

TOYOTA MOTOR PHILIPPINES CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, HON. FERNANDO V. GOROSPE, JR., AND SUN VALLEY MANUFACTURING & DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 102881. December 07, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This case involves a boundary dispute between Toyota Motor Phil. Corporation (Toyota) and Sun Valley Manufacturing and Development Corporation (Sun Valley).

Both Toyota and Sun Valley are the registered owners of two (2) adjoining parcels of land situated in La Huerta, Parañaque, Metro Manila which they purchased from the Asset Privatization Trust (APT).

The properties in question formerly belonged to Delta Motors Corporation (DMC). They were foreclosed by the Philippine National Bank (PNB) and later transferred to the national government through the APT for disposition.

APT then proceeded to classify the DMC properties according to the existing improvements i.e., buildings, driveways, parking areas, perimeter fence, walls and gates and the land on which the improvements stood. The entire DMC property is called GC III - Delta Motors Corporation, divided into Delta I, Delta II, and Delta III. Further subdivisions for the separate catalogues were made for each division e.g. Delta I into Lots 1, 2 and 3. After this classification, APT parcelled out and catalogued the properties for bidding and sale.

Part of the duly parcelled Delta I property (Lot 2) was sold to Toyota through public bidding on May 12, 1988 for the amount of P95,385,000.00. After its purchase, Toyota constructed a concrete hollow block (CHB) perimeter fence around its alleged property.

On October 5, 1990, another part of the parcelled Delta I (Lot 1) covering an area of 55,236 square meters was purchased by Sun Valley from APT for the bid price of P124,349,767.00. Relying upon the title description of its property and the surveys it had commissioned, Sun Valley claimed that Toyota's perimeter fence overlaps Sun Valley's property along corners 11 to 15 by 322 square meters and corners 19 to 1 by 401 square meters for a total of 723 square meters. (Rollo, p. 841)

Negotiations between the two (2) corporations for a possible settlement of the dispute bogged down. Court battles ensued, grounded on purely procedural issues. In pursuing the resolution of the dispute, both Toyota and Sun Valley opted to file separate actions. Much of the complications that arose and are now before us can be traced to the two separate cases pursued by both parties. There are other cases arising from the same dispute but which are not before us.

Culled from the records, these are the antecedents of the two cases which transpired below.

TOYOTA CASE (Civil Case No. 91-2504)

On September 11, 1991, Toyota filed a case against APT and Sun Valley docketed as Civil Case No. 91-2504 with the Regional Trial Court of Makati, Branch 146 presided by Judge Salvador Tensuan. The complaint was for the reformation of the Deed of Sale executed between Toyota and APT. Toyota alleges that the instrument failed to reflect true intention of the parties, as evidenced by the failure of the title to include the 723 square meters strip of land.

Toyota alleges that the discrepancy came about because of the serious flaw in the classification/cataloguing of properties bidden out for sale by APT. Toyota was made to understand that included in its perimeter fence is the disputed strip of land. Thus, Toyota sought the resurvey of the property to correct this error in the title. Sun Valley was impleaded considering that it purchased the adjoining land whose title allegedly included the 723 square meters property.

On September 11, 1991, upon Toyota's application, Judge Tensuan issued a temporary restraining order (TRO) enjoining Sun Valley and APT from any act of destruction and removal of Toyota's walls and structures. Sun Valley and APT were respectively served summons on the following day.

On September 16, 1991, Sun Valley filed a motion to dismiss, on the ground that the Toyota complaint failed to state a cause of action against it (1) since it was not a party to the contract of the deed of sale between Toyota and APT and; (2) the complaint was in effect a collateral attack on its title.

On September 27, 1991, Judge Tensuan initially denied Toyota's application for preliminary injunction on the finding that there was no evidence of any threatened destruction, removal or dispossession of Toyota's property.

On October 10, 1991, Judge Tensuan, denied Sun Valley's motion to dismiss.

Both Toyota and Sun Valley filed their respective motions for reconsideration. Toyota moved to reconsider the denial of its injunctive application while Sun Valley moved to reconsider the denial of its motion to dismiss.

