

MARCELA GONZALES ALMEIDA, PETITIONER, VS. COURT OF APPEALS AND ROBERT P. SY, RESPONDENTS.*G.R. NO. 159124. January 17, 2005*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 75020, finding grave abuse of discretion on the part of the Regional Trial Court (RTC) of Caloocan City, Branch 130,[2] when it granted the applications of the herein petitioner for the issuance of writs of preliminary prohibitory and mandatory injunction.

The antecedents, as culled from the records of the case, are as follows:

Marcelina Sarangaya was the registered owner of a parcel of land, identified as Lot 896, located in the then municipality of Caloocan, province of Rizal, covered by Transfer Certificate of Title (TCT) No. 87075,[3] with an area of 4,738 square meters. The property forms part of the Tala Estate (Friar Land) covered by Original Certificate of Title (OCT) No. 543 issued on December 27, 1910.[4]

Sometime in September 1993, respondent Robert P. Sy purchased the above parcel of land from Sarangaya. TCT No. 87075 was cancelled and, in lieu thereof, TCT No. 270862 was issued on September 16, 1993 under the name of Sy.[5]

Forthwith, the respondent caused the construction of a factory for kitchenware on the property.[6] A little over than five years later, or on January 20, 1998, petitioner Marcela Gonzales Almeida filed a complaint against the respondent and forty (40) others for quieting of title and the declaration, as void ab initio, of the assignment of sale certificates and damages, with a prayer for temporary restraining order and writ of preliminary injunction in the RTC of Caloocan City, Branch 124. The case was docketed as Civil Case No. C-537.[7]

In her complaint, the petitioner alleged, inter alia, that she was the only child of the Spouses Severino Gonzales and Juana Libertad. A certain Nicanor Jacinto was issued a Certificate of Sale dated July 11, 1910 over friar land, a parcel of land known as the Tala Estate, with an area of 25.375 hectares. Jacinto, thereafter, executed an Assignment of Sale Certificate dated November 4, 1926 in favor of the petitioner's father Severino Gonzales, which was duly approved by the Bureau of Lands. The petitioner further narrated that prior to the Second World War, her parents occupied the property continuously, openly and in the concept of owner. After the death of her father and mother in 1940 and 1942, respectively, she occupied the said property through her overseers, openly and in the concept of owner being the sole heir thereof. However, she was not able to secure a torrens title over the property based on the said certificates because of limited instruction. The petitioner further alleged that Oscar L. Uy, in connivance with the other defendants, caused the falsification of the Deed of Assignment dated November 21, 1936 over the said parcel of land purportedly executed by Severino Gonzales in favor of Pedro and Aleja Gonzales; on the basis thereof, TCT No. 42126 was issued to the latter on January 9, 1941; this was later cancelled on June 7, 1947 when TCT No. 4477 was issued to and in the names of Paula Bernardo Vda. de

Gonzales, et al.; and which, in turn, was cancelled by TCT No. 4495 issued in the name of Oscar Uy on June 7, 1947. TCT No. 10533(9498) was, thereafter, issued on July 1, 1948 in the names of Remedios Mercado, et al. The petitioner further alleged that a portion of the property identified as Lot 896 was sold to Marcelina Sarangaya on May 23, 1961,[8] who was issued TCT No. 87075 therefor. She claimed that the said deed of assignment executed in favor of Pedro and Aleja Gonzales, and the titles issued on the basis thereof were null and void. The petitioner also alleged in her complaint that she was already 73 years old.

To support her application for a writ of preliminary injunction, the petitioner alleged the following:

- a. Plaintiff, as shown in the preceding paragraphs and indubitably by the Assignment of Sale Certificate No. 722 dated November 4, 1926 (Annex "A" hereof), is the absolute owner of the subject parcel of land, Lot 896 Tala Estate, and, as such, she has the right to be protected from further acts of land grabbing and acts of dispositions by the defendants-developers;
- b. Defendants-developers having already subdivided and sold substantial portions are bent to continue to further subdivide and sell the other portions of the subject properties of the plaintiff if not ordered to desist by at least a temporary restraining order and, thereafter, by writ of preliminary injunction;
- c. Plaintiff has already suffered and will inevitably continue to suffer grave and irreparable damages and injuries if defendants-developers and/or their privies or transferees-in-interest, the herein other defendants, are not prevented from further subdividing and selling subdivided lots of the subject parcel of land and from building structures and introducing other improvements thereon;
- d. Plaintiff is ready to put up the bond in such amount reasonably fixed to answer for any damage in the event that plaintiff is finally adjudged as not to be entitled to relief of injunction.[9]

