

**ISABELO APA, MANUEL APA AND LEONILO JACALAN, PETITIONERS,
VS. HON. RUMOLDO R. FERNANDEZ, HON. CELSO V. ESPINOSA, AND
SPS. FELIXBERTO TIGOL, JR. AND ROSITA TAGHOY TIGOL,
RESPONDE...**

G.R. No. 112381. March 20, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a special civil action of certiorari to set aside orders of respondent Judge Rumoldo R. Fernandez of the Regional Trial Court, Branch 54, at Lapu-Lapu City, denying petitioners' oral motion for the suspension of their arraignment in Criminal Case No. 012489, entitled: "People of the Philippines v. Isabelo Apa, Manuel Apa and Leonilo Jacalan," as well as their motion for reconsideration.

Criminal Case No. 012489 is a prosecution for violation of P.D. 772 otherwise known as the Anti-Squatting Law. The information alleges:

That on February 1990, or prior thereto, in Agus, Lapulapu City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [herein petitioners Isabelo Apa, Manuel Apa and Dionisio Jacalan], conspiring, confederating and mutually helping with one another, without the knowledge and consent of the owner, ROSITA TIGOL, did then and there wilfully, unlawfully and feloniously take advantage of the absence or tolerance of the said owner by occupying or possessing a portion of her real property, Lot No. 3635-B of Opon Cadastre, covered by Transfer Certificate of Title No. 13250, situated in Agus, Lapulapu City, whereon they constructed their respective residential houses against the will of Rosita Tigol, which acts of the said accused have deprived the latter of the use of a portion of her land, to her damage and prejudice because despite repeated demands the said accused failed and refused, as they still fail and refuse to vacate the premises above-mentioned.

Petitioners moved for the suspension of their arraignment on the ground that there was a prejudicial question pending resolution in another case being tried in Branch 27 of the same court. The case, docketed as Civil Case No. 2247-L and entitled "Anselmo Taghoy and Vicente Apa versus Felixberto Tigol, Jr. and Rosita T. Tigol, et al.," concerns the ownership of Lot No. 3635-B.[1] In that case, petitioners seek a declaration of the nullity of TCT No. 13250 of Rosita T. Tigol and the partition of the lot in question among them and private respondent Rosita T. Tigol as heirs of Filomeno and Rita Taghoy. The case had been filed in 1990 by petitioners, three years before May 27, 1993 when the criminal case for squatting was filed against them.

On August 25, 1993, the trial court denied the petitioners' motion and proceeded with their arraignment. Petitioners, therefore, had to enter their plea (not guilty) to the charge.

On September 2, 1993, petitioners filed a motion for reconsideration but their motion was denied by the court in its order dated September 21, 1993. Hence, this petition.

The only issue in this case is whether the question of ownership of Lot No. 3635-B, which was pending in Civil

Case No. 2247-L, is a prejudicial question justifying suspension of the proceedings in the criminal case against petitioners.

We hold that it is.

A prejudicial question is a question which is based on a fact distinct and separate from the crime but so intimately connected with it that its resolution is determinative of the guilt or innocence of the accused. To justify suspension of the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution is based but also that the decision of the issue or issues raised in the civil case would be decisive of the guilt or innocence of the accused.[2] Rule 111, §5 provides:

Sec. 5. Elements of prejudicial question. – The two (2) essential elements of a prejudicial questions are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In the criminal case, the question is whether petitioners occupied a piece of land not belonging to them but to private respondent and against the latter's will. As already noted, the information alleges that “without the knowledge and consent of the owner, ROSITA TIGOL” petitioners occupied or took possession of a portion of “her property” by building their houses thereon and “deprived [her] of the use of a portion of her land to her damage and prejudice.”

Now the ownership of the land in question, known as Lot 3635-B of the Opon cadastre covered by TCT No. 13250, is the issue in Civil Case 2247-L now pending in Branch 27 of the RTC at Lapu-Lapu City. The resolution, therefore, of this question would necessarily be determinative of petitioners' criminal liability for squatting.

In fact it appears that on February 23, 1994, the court trying the civil case rendered a decision nullifying TCT No. 13250 of private respondent and her husband and declared the lot in question to be owned in common by the spouses and the petitioners as their inheritance from their parents Filomeno and Rita Taghoy. While private respondents claim that the decision in that case is not yet final because they have filed a motion for new trial, the point is that whatever may be the ultimate resolution of the question of ownership, such resolution will be determinative of the guilt or innocence of petitioners in the criminal case. Surely, if petitioners are co-owners of the lot in question, they cannot be found guilty of squatting because they are as much entitled to the use and occupation of the land as are the private respondent Rosita T. Tigol and her family.[3]

Private respondents argues that even the owner of a piece of land can be ejected from his property since the only issue in such a case is the right to its physical possession. Consequently, they contend, he can also be prosecuted under the Anti-Squatting Law.

The contention misses the essential point that the owner of a piece of land can be ejected only if for some reason, e.g., he has let his property to the plaintiff, he has given up its temporary possession. But in the case at bar, no such agreement is asserted by private respondent. Rather private respondent claims the right to possession based on her claim of ownership. Ownership is thus the pivotal question. Since this is the question in the civil case, the proceedings in the criminal case must in the meantime be suspended.

WHEREFORE, the petition is GRANTED and respondent judge is ordered to SUSPEND the proceedings in Criminal Case No. 012489 until the question of ownership in Civil Case No. 2247-L has been resolved with finality and thereafter proceed with the trial of the criminal case if the civil case is decided and terminated adversely against petitioners. Otherwise he should dismiss the criminal case.

SO ORDERED.

Narvasa, C.J., (chairman), Bidin, Regalado, and Puno, JJ., concur.

[1] This is the lot on which it is alleged in the criminal case petitioners constructed their houses against the will of the complainant Rosita Tigol and in violation of the Anti-Squatting Law.

[2] Librodo v. Coscolluela, Jr., 116 SCRA 303 (1982); Donato v. Luna, 160 SCRA 441 (1988).

[3] CIV. CODE, art. 486.

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