

EMILIANO ACUÑA AND NIEVES B. ACUÑA, PETITIONERS, VS. THE HONORABLE HERMOGENES CALUAG, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV; GUILLERMO ROMERO.; AND REYNALDO T...*G. R. No. 10736. April 30, 1957*

Ponente: MONTEMAYOR, J.

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This is a petition for "certiorari and preliminary injunction" to set aside certain orders of respondent Judge Hermogenes Caluag of the Court of First Instance of Rizal, said to have been issued with grave abuse of discretion and/or without jurisdiction.

The basic facts gathered from the petition and its annexes as well as from the answer thereto and its annexes, are as follows: On April 21, 1950, petitioner Emiliano Acuña and Ms wife, Nieves B. Acuña, executed in favor of Reynaldo T. Santos a real estate mortgage over two parcels of land with Transfer Certificates Title and the improvements thereon, to secure the payment of a loan of P25,000, with interest at 12 per cent per annum, with the undertaking that the properties mortgaged should be insured and that the insurance policy would be kept in force, and that furthermore, in case it became necessary for the mortgagee to institute judicial or extrajudicial foreclosure proceedings, the mortgagors would pay as liquidated damages an additional sum equivalent to 20 per cent of the total obligation then due and payable, and another amount of P500 as attorney's fees.

On May 2, 1951, respondent Santos filed a complaint for foreclosure of the mortgage, docketed as Civil Case No. 1433 of the Court of First Instance of Rizal. On August 1, 1951, the parties submitted a written agreement, reciting the loan of P25,000, with interest, the undertaking of the mortgagors as well as the fact that the latter had failed to make payment within and after the expiration of the period for payment, including the amount of P317.25 advanced by the mortgagee to keep the insurance policy in force; that the parties had agreed to reduce the liquidated damages to P500 only, and that judgment be rendered in favor of the plaintiff against the defendants, sentencing the latter to jointly and severally pay the plaintiff within ninety days from the receipt of the decision the amounts mentioned therein. On the same day, Judge Caluag rendered judgment in accordance with the terms thereof. The decision having become final and executory, a writ of execution, was issued on December 20, same year. The properties mortgaged were sold to Santos "who received the corresponding certificate of sale, dated February 23, 1952, from the Sheriff. On. March 10, 1952, the Sheriff's certificate of sale was approved and confirmed by respondent Judge. On May 10, 1952, upon petition of Santos, an order was issued for the issuance of a writ of possession, which writ was actually issued five days later.

On June 27, 1952, petitioners herein filed an urgent motion for extension of time to vacate the properties in question, which was denied by order of July 2, 1952, on the ground that the decision had already become final and executory and that "the court has no more jurisdiction over the same". Almost a year later, that is on June 2, 1953, "respondent Judge issued another alias Writ of Possession directing the Provincial Sheriff of Rizal to take

possession of the properties, subject matter of the complaint for foreclosure."

On June 9, 1953, Santos and petitioners herein submitted before the trial court an "Agreement and Petition" (Annex D), which reads:

"Plaintiff and defendants by and thru their respective counsels hereby agree on the following:

- That this agreement hereby supersedes all previous agreements had between, the plaintiff and the defendants in the above-entitled Civil Case, so that this agreement shall be treated as entirely new and different agreement with the previous ones.

- That the defendants have offered to purchase the properties involved in this case in the sum of P40,000, Philippine Currency, payable on or before December 31, 1953, subject to the following conditions:

(a) That the defendants have obliged themselves to pay the sum of P500 a month for the use and occupation of the said premises payable every 20th day of each month starting from May 20, 1953;

b) That the defendants have already paid the amount of P500 for the period from May 20 to June 20, 1953, and another P500 corresponding to the period from June 20 to July 20, 1953, shall be paid on or before June 30, 1953;

c) That upon failure of the defendants to pay the amount of P500 on or before June 30, 1953, and the subsequent amounts of P500 every 20th day of each month, thereafter starting from July 20, 1953, or upon failure by defendants, to pay the amount of P40,000 on or before December 31, 1953, this agreement shall immediately and automatically become null and void and of no further force and effect, and the defendants hereby agree that they will voluntarily deliver and surrender possession of the premises to the plaintiff in such event.

- It is hereby agreed that this agreement shall not be treated and considered as a contract of lease and shall be without prejudice to the right of the plaintiff to enforce the writ of possession issued in this case upon default of the defendants to pay the amount of P500 on or before June 30, 1953, and/or the amount of P500 every 20th day of every month, and/or upon failure to pay the amount of P40,000 on or before December 31, 1953, and it is likewise expressly agreed that this agreement shall not be tantamount to a waiver of the plaintiff's right under the judgment in this case.

- Parties hereto have likewise agreed as they have agreed before that all amounts paid by the defendants to the plaintiff under the previous agreements are all forfeited.

