

**VICTORINA MEDINA, VIRGINIA VINUYA, ANSELMO YABOT AND
SALVACION MENDOZA, PETITIONERS, VS. CITY SHERIFF, MANILA
AND SPOUSES JUSTINO V. JIMENEZ AND AURORA RUEDA JIMENEZ,
RESPONDENTS.**

G.R. No. 113235. July 24, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

The sole issue in the instant petition for certiorari is whether or not the Court of Appeals, in denying petitioners' application for a writ of preliminary injunction, committed grave abuse of discretion amounting to lack of jurisdiction. The facts which gave rise to this petition are stated below:

Private respondent spouses Justino and Aurora Jimenez filed an unlawful detainer suit against petitioners on April 8, 1991 docketed as Civil Case No. 92-135259-CV. The Jimenezes, as lessors and as owners of a parcel of land in Tondo, Manila, sought to evict petitioners-lessees therefrom.[1] On January 2, 1992, the Metropolitan Trial Court of Manila rendered its decision in favor of plaintiff-lessors below and herein respondents with the following dispositive portion:

“WHEREFORE, judgment is hereby rendered against the defendants and in favor of the plaintiffs, ordering the defendants to vacate the premises being occupied by them under TCT No. 194409 of plaintiffs, including all persons claiming rights and title under them. Defendants are also ordered, jointly and severally, to pay the plaintiffs the amount of P15,000.00 as attorney's fees and expenses of litigation, as well as the costs of this suit.”[2]

Unknown to petitioners, the spouses Jimenez had earlier sold the subject property to Ernesto and Rose Concepcion for P450,000.00 on October 14, 1990. After the above-mentioned ejectment case was initiated against petitioners, private respondents Jimenez commenced a complaint in the Regional Trial Court of Manila, Branch 8 for annulment of the deed of sale they had executed in favor of the spouses Concepcion.[3] On March 12, 1992, the court dismissed the complaint for lack of merit and ordered the plaintiffs Jimenez to pay liquidated damages and litigation expenses, as well as attorney's fees amounting to P50,000.00 and P30,000.00, respectively.[4] Respondent appellate court dismissed the appeal filed by the Jimenezes due to the late filing of the appellant's brief.[5]

Petitioners allege that they were not aware of the conveyance to the Concepcions and the legal battle between the latter and the Jimenez spouses until after private respondents Jimenez moved for the issuance of a writ of execution in the ejectment case. Petitioners filed their opposition to said motion on the ground of the supervening event of private respondents' loss of ownership over the property. The Metropolitan Trial Court, through Judge Reinato G. Quilala, granted the motion for execution and issued the assailed writ on April 27, 1993.[6]

Petitioners resorted to filing a case for “Damages with Preliminary Injunction and/or Temporary Restraining Order” before the Regional Trial Court of Manila, Branch 22.[7] After the lower court denied petitioner's

application for the issuance of the writ of preliminary injunction,[8] they proceeded to file a petition for prohibition and certiorari with preliminary injunction and/or restraining order in the Court of Appeals, docketed as CA-G.R. SP No. 31337.[9] On December 15, 1993, respondent court rendered the questioned Resolution denying petitioners' motion for issuance of preliminary injunction, which reads:

“Acting on the petitioners' Motion for Issuance of Preliminary Injunction dated December 7, 1993 after having gone over the petition and comment thereto with their respective annexes, We find no factual and legal basis to warrant issuance of a preliminary injunction.

WHEREFORE, the petitioners' motion is DENIED and the main case is now deemed submitted for decision.”[10]

Consequently, a Sheriff's Notice to Demolish and Vacate was issued on January 10, 1994.[11]

Hence, the instant petition for certiorari.

In a Resolution of this Court dated February 2, 1994, private respondents herein were required to comment on the petition. On July 11, 1994, after noting that the aforesaid Resolution was unclaimed by private respondents, we required counsel for petitioners to inform the Court of private respondents' address, under pain of dismissal of the petition.

On March 15, 1995, the Court required counsel for petitioners to show cause why he should not be disciplinarily dealt with for failure to comply with the July 11, 1994 Resolution. Atty. Floriano Par, counsel for petitioners, filed his Compliance on May 2, 1995 stating that the address of the Jimenezes is 1393 Sta. Maria St., Tondo, Manila, which is the same address in the Deed of Sale dated October 14, 1990 and in the complaint for ejectment in Civil Case No. 92-135259 filed in 1991.[12] On June 21, 1995, the Court reiterated its earlier directive requiring comment from private respondents and its Resolution was sent to the same address.

On August 21, 1995, the Court required counsel for petitioners once again to furnish the address of private respondents. On September 13, 1995, Atty. Floriano Par complied and stated that the true and present address of the spouses Jimenez continues to be at 1393 Sta. Maria Street, Tondo, Manila. Said address is that declared in a complaint for ejectment filed by the spouses Jimenez against the Heirs of Rita de Jesus, et al. (Civil Case No. 146572-CV) filed on January 27, 1995 and which is still pending.[13] On October 2, 1995, the Court noted Atty. Par's Compliance and directed petitioners to serve a copy of the petition directly on private respondents.[14]

On January 2, 1996, counsel for petitioners filed his Compliance stating that he personally delivered a copy of the petition to respondents at their residence and the same was received by Jackerson Jimenez, son of Justino and Aurora Jimenez, on December 28, 1995.

All this hassle regarding service on private respondents, the repeated manifestations of counsel for petitioners that private respondents had not changed residences and the continued silence of private respondents reveal the latters' utter lack of interest in the petition before us. Thus, the instant petition will have to be resolved without the benefit of their comment as the Court's patience, after granting them several chances to file their comment over a two-year period, has reached its limit.

