

NELY T. RASPADO, PETITIONER, VS. COURT OF APPEALS, THIRD DIVISION, VICENTE ONG, PEDRITO JACOB, JR., JOSEFINA TABONES, ALFREDO VILLERO, MANUEL JAPSON, BALTAZAR RIZO AND NICOLAS C...

G.R. No. 104782. March 30, 1993

Ponente: NOCON, J.

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NOCON, J.:

Petitioner, Nely T. Raspado, claims that the Court of Appeals committed grave abuse of discretion when it rendered its January 23, 1992 decision[1] setting aside the order of the trial court granting petitioner a writ of preliminary mandatory injunction. The appellate court ruled that petitioner's motion for reconsideration was deemed abandoned when it found that petitioner had filed the instant petition without waiting for said court to resolve petitioner's motion for reconsideration filed therein.

The antecedents of this case as found by the appellate court are as follows:

"On September 24, 1991, private respondent Nely T. Raspado filed Civil Case No. 91-58688 for recovery of possession of real property (accion publiciana) with preliminary mandatory injunction and damages against herein petitioners before the Regional Trial Court, Branch 39, Manila (Annex 8, petition).

"The complaint alleged, among others, that private respondent is the owner of a parcel of land at Intramuros, Manila, consisting of 389 square meters and covered by TCT No. 194183 of the Registry of Deeds of the City of Manila, having acquired said property from the Roman Catholic Archbishop of Manila by virtue of an Absolute Deed of Sale executed on August 7, 1990 (Annex B, petition); that sometime in 1986, petitioners surreptitiously entered into the property and built thereon their shanties, structures and/or buildings; and that since 1986, private respondent and/or his predecessor-in-interest have been illegally deprived of their possession of the land.

"In their answer with counterclaim (Annex C, petition), petitioners denied the material allegations of the complaint and as special and affirmative defenses asserted inter alia that the complaint does not state a cause of action; that private respondent is not a real party in interest, the real owner being Sana Tan alias Paulino Tan who is an alien and disqualified to purchase land in the Philippines; that private respondent who is working as a cashier in a small restaurant was not in a financial position to purchase the subject property; that the Absolute Deed of Sale (Annex B, petition) is null and void having been fraudulently executed and in violation of the Constitution and the Anti-Dummy Law; that petitioners have a right of first refusal having been residents and lawful occupants of the property for more than twenty-five (25) years; that private respondent had made no prior demand upon petitioners to vacate the premises nor had any conciliation proceeding been held before the complaint was filed, the 'barangay certification' being a falsification as petitioners had never received any notice or summons from the Barangay Chairman of the alleged meetings held.

"Private respondent filed a Reply and Answer to Counterclaim (Annex D) alleging that while she is a common-law wife of Paulino Tan, a Chinese national, she acquired legitimately the property; that prior

demand to vacate is not necessary in forcible entry cases; and that the certification issued by the barangay captain is valid and regular.

"On October 1, 1991, private respondent filed a motion for the issuance of a writ of preliminary mandatory injunction setting the motion for hearing on October 25, 1991.

"On October 24, 1991, petitioners filed an Opposition to the motion (Annex E, petition) alleging that private respondent could not have been dispossessed of the property in 1986 as it is petitioners who had been in possession of the same for more than 20 or 25 years and, therefore, a writ of preliminary mandatory injunction, whose purpose is to preserve the status quo, is not available to private respondent.

"On October 30, 1991, respondent issued the assailed order (Annex A, petition) granting private respondent's motion for the issuance of a writ of preliminary mandatory injunction. The corresponding writ was issued on November 5, 1991 (Annex G, petition).

"Petitioners' motion for reconsideration of the injunctive order (Annex I, petition), as well as their supplemental motion for reconsideration (Annex L, petition) were to no avail. Hence, petitioners brought the instant petition alleging the following grounds in support thereof." [2]

As abovementioned, the appellate court reversed the order of the trial court granting the writ of preliminary injunction.

Hence this petition where petitioner's preliminary and principal issues can be reduced to the issue of "whether or not the appellate court acted whimsically, capriciously and in wanton disregard of law, thereby committing grave abuse of discretion tantamount to lack of jurisdiction in setting aside the writ of preliminary mandatory injunction issued" [3] by the trial court.

