

HONORABLE MEYNARDO A. TIRO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL, BRANCH VIII, THE PROVINCIAL SHERIFF OF MISAMIS ORIENTAL, AND FORMA REAL ESTATE SUBDIVISI...*G.R. No. L-47341. October 20, 1978*

Ponente: CONCEPCION JR., J.

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Petition for certiorari to review the decision of the respondent appellate court in case CA-G.R. No. SP-06647-R, entitled: "Leopoldo Pabayo, et al., petitioners, versus Hon. Maynardo A. Tiro, etc., et al., respondents," which declared null and void and set aside the order of the Court of First Instance of Misamis Oriental in Civil Case No. 2620 entitled: "Leopoldo Pabayo, et al., plaintiffs, versus Forma Real Estate Subdivision and Management, defendant," dated December 10, 1976, directing the issuance of a writ of execution to place the defendant Forma Real Estate Subdivision and Management in possession of the property under litigation, and the order of March 23, 1977, directing the Sheriff to implement said writ of execution.

For reasons of expediency and justice, the instant petition will be treated as one for certiorari under Rule 65 of the Revised Rules of Court.

It appears that on January 5, 1966, Leopoldo Pabayo, Aurora Pabayo, Policarpa Pabayo, Felicidad Pabayo, Filomena Pabayo, Emilia Pabayo de Santos, and Vitaliana Gabua de Llarenas filed a complaint with the Court of First Instance of Misamis Oriental against the Forma Real Estate Subdivision and Management for the annulment of a contract of purchase and sale of a parcel of land known as Lot 26 of the Subdivision Plan Psd-73564 of the Cadastral Survey of Cagayan de Oro, executed by the plaintiff Vitaliana Gabua de Llarenas on August 18, 1965 in favor of the aforementioned defendant Forma Real Estate Subdivision and Management for reasons of fraud and deceit; and, with the exception of Vitaliana Gabua de Llarenas, to be declared the legal owners of the said land by virtue of the deed of sale executed by Candido Llarenas and Vitaliana Gabua on June 4, 1941 in favor of Basilisa Saareñas de Pabayo, mother of the plaintiffs.[1] After trial, the complaint and the counterclaim were dismissed, with costs against the plaintiffs.[2] Upon appeal, the Court of Appeals affirmed the judgment in toto, with costs against the plaintiffs-appellants.[3]

The judgment having become final, the Forma Real Estate Subdivision and Management filed a motion for the execution of judgment, praying "that a writ of execution issued ordering the Provincial Sheriff or his deputy to place the defendant in possession of the property litigated." The trial court granted the motion on December 10, 1976.[4] The trial court, however, held in abeyance the writ of execution pending final clarification from this Court as to the status of the plaintiffs' Motion for Leave to Admit Amended Petition for Review,[5] but after this Court had ruled that the case referred to[6] has already been terminated, the lower court directed the Sheriff to proceed with the execution as previously ordered.[7] Consequently, Leopoldo Pabayo and his co-plaintiffs filed a petition for certiorari with the Court of Appeals to annul and set aside these orders directing the Sheriff to place

the Forma Real Estate Subdivision and Management in possession of the property involved in the litigation. They contended that the judgment sought to be enforced, which judgment was affirmed in toto by the Court of Appeals, merely decreed the dismissal of the complaint and counterclaim and the payment of costs, but did not adjudge possession of any portion of the lot in question to anybody or order the eviction of the plaintiffs therefrom, so that the Court of First Instance of Misamis Oriental abused its discretion in ordering the delivery of the possession of the land to the defendant Forma Real Estate Subdivision and Management.

The Court of Appeals sustained this view stating "that Judge Teves (who penned the decision) did not pass upon the question of possession, as in fact no mention was made in the dispositive part of the latter's decision as to the party entitled to the possession thereof," and declared the questioned orders of December 10, 1976 and March 23, 1977 null and void for having been issued with grave abuse of discretion amounting to lack of jurisdiction.[8] The Court of Appeals cited the cases of Talens vs. Garcia,[9] and Jabon vs. Alo,[10] in support of its conclusion.

Hence, the instant petition for review.

The petitioner, Forma Real Estate Subdivision and Managemant, contends that the respondent Court of Appeals wrongfully applied the cases of Talens vs. Garcia and Jabon vs. Alo because in the case at bar, there exists no relationship of landlord and tenant, or lessor and lessee between the parties, and/or any other valid defense to resist surrender of possession; and that the herein private respondents Leopoldo Pabayo and his co-heirs had the opportunity to prove the value of their necessary improvements.