"Wherefore, the parties hereby respectfully pray the approval of this agreement and that the alias writ of possession sought to be executed on June 11, 1953, at 2:00 p.m. by the Provincial Sheriff of Rizal be held in abeyance until further action."

On September 23, 1953, respondent Judge issued the, following order:

"It having been shown that defendants have failed to comply with the terms of the agreement dated June 9, 1953;

"As prayed for in the ex-parte petition filed by counsel for the plaintiff: dated August 24, 1953, let an alias writ of possession be issued immediately to be executed by the Provincial Sheriff of Rizal with the assistance of Constabulary soldiers if necessary.

"SO ORDERED."

On the same day, the Clerk of Court issued the alias writ of possession.

Many months thereafter, or rather, on May 8, 1954, petitioners filed an urgent petition to quash the alias writ of

possession issued on September 23, 1953, on the ground that said writ was null and void, for the reason that:

"(a) the judgment sought to be enforced by said order and alias writ of possession has been satisfied and/or novated by the Agreement of June 9, 1953, Annex D;

"(b) the alias writ of possession issued on September 23, 1953 has no longer any force and effect since its life had already lapsed after the expiration of sixty (60) days; and of other grounds."

Acting upon said petition, respondent Judge issued the following order:

" * * and it appearing to the Court that the said Writ is no longer enforceable as more than 60 days have elapsed from the day of its issuance,

"As prayed for, the Sheriff of Rizal and his agents are hereby ordered to refrain from enforcing the said writ until further order from this Court."

On July 8, 1954, respondent Judge issued an order (Annex F) for the issuance of an alias writ of possession to enforce the decision in the case.

On July 12, 1954, petitioners filed a notice of appeal from the order of July 8, 1954. Their perfected appeal is docketed in this Court under G. K. No. L-8881, entitled "Reynaldo T. Santos vs. Emiliano Acuña, et al."

On October 28, 1955, respondent Judge appointed respondent Guillermo Romero as receiver of the properties involved over the opposition of the petitioners.

On February 7, 1956, respondent Judge issued an order directing the Sheriff of Rizal to place receiver Romero in possession of the premises (Annex H). On February 27, 1956, respondent Judge issued another order requiring Acuña within two days to comply with his order commanding him to surrender the possession of the premises to the receiver, under penalty of contempt of court (Annex I). On March 8, 1954, petitioners filed a motion for reconsideration of the orders of February 7 and 27, 1956, on the ground that both orders were issued without jurisdiction which respondent Judge had lost by reason of the perfection of the appeal (Annex J). On April 25, 1956, respondent Judge issued an order denying petitioners motion for reconsideration and directed the petitioners to deliver the property in question to the receiver within two days, "failing which, they shall be dealt with accordingly." (Annex K).

The position taken by the petitioners in these certiorari proceedings is that, inasmuch as they had perfected their appeal in the main case which involves the possession of the property in question, respondent Judge no longer had jurisdiction over said question of possession, much less could he deprive the appellants of their actual possession and deliver the same to another. We agree with counsel for the respondents that, although the perfection of an appeal deprives the trial court of jurisdiction over the case, nevertheless, under the law, said court retains jurisdiction as regards the preservation of the property under litigation and involved in the appeal, including necessarily the authority to appoint a receiver who has the power to take and keep possession of the property in controversy. (Rule 61, Section 1 (d) and Section 7; *Velasco & Co. vs. Go Chuico*, 28 Phil., 39; *Jocson vs. Presbitero et al.*, 97 Phil., 6). According to respondents' answer to the petition, petitioners did not contest the legality and propriety of the appointment of the receiver; they did not even file a motion for reconsideration of the appointment. Consequently, it is now rather late to raise the question of the propriety and legality of the order of the court appointing said receiver. According to the same answer, petitioners herein are insolvent; the building and improvements involved in the appeal are in danger of being destroyed or impaired; and petitioners have failed to pay the rents at the rate of P500 a month from August, 1953, up to the date of the answer, June 26, 1956, amounting to about P15,000, for which reason the receiver was appointed on October 28, 1955.

Petitioners insinuate in their petition that the order for the delivery of the property to the receiver "touches a matter litigated by the appeal, i.e., the physical possession of the petitioners". That is not correct. The question litigated in the appeal is whether the petitioners or respondent Santos has a better right to possession. The appointment of the receiver with order to deliver possession to him does not touch upon, much less decide that question. It merely means that pending appeal, and to preserve the property and keep the rents, the trial court, through its officer, the receiver, would take possession.

The orders of respondent Judge on petitioners to deliver possession of the property to the receiver are, therefore, valid and it was petitioners' duty to obey the same.

In view of the foregoing, the petition for certiorari is hereby denied, with costs.

Bengzon, Padilla,, Reyes, A., Bautista, Angelo, Labrador, Conception, Endencia, and Felix, JJ., concur.

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