LEONARDO T. REYES, PETITIONER, VS. COURT OF APPEALS, EL CID PAGURAYAN, ANTONIO SOLOMON, ANGELITO RANOSA, VILMA RAMOS, AND THE ALLEGED “TENANTS, OCCUPANTS AND BUILDERS IN GOOD FA...

G.R. No. 129750. December 21, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a petition for certiorari under Section 1 of Rule 65 which seeks to annul the Resolution[2] of respondent court (Fourteenth Division) dated July 2, 1997, which is hereunder quoted in full:

> "It appearing that the threatened execution of the writ of demolition against the petitioners will cause irreparable injury and will work injustice to them and there being a need to maintain the status quo further while this petition has not been resolved, let a writ of preliminary injunction issue upon the filing by the petitioners of a bond in the sum of P200.000.00, enjoining the respondents from implementing the Resolution dated May 26, 1997 and the alias Writ of Demolition dated May 30, 1997 in Civil Case No. 3039. (sic)
>
> The motion of the respondents that this case be consolidated with CA-G.R. SP No. 42725 is denied, it appearing that this case can be decided independently of the question of ownership of the land.
>
> This petition is hereby set for hearing at 10:30 A.M. on July 29, 1997 at the Moran Hall, Court of Appeals Main Building, Ermita, Manila at which time and date the parties may argue their respective positions.
>
> SO ORDERD."

The antecedents material to the instant petition are:

Petitioner Leonardo T. Reyes is the plaintiff in Civil Case No. 2136 entitled Leonardo Reyes vs. Daniel Soriano et al. for Specific Performance and Damages which was decided on June 5, 1975 in favor of the plaintiff. To satisfy the judgment, the Deputy Provincial Sheriff of Cagayan levied on three (3) parcels of land belonging to Daniel, Diosdado, Damaso, Domingo, Jr., Dominador and Domitila, all surnamed Soriano. The levied properties were sold at public auction wherein petitioner Leonardo T. Reyes was the sole and highest bidder. Upon expiration of the one year period for the judgment debtor to exercise his right of redemption, the deed of absolute sale covering the properties was issued in favor of Reyes.

It appears that earlier, the judgment debtor had filed a case, Civil Case No. 3093, to annul the auction sale and certificate of sale in favor of Reyes. This case was decided in favor of Reyes. The Court of Appeals affirmed the decision with modification; Petition for Review on Certiorari was denied by the Supreme Court and the denial became final on July 27, 1992 per entry of judgment.

After attempts by the Sorianos to stop the execution of the judgment declaring the sale in favor of petitioner Reyes valid, had failed, a writ of execution was issued on November 26, 1996 directing the provincial sheriff "to

enforce the Writ of Execution and to deliver the Writ of Possession to petitioner Reyes, commanding that Reyes be placed in possession of the Lots 3-A, 3-B, 3-E, 3-H and 3447-C-1, and to "eject the lessees and those acting in their behalf for the land subject of this unit." As a consequence, Lots 3-A 3-B, 3-E and 3-H (except Lot 3747-G-1) are now titled in the name of petitioner Reyes. The Sorianos and occupants (herein private respondents) refused to vacate the property, and a writ of demolition was issued upon motion.

The Sorianos and the private respondents herein, who claim to have been in the land in question and built in good faith their houses, buildings and improvements thereon, even before the same was sold in the auction sale, resisted the execution and the demolition of their houses. Private respondents claim that they should be allowed to intervene and be given the opportunity to be heard as they were not made parties in Civil Case No. 3093. Private respondents filed a petition for certiorari in the Court of Appeals docketed as CA-G. R. SP No. 44378 questioning the denial by the trial court of their request to be allowed to intervene and to quash the writ of demolition and alias writ of demolition directed against them. On July 2, 1997, the Court of Appeals issued the Resolution now assailed in this petition, earlier-quoted.[3]

As stated in the above-mentioned Resolution, the court set the petition for hearing on July 29, 1997 in order that the parties may argue their respective positions. Before this date, Leonardo Reyes filed the instant petition for certiorari and prohibition, with application for a temporary restraining order and a writ of preliminary injunction (which was received by this Court on July 25, 1997) assailing the quoted resolution of the Court of Appeals granting injunctive relief.