In his answer[10] to the complaint, the respondent asserted, among others, that he bought Lot 896 in good faith and for valuable consideration. Contrary to the petitioner's claim that the property was in her possession,[11] it was he who had been in continuous possession thereof. Moreover, as against the Deed of Assignment of Sale Certificate No. 722, the title issued under his name, TCT No. 270862, should prevail.[12]

Upon motion of the petitioner, the trial court ordered the consolidation of Civil Case No. C-537 with another case relating to Lot 896, Civil Case No. C-17659, earlier filed and pending with the RTC, Branch 130,[13] presided by Judge Jaime T. Hamoy.[14]

During the August 20, 1999 hearing of the petitioner's plea for a writ of preliminary injunction, Santos Alberca was presented as witness. Alberca testified that he was somehow related to the petitioner[15] and had been the overseer of the latter's property, Lots 896, 897 and 899, since 1994.[16] He narrated that when squatters occupied a portion of the property, he confronted them and demanded proof of their title; the latter failed to do so. Alberca admitted, however, that the petitioner had no proof that the subject properties were in her name,[17] and that he was not aware whether there was a proceeding, testate or intestate, concerning the estate of the late Severino Gonzales, the petitioner's alleged father. The respondent did not adduce any evidence.

On June 4, 2002, the trial court issued an Order[18] granting the application for a writ of preliminary prohibitory injunction, enjoining the defendants therein from further subdividing the disputed parcel of land known as Lot 896 of the Tala Estate located in Camarin, Caloocan City, and from selling or encumbering, or otherwise, negotiating any portion thereof and from building or constructing any structures or improvements thereon, as well as from bulldozing, leveling or scrapping or excavating any portion thereof or from the entry of any illegal occupants or any portion thereof and from committing further acts of dispossession thereon, upon posting, by the petitioner as the plaintiff therein, of an injunctive bond in the amount of One Million Pesos (P1,000,000.00). The trial court ruled that, based on the Assignment of Sale Certificate dated November 4, 1926 and being the lone heir

of the Spouses Gonzales, the petitioner became the owner of Lots 896, 897 and 899. Thus, the trial court concluded that the title over Lot 896 issued to the respondent was spurious and falsified.[19]

After the petitioner posted a bond of P1,000,000.00, the trial court issued a writ of preliminary prohibitory injunction[20] on July 1, 2002, enjoining the respondent and the other defendants and all their attorneys, representatives, agents and other persons assisting them, or acting in their behalf or who derived their rights and occupancy from them, from developing, moving, leveling or hauling earth; from further subdividing any portion of Lot 896 of the Tala Estate, situated in Caloocan City; from constructing/building any structure thereon of any kind or enclosing any portion thereof with fence; from selling or offering to sell, leasing or, otherwise, occupying any portion thereof; and from further introducing or allowing any entry of other persons in any portion of the said lot.[21]

The Sheriff's Partial Report[22] dated August 19, 2002 stated that the defendants refused to comply with the said writ of injunction issued by the court. Thus, on August 23, 2002, the petitioner filed a motion for the issuance of a writ of preliminary mandatory injunction, serving a copy thereof on the respondent on August 22, 2002.[23]

For his part, the respondent filed a motion for the dissolution[24] of the writ of preliminary injunction which the trial court issued on July 1, 2002, alleging that the petitioner had no torrens title over Lot 896. He further alleged that as it appears from the face of TCT No. 87075 issued in the name of Angelina Sarangaya and TCT No. 270862, the title issued in his name, the subject property was free from any liens, claims or encumbrances of whatever nature. He, likewise, alleged that the petitioner could amply protect whatever right she had over the property via an annotation of a notice of lis pendens. Finally, the respondent claimed that he was never notified of the hearing for the issuance of a writ of preliminary injunction nor furnished with a copy of the trial court's June 4, 2002 Order.