On October 30, 1991, APT filed its answer with affirmative defenses alleging that the complaint must be dismissed on the ground that Toyota and APT should first have resorted to arbitration as provided in Toyota's deed of sale with APT. On December 4, 1991, Toyota filed a motion alleging that Sun Valley's long threatened destruction and removal of Toyota's walls and structures were actually being implemented to which Judge Tensuan issued another TRO enjoining acts of destruction and removal of the perimeter walls and structures on the contested area.

Consequently, on December 17, 1991, Judge Tensuan reconsidered his earlier denial of Toyota's application for injunction and granted a writ of preliminary injunction enjoining Sun Valley from proceeding with its threatened destruction and removal of Toyota's walls and directed Sun Valley to restore the premises to the status quo ante.

On December 11, 1991, Judge Tensuan denied Sun Valley's motion for reconsideration of its motion to dismiss. Sun Valley elevated this denial to the Court of Appeals. The case was docketed as CA-G.R. Sp. No. 26942 and raffled to the Eleventh (11th) Division.

Judge Tensuan's jurisdiction to act considering the defense of prematurity of action for failure to arbitrate the validity of the TRO issued on December 4, 1991 and the order granting injunctive reliefs were challenged in a petition for certiorari filed with the Court of Appeals and docketed as CA-G.R. No. 26813, assigned to the Second (2nd) Division.

SUN VALLEY CASE (Civil Case No. 91-2550)

On September 16, 1991, Sun Valley, on the other hand, filed a case for recovery of possession of the disputed 723 square meters boundary with the Regional Trial Court (RTC) Makati, Branch 61 presided by Judge Fernando

Gorospe, Jr.

On the same day, Judge Gorospe issued a TRO enjoining Toyota from committing further acts of dispossession against Sun Valley.

On September 19, 1991, Toyota moved to lift the TRO and opposed Sun Valley's application for injunction.

On September 23, 1991, Toyota filed a motion to dismiss on the ground that the RTC has no jurisdiction over the case since the complaint was a simple ejectment case cognizable by the Metropolitan Trial Court (MTC). The motion to dismiss was set for hearing on September 27, 1991.

On September 27, 1991, Sun Valley filed an amended complaint to incorporate an allegation that Toyota's possession of the alleged disputed area began in September, 1988 when Toyota purchased the property.

Ruling that the amendment was a matter of right, Judge Gorospe admitted the amended complaint. Toyota adopted its motion to dismiss the original complaint as its motion to dismiss the amended complaint. After the arguments to Toyota's motion to dismiss, the same was submitted for resolution. Sun Valley's application for prohibitory and mandatory injunction contained in its complaint was set for hearing on October 1, 1991.

Protesting the admission of the amended complaint, Toyota went to the Court of Appeals, on certiorari on October 1, 1991. This petition was docketed as CA G.R. No. 26152 raffled to the Tenth (10th) Division.

Toyota was later prompted to file two supplemental petitions, before the Court of Appeals as a result of Judge Gorospe's alleged hasty issuance of four (4) Orders, all dated October 1, 1992. These are:

(1) First supplemental petition dated October 4, 1991 which sought to nullify the Order denying Toyota's motion to dismiss the amended complaint.

(2) Second supplemental petition dated October 23, 1991 which sought the nullification of the orders granting Sun Valley's application for preliminary prohibitory and mandatory injunction and denying Toyota's motion to cross-examine Sun Valley's witnesses on the latter's injunction application.

On November 27, 1991, respondent Court of Appeals' Tenth Division promulgated its questioned decision which is primarily the subject matter of the present petition before us.

The respondent court denied due course to the Toyota petition on the finding that the amendment of Sun Valley's complaint was a valid one as Sun Valley's action was not for unlawful detainer but an accion publiciana. Furthermore, the supplemental petitions filed by Toyota assailing the prohibitory and mandatory injunctive writ were not ruled upon as they were expunged from the records because of Toyota's failure to attach a motion to admit these supplemental petitions.

Consequently, Toyota filed the present petition for certiorari on December 9, 1991.

Earlier, upon an ex-parte motion to clarify filed by Sun Valley on October 25, 1991, Judge Gorospe issued another order dated December 2, 1991 which allowed Sun Valley to break open and demolish a portion of the Toyota perimeter walls, and eventually to secure possession of the disputed area. Toyota was constrained to come to this Court for relief.