For the petition to be granted, it must be shown that the respondent appellate court committed grave abuse of discretion equivalent to lack of jurisdiction and not mere errors of judgment, for certiorari is not a remedy for errors of judgment, which are correctible by appeal. [15]

The instant petition should be dismissed, there being no grave abuse of discretion on the part of respondent court in denying petitioners' application for preliminary injunction.

To be entitled to the injunctive writ, they must show that there exists a right to be protected which is directly threatened by an act sought to be enjoined.[16] Furthermore, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent serious damage.[17] Complainant's right must be clear and unmistakable. In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion. Where the complainant's right or title is doubtful or disputed, injunction is not proper.[18] The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.[19]

In the instant case, the enforcement of the writ of execution, which would evict them from their homes, is manifestly prejudicial to petitioners' interest. However, they possess no clear legal right that merits the protection of the courts through the writ of preliminary injunction. Their right to possess the property in question has been declared inferior or inexistent in relation to the plaintiff in the ejectment case below after a judgment which has become final and executory.

Petitioners' ground for the issuance of the writ of prohibition and/or certiorari before the Court of Appeals is the presence of a supervening event that renders execution unjust or inequitable. Said issue remains unresolved in the main case still pending and does not confirm the existence of a clear right in favor of petitioners. At best, they can obtain the suspension of the enforcement of the writ of execution or other similar relief on equitable grounds. [20]

WHEREFORE, the instant petition is hereby DISMISSED.

Costs against petitioner.

SO ORDERED.

Regalado, (Chairman), Puno, and Mendoza, JJ., concur.

Torres, Jr., J., on leave.

[1] The property was originally covered by Transfer Certificate of Title No. 194409 in the name of the spouses Jimenez.

[2] Penned by Judge Reinato G. Quilala, Rollo, pp. 32-35.

[3] "Spouses Justino V. Jimenez and Aurora D. Rueda Jimenez v. Spouses Ernesto Concepcion and Rose Concepcion," Civil Case No. 91-56807, Regional Trial Court of Manila, Branch 8.

[4] Penned by Judge Arsenio M. Gonong, Rollo, pp. 48-61.

[5] Per Resolution dated January 27, 1993 in CA-G.R. CV No. 37681 dated January 27, 1993, penned by Justice Serafin V.C. Guingona with the concurrence of Justices Segundino G. Chua and Ricardo P. Galvez, Rollo, pp. 62-64.

[6] Issued by Judge Reinato G. Quilala, Rollo, p. 65.

[7] Civil Case No. 93-65848, Regional Trial Court of Manila, Branch 22.

[8] Per Judge Marino M. Dela Cruz, Jr., Rollo, p. 75.

[9] "Victoria Medina, et al. v. Hon. Marino M. Dela Cruz and Spouses Justino and Aurora Jimenez."

[10] Per Justice Alfredo Marigomen with the concurrence of Justices Ma. Alicia Austria-Martinez and Lourdes K. Tayao-Jaguros, Rollo, pp. 89-90.

[11] Rollo, p. 91.

[12] Rollo, p. 101.

[13] Rollo, p. 120.

[14] Rollo, p. 137.

[15] *Lipana v. Development Bank of Rizal*, 154 SCRA 257 (September 24, 1987) citing *Vecino v. Geronimo*, 59 O.G. 579. Rule 65, Sections 1 and 2.

[16] *Searth Commodities Corporation v. CA*, 207 SCRA 628 (March 31, 1992); *Saulog v. CA*, G.R. No. 119769, September 18, 1996.

[17] *Syndicated Media Access Corporation v. CA*, 219 SCRA 797 (March 11, 1993).

[18] *Arcega v. CA*, G.R. No. 122206, July 7, 1997 citing *Vinzons-Chato v. Natividad*, 244 SCRA 787 and *China Banking Corporation v. CA*, G.R. No. 121158, December 5, 1996.

[19] *Ibid.* citing *Ulang v. CA*, 224 SCRA 642.

[20] When a judgment or order becomes final and executory, the trial court's ministerial duty is to issue a writ of execution to enforce this judgment. A writ of execution may, however, be refused on equitable grounds such as when there is a change in situation of the parties that would make execution inequitable. Likewise, where supervening events occurring subsequent to the judgment bring about a material change in the situation of the parties which makes the execution inequitable or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, a stay or preclusion of execution may be properly sought. These are cases of special and exceptional nature where execution may be suspended in the higher interest of justice. *Baclayon v. CA*, 182 SCRA 761 (February 26, 1990); *Rodriguez v. Project 6 Market Service Cooperative*, 247 SCRA 528 (August 23, 1995) citing *Luna v. CA*, 137 SCRA 7; *Heirs of Gumimpin v. CA*, 120 SCRA 687; *Albar v. Carandang*, 6 SCRA 211. *Hualam Construction Development Corporation v. CA*, 214 SCRA 612 (October 16, 1992) citing *Laurel v. Abalos*, 163 SCRA 237; *Laurel v. Abalos*, 30 SCRA 281 (October 31, 1969); Concurring opinion of Chief Justice, then Associate Justice, Andres R. Narvasa in *Baclayon v. CA*, 182 SCRA 761 (February 26, 1990); and *Ngo Bun Tiong v. Sayo*, 163 SCRA 237 (June 30, 1988); *Lipana v. Development Bank of Rizal*, 154 SCRA 257 (September 24, 1987) citing *Vecino v. Geronimo*, 59 O.G. 579.

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