.

[1][*] Ponente vice J. Filomena Singh, who is on leave, per raffle dated May 20, 2014; To act only on petitioner's Urgent Motion/Application for the Issuance of TRO or Maintenance of Status Quo and/or Preliminary Injunction.

[**] Singh, J., On official leave.

Rollo, pp. 82 – 99.

[2] Annex “B,” Rollo, pp. 101 – 102.

[3] Rollo, pp. 87 – 89.

[4] Australian Professional Realty, Inc., et al. v. Municipality of Padre Garcia Batangas Province, G.R. No. 183367, 14 March 2012.

[5] Universal Motors Corporation v. Judge Rojas, A.M. No. RTJ-03-1814, 26 May 2005 citing Rivera v. Mirasol, A.M. No. RTJ-04-1885, 14 July 2004.

[6] Id., citing Medina v. City Sheriff of Manila, 342 Phil. 90 (1997).

[7] Oscar M. Herrea, Remedial Law III, 2006 Edition, citing Developer's Group of Companies, Inc. v. Court of Appeals, 219 SCRA 715 (1993).

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