On December 11, 1991, we issued a TRO enjoining the implementation of Judge Gorospe's injunction and break-open orders dated October 1, 1991 and December 2, 1991 respectively as well as further proceedings in Civil Case No. 91-2550.

Meanwhile, the Court of Appeals' Second Division issued a TRO ordering respondent Judge Tensuan and all

other persons acting in his behalf to cease and desist from further proceeding with Civil Case No. 91-2504 and from enforcing the Order dated December 17, 1991 and the writ of preliminary mandatory injunction dated December 19, 1991.

This prompted Toyota to file a motion to quash the TRO and file a supplemental petition with this Court impleading the Court of Appeals' Second Division.

On January 13, 1992, we admitted the supplemental petition.

On January 10, 1992, the Court of Appeals' Second Division issued its Resolution granting Sun Valley's application for preliminary injunction which enjoined Judge Tensuan in the Toyota case from implementing his injunction Order and from proceeding with the case before him (Civil Case No. 91-2504).

Thus, Toyota filed its Second Supplemental Petition with this Court challenging the validity of the injunction writ issued by the Court of Appeals' Second Division.

This Second Supplemental Petition was admitted on February 10, 1992.

On February 10, 1992, we gave due course to Toyota's petition.

Subsequently, through a manifestation dated April 29, 1992, Toyota informed the Court that on April 15, 1992, the Court of Appeals' 11th Division (Sun Valley case) rendered a decision dismissing the case before it for lack of merit. The Court of Appeals ruled that the Toyota complaint was not a collateral attack on Sun Valley's title and that misjoinder of parties is not a ground for dismissal.

A subsequent motion for reconsideration was denied in a resolution dated August 10, 1992.

In the instant petition Toyota raises the following issues, to wit:

1. The Court of Appeals' 10th Division gravely abused its discretion when it ignored or pretended to ignore Toyota's protests against Judge Gorospe's injunction orders.
2. Sun Valley is guilty of forum-shopping and Judge Gorospe of case-grabbing.

Sun Valley, on the other hand raises the following:

1. Whether or not the petitioner availed of the proper mode of elevating the case to this Court.
2. Whether or not the Court of Appeals committed grave abuse of discretion in refusing to act upon petitioner's supplemental petitions for certiorari.
3. Whether or not the complaint filed in the court below is an accion publiciana which is within the jurisdiction of the RTC.
4. Whether or not Judge Salvador S. Tensuan had jurisdiction to take cognizance of Civil Case No. 2504 for reformation of instrument.
5. Whether or not respondent Judge Gorospe, Jr. committed grave abuse of discretion in granting private respondent's application for a writ of preliminary prohibitory/mandatory injunction.
6. Whether or not Judge Tensuan committed grave abuse of discretion in issuing the writ of mandatory injunction dated December 19, 1991.

This case is far from settlement on the merits. Through legal maneuverings, the parties have succeeded in muddling up the vital issues of the case and getting the lower courts embroiled in numerous appeals over

technicalities. As it is now, there are three appellate decisions/resolutions before us for review and conflicting orders issued by lower courts as a result of the separate cases filed by the parties. As in the case of *Consolidated Bank and Trust Corp. v. Court of Appeals* 193 SCRA 158 [1991], the Court is explicit in stating that:

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“Where there are conflicting but inextricably interconnected issues in one and the same complicated case, it is best that these be resolved in one integrated proceeding where an overall picture of the entirety of the case can be presented and examined. Piecemeal determinations by several trial courts on segments of the basic issue and disconnected appeals to different Divisions of the Court of Appeals resulting in separate decisions each dealing with only part of the problem are discouraged. Needless multiplicity of suits is something which is frowned upon.”

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Amid the clutter of extraneous materials which have certainly bloated the records of this case, we find only two (2) issues vital to the disposition of the petition: first, is the matter of jurisdiction, who as between Judge Tensuan or Judge Gorospe has jurisdiction over the dispute; and second, who as between the parties has the rightful possession of the land.

Anent the issue on jurisdiction, we examine the two actions filed by the parties.

Toyota filed an action for reformation on September 11, 1991, before Judge Tensuan alleging that the true intentions of the parties were not expressed in the instrument. (Art. 1359 Civil Code) The instrument sought to be reformed is the deed of sale executed by APT in favor of Toyota. Toyota alleges that there was a mistake in the designation of the real properties subject matter of the contract. Sun Valley was impleaded in order to obtain complete relief since it was the owner of the adjacent lot.