There is merit in the petition. The controlling precedent is the case of Perez vs. Evite,[11] where the Court ruled that the doctrine enunciated in the cases of Talens vs. Garcia and Jabon vs. Alo may not be invoked in instances where no such right to continue possession may be appreciated in favor of the possessor. The Court said:

"It may be observed that in both decisions,[12] this Court underscored the possibility that the actual possessor has some rights which must be respected and defined. It is thus evident that the pronouncement was made having in mind cases wherein the actual possessor has a valid right over the property enforceable even against the owner thereof. As example, we gave the cases of tenants and lessees. However, it is our view that the above doctrine may not be invoked in instance where no such right may be appreciated in favor of the possessor. In the instant case there appears in the appealed order of June 30, 1959, the specific finding of the trial court that 'the plaintiffs have not given any reason why they are retaining the possession of the property.' (p. 57, Record on Appeal.) This factual finding can not be reviewed in this instance as the appeal has been taken to us directly only on question of law. (p . 72, Record on Appeal.)

"Under Section 45 of Rule 39,[13] Rules of Court, which reads:

'Sec. 45. What is deemed to have been adjudged. – That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.' (Italics supplied)

a judgment is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto. Thus, in a land registration case wherein ownership was adjudged, we allowed the

issuance of a writ of demolition (to remove the improvements existing on the land), for being necessarily included in the judgment. Considering that herein plaintiffs-appellants have no other claim to possession of the property apart from their claim or ownership which was rejected by the lower court and, consequently, has no right to remain thereon after such ownership was adjudged to defendants-appellees, the delivery of possession of the land should be considered included in the decision. Indeed, it would be defeating the ends of justice should we require that for herein appellees to obtain possession of the property duly adjudged to be theirs, from those who have no right to remain therein, they must submit to court litigations anew."

In the instant case, Leopoldo Pabayo and the other private respondents are in possession of the property in question by virtue of the alleged deed of sale executed by Candido Llarenas and Vitaliana Gabua in favor of Basilisa Saareñas de Pabayo who, in turn, donated the property to them. The lower court, however, found -

" * * *that plaintiffs, especially Vitaliana, have miserably failed to prove the genuineness and due execution of Exhibit 'A', rendering it worthless as a piece of evidence. In legal contemplation the alleged sale never existed, much less transferred or conveyed to Basilisa Saareñas de Pabayo any proprietary right over the land in litigation.

"Consequently, Basilisa could donate nothing to her children, the herein plaintiffs-Pabayos. And even if she did there is no evidence to prove it or make it valid or effective. For no deed of donation was presented or shown to exist. Article 749, NCC. But most importantly, since Basilisa, as stated before, had acquired no proprietary rights whatsoever over the land in litigation, she was without any right to donate or in any other manner convey it to another."[14]

The Court of Appeals, in its affirmatory decision, said:

" * * *Clearly therefore, on June 4, 1941 when Exhibit 'A' was supposedly executed, Vitaliana Gaboa de Llarenas had no property to sell. Having no definite property to sell to Basilisa de Saareñas, the latter has not acquired anything at all. Consequently she could not have donated to the plaintiffs what she has not acquired on June 4, 1941."[15]

Since the matter of possession is not litigated separately from that of ownership and that Leopoldo Pabayo and his co- plaintiffs have no other claim to possession apart from their claim of ownership which was rejected by the trial court, as well as by the Court of Appeals, and, therefore, have no right to retain the possession of the land in question, the delivery of possession of the land should be considered included in the decision, following the case of Perez vs. Evite. In view thereof, the Court of First Instance of Misamis Oriental did not abuse its discretion in ordering the Sheriff to place the herein petitioner, Forma Real Estate Subdivision and Management, in possession of the land registered in its name.

WHEREFORE, the petition is granted and the decision of the Court of Appeals in case CA- G.R. No. SP-06647-R, entitled: "Leopoldo Pabyo, et al., petitioners, versus Hon. Meynardo A. Tiro, etc., et al., respondents," promulgated on September 15, 1977 and its resolution dated October 26, 1977 are hereby annulled and set aside. Costs against the private respondents.

SO ORDERED.

Fernando, Acting C.J., (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Aquino, J., see opinion below.

[1] Rollo, p. 40.

[2] Id., p. 48.

[3] Id., p. 54.

[4] Id., pp. 32, 33.

[5] Id., p. 33.

[6] L-41995, Leopoldo Pabayo, et al. vs. Court of Appeals.

[7] Rollo, p. 13.

[8] Id., p. 30.

[9] 87 Phil. 175.

[10] 91 Phil. 750.

[11] L-16003, March 29, 1961, 1 SCRA 949.

[12] referring to the cases of Talens vs. Garcia and Jabon vs. Alo.

[13] now Sec. 49(c) of Rule 39, Revised Rules of Court.

[14] Rollo, p. 48.

[15] Id., p. 54.

SEPARATE CONCURRING OPINION**AQUINO, J.:**

I concur because respondents Pabayo have not shown any right to possess the disputed land apart from their claim of ownership, which was rejected in the case which they themselves had filed against the petitioner. They have no right to possess the land, the ownership of which was adjudged to the petitioner whose title is evidenced by TCT No. 5569.

Under those circumstances, a separate action against the Pabayos for the recovery of possession is not necessary (Perez and Alcantara vs. Evite and Manigbas, 111 Phil. 564).

However, it should be noted that Judge Tiro and the sheriff were improperly joined as appellants in this case.

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