As held in *Merville Park Homeowners Association vs. Velez*: [4]

"A preliminary mandatory injunction is not a proper remedy to take property, possession of which is being disputed, out of the possession and control of one party and to deliver the same to the other party. IT MAY ISSUE pendente lite ONLY IN CASES OF EXTREME URGENCY, WHERE the right to the possession, during the pendency of the main case, of the property involved is very clear; WHERE considerations of relative inconvenience bear strongly in favor of the complainant seeking the possession pendente lite; WHERE there was wilful and unlawful invasion of plaintiff's rights, over his protest and remonstrance, the injury being a continuing one; WHERE the effect of the preliminary mandatory injunction is to re--establish and maintain a pre-existing and continuing relationship between the parties, recently and arbitrarily interrupted by the defendant, rather than to establish a new relationship during the pendency of the principal case (citing numerous cases). Obviously, it is for the party requesting the writ to demonstrate clearly the presence of one or more of the above grounds." [5] (Emphasis supplied)

The appellate court has correctly followed the guidelines that this Court has set in said case and We quote:

"The injunction that was issued by the respondent Judge went beyond maintaining the status quo. The injunction did not reestablish or maintain a preexisting continuing relation between the parties but, on the contrary, it established a new relation. It is not denied that petitioners were already in possession of the premises in question when the property was sold by the Roman Catholic Archbishop of Manila to private respondent on August 7, 1990 (Annex B, petition). Private respondent herself admitted that petitioners occupied the property in 1986 although the latter vigorously maintained that they have been occupants of the land for more than 20 to 25 years. Therefore, when we speak of status quo, it should be petitioners who should be given the right to stay in the premises until after the main action is resolved.

"From the allegations in the complaint and the evidence adduced during the hearing for the issuance of a preliminary mandatory injunction, private respondent has not made out a clear case, free from doubt and

dispute, to warrant the issuance of an injunction in her favor. It is true that she possesses a Transfer Certificate of Title in her name covering the property. But the issue here is not one of ownership, but right of possession de jure. Petitioners in their answer vigorously maintained that they are entitled to possession of the property, being lawful occupants and residents of the premises for more than 25 years and such being the case, they have the 'right of first refusal of occupation'. Petitioners also raised the defense in their answer that private respondent is a mere dummy of her common-law husband, Paulino Tan, pointing out that private respondent is just a mere cashier in a small restaurant and was not in a financial position to purchase the subject property. If the defenses interposed by petitioners are successfully proven at the trial, the complaint will have to be dismissed. In other words, private respondent has shown no clear right as to be entitled to a preliminary mandatory injunction.

"The effect of the preliminary mandatory injunction issued by the respondent Judge is to dispose of the main case without trial. Petitioners will be thrown into the streets and their houses built on the premises demolished without affording them the opportunity to prove their right of possession in a full hearing."

"Neither can private respondent justifiably claim that there was a willful and unlawful invasion of her rights by petitioners. Petitioners entered into the property when its owner was still the Roman Catholic Archbishop of Manila. She was not privy as to how petitioners entered and occupied the property. She did not adduce evidence to buttress her allegations in the complaint that petitioners are squatters who allegedly made a surreptitious and forceable entry into the property without the personal knowledge or consent of the Roman Catholic Archbishop of Manila. Private respondent herself testified during said hearing that she had no knowledge how petitioners managed to occupy the property. Hence -

'Q Do you know how the defendants entered the property?

"A No, sir.' (TSN. p. 9, Oct. 25, 1991)

"Private respondent's other witness, Antonio Osteria could not also have been in the position to state that petitioners illegally entered into the property. Osteria admitted that he is employed as a messenger by private respondent (Tsn., pp. 4-5, Id). He is not, therefore, free from bias. He also stated that he is residing at 430 Coral Street, Tondo Manila (Tsn, p. 4, id.) some distance away from Intramuros, which would make him hardly competent to testify as to what took place. In the premises in question in 1986 when the property was still owned by the Roman Catholic Archbishop of Manila

WHEREFORE, finding no reversible error in the appellate court's decision. We hereby AFFIRM the same in toto. The petition is hereby DENIED for lack of merit with costs against the petitioner.
SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Decision, CA-G.R. SP No. 26632, "Ong vs. Hon. Vega", January 23, 1992, Kapunan, J., Ponente, Victor and Luna, JJ., concurring; Rollo, pp. 58-65.

[2] Rollo, pp. 59-60.

[3] Petition, p. 20; Rollo, p. 23.

[4] 196 SCRA 189 (1991).

[5] Ibid., pp. 193-194.

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