Sun Valley, however argues that the complaint for reformation states no cause of action against it since an action for reformation is basically one strictly between the parties to the contract itself. Third persons who are not parties to the contract cannot and should not be involved. Thus, Sun Valley contends that it should not have been impleaded as a defendant.

The Court of Appeals’ 11th Division, in its decision promulgated on April 15, 1992 where the denial of Sun Valley’s motion to dismiss was sustained, correctly ruled that misjoinder of parties is not a ground for dismissal.

American jurisprudence from where provisions on reformation of instruments were taken discloses that suits to reform written instruments are subject to the general rule in equity that all persons interested in the subject matter of the litigation, whether it is a legal or an equitable interest should be made parties, so that the court may settle all of their rights at once and thus prevent the necessity of a multiplicity of suits (*Bevis Construction Co. v. Grace* [Fla App] 115 So 2d. 84; *Green v. Stone*, 54 N.J.E. 387, 34 A 1099). As a general rule, therefore, all persons to be affected by the proposed reformation must be made parties. (*American Fidelity & Casualty Co. v. Elder*, 189 Ga 229, 5 SE 2d 668; *Kemp v. Funderburk*, 224 NC 353, 30 SE 2d 155). In an action to reform a deed, all parties claiming an interest in the land or any part thereof purportedly conveyed by the instrument sought to be reformed, and whose interests will be affected by the reformation of the instrument are necessary parties to the action. (*Kemp v. Funderburk*, 224 NC 353, 30 SE 2d 155)

From the foregoing jurisprudence, it would appear that Toyota was correct in impleading Sun Valley as party defendant. However, these principles are not applicable under the particular circumstances of this case. Under the facts of the present case, Toyota’s action for reformation is dismissible as against Sun Valley.

Attention must first be brought to the fact that the contract of sale executed between APT and Toyota provides an

arbitration clause which states that:

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“5. In case of disagreement or conflict arising out of this Contract, the parties hereby undertake to submit the matter for determination by a committee of experts, acting as arbitrators, the composition of which shall be as follows:

- a) One member to be appointed by the VENDOR;
- b) One member to be appointed by the VENDEE;
- c) One member, who shall be a lawyer, to be appointed by both of the aforesaid parties;

“The members of the Arbitration Committee shall be appointed not later than three (3) working days from receipt of a written notice from either or both parties. The Arbitration Committee shall convene not later than three (3) weeks after all its members have been appointed and proceed with the arbitration of the dispute within three (3) calendar months counted therefrom. By written mutual agreement by the parties hereto, such time limit for the arbitration may be extended for another calendar month. The decision of the Arbitration Committee by majority vote of at least two (2) members shall be final and binding upon both parties hereto. The cost of arbitration shall be borne equally by both the VENDOR and the VENDEE; (Rollo, pp. 816-817)

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The contention that the arbitration clause has become disfunctional because of the presence of third parties is untenable.

Contracts are respected as the law between the contracting parties (*Mercantile Ins. Co, Inc. v. Felipe Ysmael, Jr. & Co., Inc.*, 169 SCRA 66 [1989]). As such, the parties are thereby expected to abide with good faith in their contractual commitments (*Quillan v. CA*, 169 SCRA 279 [1989]). Toyota is therefore bound to respect the provisions of the contract it entered into with APT.

Toyota filed an action for reformation of its contract with APT, the purpose of which is to look into the real intentions/agreement of the parties to the contract and to determine if there was really a mistake in the designation of the boundaries of the property as alleged by Toyota. Such questions can only be answered by the parties to the contract themselves. This is a controversy which clearly arose from the contract entered into by APT and Toyota. Inasmuch as this concerns more importantly the parties APT and Toyota themselves, the arbitration committee is therefore the proper and convenient forum to settle the matter as clearly provided in the deed of sale.

Having been apprised of the presence of the arbitration clause in the motion to dismiss filed by APT, Judge Tensuan should have at least suspended the proceedings and directed the parties to settle their dispute by arbitration (*Bengson v. Chan*, 78 SCRA 113 [1977], Sec. 7, RA 876). Judge Tensuan should not have taken cognizance of the case.

