

**DR. ANTONIO C. SANTOS, PETITIONER, VS. COURT OF APPEALS,
EMMANUEL B. JUAN, AND CARMELITA JUAN DELOS SANTOS,
RESPONDENTS.**

G.R. NO. 155374. November 20, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

This case originated from an action for Injunction with Damages with prayer for the issuance of a preliminary injunction or temporary restraining order filed by Emmanuel B. Juan and Carmelita Juan Delos Santos (respondents) against Dr. Antonio C. Santos (petitioner) and Rolando Lim (Lim), Officer In Charge of the City Engineer's Office of Valenzuela City. Respondents alleged that they are the registered owners of a parcel of land located in Barangay Ugong, Valenzuela City. They developed a passage over the land leading to Barangay Que Grande Street and allowed adjoining property owners, including petitioner, to use the passage. In March 1999, respondents decided to construct commercial buildings on the land. Respondents fenced the land and closed the passage. However, respondents opened another passage on another side of their land. The new passage also leads to the same barangay road.

In May 1999, petitioner, with the help of armed men, demolished the concrete fence blocking the old passage. Respondents alleged that the demolition was done without any court order but with the support of Lim.

In an Order dated 24 May 1999,[1] Judge Floro P. Alejo (Judge Alejo) of the Regional Trial Court of Valenzuela City, Branch 172 (trial court), issued an order setting for hearing the issuance of a temporary restraining order on 27 May 1999. On 27 May 1999, the trial court issued an Order (27 May 1999 Order), as follows:

When the plaintiffs' prayer in the complaint for the issuance of a temporary restraining order was called for hearing this morning, the parties, upon suggestion of the Court, agreed to submit in connection with said incident their respective position papers attaching thereto the affidavits of their respective witnesses and whatever documents they may wish to submit as evidence in support of their respective contentions within five (5) days from today, after which the incident of temporary restraining order shall be considered submitted for resolution.

SO ORDERED.[2]

On 9 June 1999, the trial court issued another Order (9 June 1999 Order), thus:

For resolution is the prayer in the complaint for the issuance of a writ of preliminary injunction restraining "the defendants from entering or passing on the property described in T.C.T. No. V-52589 and from interfering with any improvement being constructed by plaintiffs."

x x x x

WHEREFORE, upon the posting by the plaintiffs of a bond in the amount of P50,000.00 to the effect that the plaintiffs will pay the defendants all the damages which they may sustain by reason of the injunction if the

Court should finally decide that the plaintiffs are not entitled thereto, let the writ of preliminary injunction prayed for be issued accordingly.

SO ORDERED.[3]

On 14 June 1999, the trial court issued a writ of preliminary injunction.[4] Petitioner filed an Urgent Motion for Reconsideration.[5]

In an Order[6] dated 15 June 1999, the trial court set an ocular inspection of the property and held in abeyance petitioner's Urgent Motion for Reconsideration. Petitioner filed a motion for the inhibition of Judge Alejo on the ground that he uttered a statement that he could not reverse himself on his 9 June 1999 Order.[7] The trial court denied the motion for inhibition in its Order dated 23 June 1999 (23 June 1999 Order).[8]

Petitioner filed a petition for certiorari and prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 53627, assailing the 9 June 1999 Order, the writ of preliminary injunction, and the 23 June 1999 Order issued by the trial court.

In its 23 April 2002 Decision,[9] the Court of Appeals denied the petition and affirmed the 9 June 1999 and 23 June 1999 Orders of the trial court.

The Court of Appeals ruled that the grant or denial of an injunction rests upon the sound discretion of the trial court. The Court of Appeals ruled that Judge Alejo did not commit grave abuse of discretion in issuing the writ of preliminary injunction. The Court of Appeals did not agree with petitioner that the writ of preliminary injunction was issued without a hearing. A hearing was set on 27 May 1999 during which the parties agreed to submit their position papers. The Court of Appeals also ruled that the petition was prematurely filed because petitioner's Urgent Motion for Reconsideration had not yet been acted upon by the trial court. The Court of Appeals ruled that petitioner failed to show that the case falls under the exceptional circumstances where a petition for certiorari may be filed even without filing a motion for reconsideration.

Petitioner filed a motion for reconsideration. In its 26 September 2002 Resolution,[10] the Court of Appeals denied petitioner's motion for reconsideration.

Petitioner came to this Court via a petition for review,[11] raising the following issues:

- Whether the Court of Appeals erred in ruling that the trial court did not commit grave abuse of discretion in issuing the 9 June 1999 Order, the writ of preliminary injunction, and the 23 June 1999 Order; and
- Whether the Court of Appeals erred in ruling that the petition for certiorari was prematurely filed.