The records of the Court of Appeals show that the proceedings in the Court of Appeals were suspended in view of the filing of the instant petition.[4]

We find no merit in the instant petition.

First, the petition for certiorari was precipitately filed and is premature, and for that reason, should be dismissed. The rule is that certiorari as a special civil action will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an opportunity to correct its imputed errors.[5] While there are exceptions to the rule[6], none of them are in point. The petitioner had available to him a speedy and adequate remedy, as he could have filed a motion for reconsideration, but he opted to dispense with the same for no good reason.

In this case, the respondent court had set the petition for hearing to enable the parties to argue their respective positions. On the date set for hearing, petitioner Reyes moved for the suspension of the proceedings and informed the court that he has filed a petition for certiorari and prohibition in the Supreme Court.[7] Instead of presenting his arguments before the Court of Appeals, when he had full opportunity to do so, petitioner opted to elevate the matter to this Court where he now raises what is essentially a question of fact- i.e. whether private respondents are indeed lessees or builders in good faith. Needless to state, questions of fact are not properly to be raised in a petition for certiorari before this Court which is not a trier of facts.

Moreover, the Court is not impressed that the petition has substantive merit. The assailed order was issued by respondent court in view of the threatened execution of the writ of demolition against the petitioner and was intended to maintain the status quo while the petition has not been resolved. We find no cogent reason to disturb respondent court’s finding that the demolition will "cause irreparable injury and will work injustice" to the therein petitioners, who were not impleaded as parties to the case between Leonardo T. Reyes and the judgment debtors (the Sorianos), and whose reason for wanting to be heard is that they are builders in good faith on the lots in question and that the houses and improvements to be demolished belong to them. That the threatened demolition will cause irreparable injury or damage is a finding that this Court will not disturb, on a petition for certiorari, absent a showing of grave abuse of discretion.

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The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse.[8] From an examination of the pleadings and their annexes, we are not convinced that respondent abused its discretion in a manner that is whimsical and arbitrary as to warrant our interference by the extraordinary writ of certiorari.

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Zone 1-Eustaquia P. Cacho, Cesar T. Caronan, Rodolfo P. Corpuz, Rogelio U. Corpuz, Sr., Edmundo E. Favia, Eduardo B. Francisco, Danilo A. Lacanilao, Christopher R. Lim, Rodante A. Lim, Santiago Macasiray, Milagros T. Pacibe, Dominga Pagunuran, Rogilio D. Pamittan, Jimmy R. Rayala, Cristobal V. De Los Reyes, Efren V. De Los Reyes, Roy V. De Los Reyes, Celerina C. Santiago and Trinidad C. Carag.

[2] Issued by Justices Salome Montoya, Eugenio Labitoria and Omar U. Amin.

[3] The records of the Court of Appeals show that El Cid Pagurayan et al filed the injunction bond of P200,000.00, which was approved (Res. Prom. August 12, 1997).

[4] Resolution prom. September 25, 1997.

[5] Tan vs. CA, 275 SCRA 568; Quiambao vs. NLRC, 254 SCRA 211.

[6] Liberty Insurance Corp. vs. CA, 222 SCRA 37 stated the following exceptions to the rule: (1) when the issue raised is purely one of law; (2) where public interest is involved; (3) in cases of emergency; or (4) where special circumstances warrant immediate or more direct action.

[7] p. 176 Comment of Private Respondents.

[8] Saulog vs. CA, 262 SCRA 51; Inter-Asia Services Corp. (International) vs. CA, 263 SCRA 408.

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