But the more apparent reason which warrants the dismissal of the action as against Sun Valley is the fact that the complaint for reformation amounts to a collateral attack on Sun Valley's title, contrary to the finding of the Court of Appeals' 11th Division.

It is undisputed that Sun Valley has a Torrens title registered in its name by virtue of its purchase of the land from APT.

Toyota contends that the 723 square meters strip of land which it understood to be included in its purchase from APT was erroneously included in Sun Valley's title. This is the reason why reformation was sought to correct the

mistake.

Well-settled is the rule that a certificate of title can not be altered, modified, or cancelled except in a direct proceeding in accordance with law. (Section 48, P.D. No. 1529)

In the case of *Domingo v. Santos Ongsiako, Lim y Sia* (55 Phil. 361 [1930]), the Court held that:

“x x x The fact should not be overlooked that we are here confronted with what is really a collateral attack upon a Torrens title. The circumstance that the action was directly brought to recover a parcel of land does not alter the truth that the proceeding involves a collateral attack upon a Torrens title, because as we have found, the land in controversy lies within the boundaries determined by that title. The Land Registration Law defines the methods under which a wrongful adjudication of title to land under the Torrens system may be corrected xxx.”

While reformation may often be had to correct mistakes in defining the boundary of lands conveyed so as to identify the lands, it may not be used to pass other lands from those intended to be bought and sold, notwithstanding a mistake in pointing out the lines, since reformation under these circumstances would be inequitable and unjust. (*McCay v. Jenkins*, 244 Ala 650, 15 So 2d 409, 149 ALR 746)

Assuming that Toyota is afforded the relief prayed for in the Tensuan court, the latter can not validly order the contested portion to be taken out from Sun Valley's TCT and award it in favor of Toyota.

An action for reformation is in personam, not in rem (*Cohen v. Hellman Commercial Trust & Saving Bank*, 133 Cal App 758, 24 P2d 960; *Edwards v. New York Life Ins. Co.* 173 Tenn 102, 114 SW 2d 808), even when real estate is involved. (*Agurs v. Holt*, 232 La 1026, 95 So 2d 644; *Vallee v. Vallee* (La App) 180 So 2d 570). It is merely an equitable relief granted to the parties where through mistake or fraud, the instrument failed to express the real agreement or intention of the parties. While it is a recognized remedy afforded by courts of equity it may not be applied if it is contrary to well-settled principles or rules. It is a long standing principle that equity follows the law. It is applied in the absence of and never against statutory law (*Zabat v. Court of Appeals*, 142 SCRA 587 [1986]) Courts are bound by rules of law and have no arbitrary discretion to disregard them. (See *Arsenal v. Intermediate Appellate Court*, 143 SCRA 40 [1986]) Courts of equity must proceed with utmost caution especially when rights of third parties may intervene. Thus in the instant case, vis-a-vis well-settled principles or rules in land registration, the equitable relief of reformation may not come into play in order to transfer or appropriate a piece of land that one claims to own but which is titled in the name of a third party.

On the other hand, Sun Valley filed an action for reconveyance against Toyota to recover possession of the strip of land encroached upon and occupied by the latter. What Sun Valley seeks in its complaint is the recovery of possession de jure and not merely possession de facto. Toyota moved to dismiss on the assumption that the complaint was one for unlawful detainer cognizable by the MTC.

We do not find any reversible error in the decision of the Court of Appeals' 10th Division where it upheld Judge Gorospe's order denying Toyota's motion to dismiss. An amendment to a complaint before a responsive pleading is filed, is a matter of right (Rule 10, Sec. 2) Whether or not the complaint was amended, Sun Valley's complaint was one for accion publiciana cognizable by the RTC. Its right over the land is premised on the certificate of title registered in its name after it had purchased said land from APT. As the registered owner it had the right of possession of said land illegally occupied by another. (*Ybañez v. IAC*, 194 SCRA 743 [1991]) The case of *Banayos v. Susana Realty, Inc.* (71 SCRA 557 [1976]) is quite instructive:

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“We deem it advisable, at this point, to reiterate the essential differences between three kinds of actions for the

recovery of possession of real property, namely: (1) the summary action for forcible entry and unlawful detainer; (2) the *accion publiciana*; and (3) the *accion de reivindicacion*.