In its 23 June 1999 Order, the trial court denied petitioner's motion for the inhibition of Judge Alejo. Petitioner raises as one of the issues the alleged error committed by the Court of Appeals in affirming the trial court's 23 June 1999 Order. However, in his Memorandum, petitioner failed to present any argument to show that the Court of Appeals committed a reversible error in affirming the 23 June 1999 Order.

This Court's 22 May 2004 Resolution[12] is clear: the memorandum of the party shall contain "a clear and concise presentation of the argument in support of each issue." For petitioner's failure to present any argument on this issue, this Court will not rule on the merit of the denial of petitioner's motion for inhibition as contained in the trial court's 23 June 1999 Order.

Petitioner alleges that the Court of Appeals erred in ruling that the petition for certiorari was prematurely filed. Petitioner admits that he filed the petition for certiorari before the Court of Appeals while his Urgent Motion for Reconsideration before the trial court was still pending. However, petitioner claims that the urgent necessity of

resolving the issue justifies the filing of the petition for certiorari. Petitioner argues that respondents closed a public road. At the time of the closure, petitioner was constructing his house and the delivery trucks and the laborers could not pass through the street. Petitioner alleges that it would be fatal for him to wait for the resolution of his Urgent Motion for Reconsideration. Petitioner alleges that the resolution of his Urgent Motion for Reconsideration is not forthcoming, given the actuation of Judge Alejo.

In a Resolution dated 14 February 2007, we required the parties to inform the Court of the status of petitioner's Urgent Motion for Reconsideration and to furnish the Court of any order or resolution issued by the trial court on the matter. In their Compliance with Manifestation dated 8 March 2007,[13] respondents informed the Court that they could not produce any document, resolution, or order on the matter because the trial court forwarded the records of the case to this Court. Respondents manifested that the Urgent Motion for Reconsideration was still unresolved when CA-G.R. SP No. 53627 was filed before the Court of Appeals. In his Compliance with Manifestation[14] dated 14 March 2007, petitioner informed the Court that he has not received any order or action of the trial court on his Urgent Motion for Reconsideration up to the filing of said Compliance with Manifestation.

The general rule is that the filing of a motion for reconsideration is indispensable before a party can resort to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any.[15] While this rule is subject to exceptions, petitioner fails to show that this case falls under any of the exceptions. Besides, in this case, petitioner filed an Urgent Motion for Reconsideration but, without waiting for its resolution, filed a petition for certiorari before the Court of Appeals. Petitioner claims that the resolution of his Urgent Motion for Reconsideration is not forthcoming. In the same way that the parties may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not,[16] it is not up to petitioner to preempt the trial court's action on his Urgent Motion for Reconsideration. Petitioner's recourse should have been to move for the trial court's resolution of his Urgent Motion for Reconsideration instead of filing a petition for certiorari before the Court of Appeals. The Court of Appeals correctly ruled that the petition for certiorari was prematurely filed.

However, after ruling that the petition was prematurely filed, the Court of Appeals should have refrained from further ruling on the merits of the 9 June 1999 Order of the trial court. The ruling of the Court of Appeals on the validity of the 9 June 1999 Order preempted the trial court's resolution of petitioner's Urgent Motion for Reconsideration.

Considering the pendency of petitioner's Urgent Motion for Reconsideration before the trial court, it follows that the petition before this Court is also premature.

WHEREFORE, we DENY the petition for premature filing. We SET ASIDE the 23 April 2002 Decision of the Court of Appeals in CA-G.R. SP No. 53627 insofar as it affirmed the 9 June 1999 Order of the trial court.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga and Velasco, Jr., JJ., concur.

[1] Records, p. 19.

[2] Rollo, p. 41.

[3] Id. at 51, 53.

[4] Id. at 63-64.

[5] Id. at 54-56.

[6] Id. at 65.

[7] Not 7 June 1999 as stated in the Order.

[8] Rollo, pp. 66-67.

[9] Id. at 157-166. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring.

[10] Id. at 182. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Teodoro P. Regino and Remedios Salazar-Fernando, concurring.

[11] Under Rule 45 of the 1997 Rules of Civil Procedure.

[12] Rollo, pp. 202-203.

[13] Id. at 278-284.

[14] Id. at 307-310.

[15] Metro Transit Organization, Inc. v. Court of Appeals, 440 Phil. 743 (2002).

[16] Id.

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