“The action for forcible entry may be brought where dispossession of real property had taken place by any of the means provided for in Section 1 of Rule 70 of the Revised Rules of Court, and in the case of unlawful detainer, where the possession is withheld after the expiration or termination of the right to hold possession, by virtue of any contract express or implied. These two actions must be filed within one (1) year after such unlawful deprivation or withholding of possession with the municipal or city court. These actions in their essence are mere quieting processes by virtue of which a party in possession of land may not be, by force, dispossessed of that land, the law restoring to him such possession in a summary manner, until the right of ownership can be tried in due course of law. They are, therefore, intended to provide an expeditious means of protecting actual possession or right to possession of property. The aforesaid Rule 70 does not, however, cover all of the cases of dispossession of lands. Thus, ‘whenever the owner is dispossessed by any other means than those mentioned he may maintain his action in the Court of First Instance, and it is not necessary for him to wait until the expiration of twelve months before commencing an action to be repossessed or declared to be owner of land.’ (Gumiran v. Gumiran, 21 Phil. 174, 179. Cf. Medina, et al. v. Valdellon, 63 SCRA 278) Courts of First Instance have jurisdiction over actions to recover possession of real property illegally detained, together with rents due and damages, even though one (1) year has not expired from the beginning of such illegal detention, provided the question of ownership of such property is also involved. In other words, if the party illegally dispossessed desires to raise the question of illegal dispossession as well as that of the ownership over the property, he may commence such action in the Court of First Instance immediately or at any time after such illegal dispossession. If he decides to raise the question of illegal dispossession only, and the action is filed more than one (1) year after such deprivation or withholding of possession, then the Court of First Instance will have original jurisdiction over the case. (Bishop of Cebu v. Mangaron, 6 Phil. 286; Catholic Church v. Tarlac and Victoria, 9 Phil. 450; Ledesma v. Marcos, 9 Phil. 618; Medina, et al. v. Valdellon, supra) The former is an *accion de reivindicacion* which seeks the recovery of ownership as well as possession, while the latter refers to an *accion publiciana*, which is the recovery of the right to possess and is a plenary action in an ordinary proceeding in the Court of First Instance. (Sec. 88, Rep. Act No. 296; Rule 70, Rules of Court Manila Railroad Co. v. Attorney General, 20 Phil. 523; Lim Cay v. Del, 55 Phil. 692; Central Azucarera de Tarlac v. De Leon, 56 Phil. 169; Navarro v. Aguila, 66 Phil. 604; Luna v. Carandang, 26 SCRA 306; Medina, et al. v. Valdellon, supra; Pasagui, et al. v. Villablanca, et al., supra).

With the finding that Toyota’s action for reformation is dismissible as it is in effect a collateral attack on Sun Valley’s title, Sun Valley’s action for recovery of possession filed before Judge Gorospe now stands to be the proper forum where the following dispute may be tried or heard.

We now come to the issue as to which of the parties has a legal right over the property to warrant the issuance of the preliminary mandatory/prohibitory injunction.

In actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. To authorize a temporary injunction, the complainant must make out at least a *prima facie* showing of a right to the final relief. Preliminary injunction will not issue to protect a right not in esse (Buayan Cattle Co. Inc. v. Quintillan, 128 SCRA 286-287 [1984]; Ortigas & Company, Limited Partnership v. Ruiz, 148 SCRA 326 [1987]).

Two requisites are necessary if a preliminary injunction is to issue, namely, the existence of the right to be protected, and the facts against which the injunction is to be directed, are violative of said right. In particular, for a writ of preliminary injunction to issue, the existence of the right and the violation must appear in the allegations of the complaint and an injunction is proper also when the plaintiff appears to be entitled to the relief demanded in his complaint. Furthermore, the complaint for injunctive relief must be construed strictly against the pleader

(Ortigas & Company, Limited Partnership v. Ruiz, supra)

In the instant case the existence of a “clear positive right” especially calling for judicial protection has been shown by Sun Valley.

Toyota’s claim over the disputed property is anchored on the fact of its purchase of the property from APT, that from the circumstances of the purchase and the intention of the parties, the property including the disputed area was sold to it.

Sun Valley, on the other hand has TCT No. 49019 of the Registry of Deeds of Parañaque embracing the aforesaid property in its name, having been validly acquired also from APT by virtue of a Deed of Sale executed in its favor on December 5, 1990. (Rollo, p. 823-825; 826-827)

There are other circumstances in the case which militate against Toyota’s claim for legal possession over the disputed area.

The fact that Toyota has filed a suit for reformation seeking the inclusion of the 723 square meters strip of land is sufficient to deduce that it is not entitled to take over the piece of property it now attempts to appropriate for itself.

As early as September, 1988 prior to the construction of the perimeter fence, Toyota was already aware of the discrepancies in the property’s description in the title and the actual survey.

The letter of its surveyor company, Summa Kumagai thus reveals:

“09 September, 1988

TOYOTA MOTOR PHILIPPINES CORPORATION

10th Floor, Metrobank Plaza

Sen. Gil J. Puyat Ave.,

Makati, Metro Manila

ATTENTION: MR. FLORENCIO JURADO

Finance Officer

SUBJECT : PHASE I RENOVATION WORK

PERIMETER FENCE

GENTLEMEN:

This is in connection with the construction of the Perimeter Fence for the Toyota Motor Plant Facilities which to this date we have not started yet due to the following reasons:

1. Lack of fencing permit which can only be applied to and issued by the Parañaque Building Official upon receipt of the transfer certificate to title and tax declaration.
2. Although the Building Official has verbally instructed us to proceed with the renovation work and construction of fence, we could not execute the fencing work due to discrepancies on the consolidation plan and the existing property monuments. These discrepancies was (sic) confirmed with the representatives of the Geodetic Engineer.

Kindly expedite the immediate confirmation with the Geodetic Engineer on the final descriptions of the property lines.

We would appreciate your usual prompt attention regarding this matter.

Very truly yours,

CESAR D. ELE

Project Manager” (Underscoring supplied, Rollo, p. 811)

Despite such notification, Toyota continued to build the perimeter fence. It is highly doubtful whether Toyota may be considered a builder in good faith to be entitled to protection under Article 448 of the Civil Code.

The records also reveal that Toyota’s own surveyor, the Certeza Surveying & Acrophoto Systems, Inc. confirmed in its reports dated April 1 and April 5, 1991 that Toyota’s perimeter fence overlaps the boundaries of Sun Valley’s lot, (rollo, pp. 833-383)

Even communication exchanges between and among APT Toyota & Sun Valley show that the parties are certainly aware that the ownership of the disputed property more properly pertains to Sun Valley. Among these are the following:

“May 28, 1991

MR. JOSE CH. ALVAREZ

President

Sun Valley Manufacturing &

Development Corp. (SVMDC)

Cor. Aurora Blvd. and Andrews Ave.

Pasay City, Metro Manila

Dear Mr. Alvarez:

Thank you for honoring our invitation to a luncheon meeting held at noon time today at Sugi Restaurant.

As per our understanding, we would like to propose as a package the settlement of differences between your property and ours as follows:

I. Boundary Issue between TMP Main Office & Factory and the recently acquired property of SVMDC

The boundary lines to our property bidden early 1988 were determined after making full payment in August 1988 jointly by representatives of TMP/Metrobank - Messrs. Mitake, Pedrosa, Alonzo and Jurado, APT - Mr. Bince together with representatives of Geo-Resources who installed the monuments and prepared the technical description of the property. The construction of the fence utilized existing fence marked yellow on Exhibit 1 and made sure that the new fence to set boundaries were on top of the monuments set by Geo-Resources. The replacement of existing wire fence were effected by setting concrete walls on exactly the same position.

This is the reason why we are surprised to be informed that our fence goes beyond the boundary lines set forth in the Technical Description on the Transfer Certificate of Title (TCT) to our property. This occurs even on fence already existing and should have been maintained in the TCT.

Since we have manifested our intention when we set boundaries to our property, we propose the following in relation to the excess area occupied by TMP.

1. We offer to give way to an access road 5 m. wide more or less from point 15 to 16 of Lot 2 (14.65 m in length) at the back of our Paint Storage Building (Exhibit 2).

2. We propose to pay for the balance of excess land inside TMP fence (contested areas) at a price mutually agreed upon.

II. Question of ownership of certain permanent improvements (underground water reservoir and perimeter walls/fences) located at Lot 6 which we won by bidding from APT on October 5, 1990.

We have made our position to APT that these permanent improvements are part of Lot 6 on an 'as is where is' bid basis (See explanatory map - Exhibit 3). However, since you have relayed to us that the underground water reservoir is of no use to you, as part of the total package we are proposing to pay for the underground water reservoir, the applicable perimeter walls/fences and the water pump/pipings at a price mutually agreed upon.

We hope that through this proposal we would settle our differences and look forward to a more cooperative relationship between good neighbors.

We will appreciate your favorable consideration and immediate attention on the matter.

Very truly yours,

MASAO MITAKE
President

"July 4, 1991

TOYOTA MOTOR PHILIPPINES CORPORATION

Rm. 15, South Superhighway

Parañaque, Metro Manila

ATTENTION: MR. MASAO MITAKE

President

Gentlemen:

This refers to our several meetings regarding the property problems at 'Lot 6' and your encroachment of SVMD LOT I.

We wish to thank you for finally acknowledging the legitimacy of our demands on both properties. In order to start a good business relationship, we propose that the property problem at 'LOT 6' which consists of the perimeter fence, water reservoir, water pump and systems be settled first, in the amount of P3,500,000.00 payable to CMANC.

We also would like to request you to allow us to continue usage of the MERALCO posts and lines connecting to SVMD power station which passes thru your property and allow entry of MERALCO linemen from time to time.

Upon acceptance of these requests, I will confer with our Japanese partners to consider the selling of the 723 sq. m. of land adjacent to your Assembly Plant which you continue to use even after said property has been legally transferred to us from last quarter of 1990.

In view of your present good behavior, we are hoping that this first problem be settled not later than July 15,

1991, otherwise, we will consider the whole matter as unacceptable to you and we, therefore, proceed as earlier demanded to immediately demolish the CHB fence that prevents us from using our property.

We hope for your immediate action to start the resolution of these unwanted problems.

Very truly yours,

JOSE CH. ALVAREZ

President” (Rollo, p. 832; Underlining ours)

Moreover, Sun Valley puts forth evidence that Toyota has altered the boundaries of its own property by moving the monuments erected thereon by APT’s surveyor Geo-Resources and Consultancy, Inc. when Lot 2 was initially surveyed in August 1988:

“The Asset Privatization Trust

10th Floor, BA-Lepanto Building

9847 Paseo de Roxas, Makati,

Metro Manila

Attention: Mr. Felipe B. Bince, Jr.

Associate Executive Trustee

Dear Sirs:

This has reference to our letter to your office dated April 8, 1991, a copy of which is attached, regarding the check survey of Delta I. After asking some of the field men who participated in the various surveys of Delta I from the consolidation to subdivision surveys, we found out that some more of the present corner points are not the same points shown to them during the surveys. We shall show this during a meeting with the representatives of the owners of Lots 1 and 2.

We hope this will help clarify the discrepancies.

Very truly yours,

NORBERTO S. VILA

Exec. Vice Pres & Gen. Manager

(Underlining supplied; Rollo, p. 839)

There is therefore sufficient and convincing proof that Sun Valley has a clear legal right to possession in its favor to warrant the issuance of a writ of preliminary/mandatory injunction. Sun Valley’s TCT gives it that right to possession. On the other hand, Toyota has not established its right over the said property except for the assertion that there was a mistake in an instrument which purportedly should have included the questioned strip of land.

As between the two (2) parties, Sun Valley has a better right. Under the circumstances, therefore, and considering that the clear legal right of Toyota to possession of the disputed area has not been established sufficient to grant the prayed for relief, a writ of preliminary mandatory injunction may be issued pendente lite. (See *Mara, Inc. v. Estrella*, 65 SCRA 471 [1975]; *De Garcia v. Santos*, 79 Phil. 365 [1947]; *Rodulfa v. Alfonso*, 76 Phil. 225 [1946] and *Torre v. Querubin*, 101 Phil. 53 [1957])

In view of all the foregoing, the petition is hereby DISMISSED for failure to show reversible error, much less

grave abuse of discretion, on the part of the respondent court.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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