On December 12, 2002, the trial court issued an Order[25] denying the motion to dissolve the writ of preliminary injunction. On even date, the trial court issued another order[26] granting the petitioner's application for a writ of preliminary mandatory injunction on a bond of P2,000,000.00.[27] On January 16, 2003, the trial court issued a writ of preliminary mandatory injunction[28] ordering Sheriff Perseverando C. Pangan to place the petitioner in the possession of Lot 896 of the Tala Estate.

The respondent received a copy of the writ of preliminary mandatory injunction on December 26, 2002, with an accompanying notice from the sheriff ordering him to vacate the property. On January 21, 2003, the respondent filed a petition for certiorari[29] under Rule 65 of the Revised Rules of Court with the Court of Appeals (CA) for the nullification of the June 4, 2002 and December 12, 2002 Orders of the trial court. The case was docketed as CA-G.R. SP No. 75020.

Based on the Sheriff's Partial Report[30] dated January 24, 2003, stating that there were structures erected in the subject property, the petitioner forthwith filed a motion in the trial court for their removal therefrom on February 4, 2003.[31]

In his petition before the CA, the respondent alleged that aside from the Deed of Assignment of Sale Certificate No. 722, the petitioner had no other documentary or testimonial evidence to prove her ownership over the property. He averred that the petitioner failed to secure a torrens title over the property over a span of 70 years. The respondent, likewise, pointed out that even if Assignment of Sale Certificate No. 722 was, indeed, forged, the petitioner nevertheless failed to adduce evidence of his participation therein. He also alleged that the assailed orders and writs of the trial court, in effect, disposed of the main case, and maintained that he could not be deprived of his possession of the property via a writ of preliminary mandatory injunction. He reiterated that he purchased the subject property in good faith and for valuable consideration.

On April 30, 2003, the CA rendered judgment giving due course and granting the petition. The appellate court held that in issuing the assailed orders and writs against the respondent, the trial court committed a grave abuse of its discretion. The petitioner filed a motion for reconsideration of the decision, which was denied by the appellate court. She then filed the instant petition for review on certiorari, alleging that the CA erred in not dismissing the respondent's petition for certiorari for having been filed out of time, and that the appellate court, likewise, erred in nullifying the assailed orders and writs issued by the trial court.

The petitioner avers that the respondent filed his petition for certiorari with the CA only on January 21, 2003, well beyond the sixty (60)-day period therefor, counted from his receipt of the trial court's June 4, 2002 Order, granting her plea for a writ of preliminary prohibitory injunction. She asserts that the CA should have dismissed the same on such ground.

In his comment on the petition, the respondent avers that he was never officially served with a copy of the June 4, 2002 Order of the trial court.

We have meticulously reviewed the records and find that, indeed, the respondent was not served with a copy of the trial court's June 4, 2002 Order. The records show that while the respondent was represented by the Kapunan Imperial Panaguiton & Bongolan Law Firm, such counsel was not among those who were furnished copies of the said order by registered mail.^[32] Even in the Sheriff's Partial Return dated August 19, 2002, there is no showing that a copy of the writ of preliminary injunction issued by the trial court on July 1, 2002 was served on the respondent and/or through his counsel.

The Court also notes that the respondent's counsel was not even served with a copy of the petitioner's application for a writ of preliminary mandatory injunction filed on August 23, 2002. The respondent was personally served with a copy thereof on August 22, 2002, in which it was merely alleged that the trial court issued an Order on June 4, 2002, granting the petitioner's plea for a writ of preliminary injunction, and that a writ of preliminary prohibitory injunction was, likewise, issued on July 1, 2002. The respondent then filed his motion for the dissolution of the July 1, 2002 Writ of Preliminary Injunction on August 29, 2002 and filed his Opposition dated September 5, 2002 to the petitioner's application for a writ of preliminary mandatory injunction. Upon his receipt on December 26, 2002 of the trial court's December 12, 2002 Order granting the petitioner's application for a writ of preliminary mandatory injunction and denying his motion for the dissolution of the July 1, 2002 Writ of Preliminary Injunction, the respondent filed his petition for certiorari with the CA on January 21, 2003. Under Section 4, Rule 65 of the Rules of Court, the sixty (60)-day period shall be counted from receipt of the notice of the resolution denying the motion for reconsideration of the assailed order of the tribunal:

Sec. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

Thus, the respondent's petition for certiorari before the CA filed on December 26, 2002 assailing the December

12, 2002 Order of the RTC denying his motion to dissolve the July 1, 2002 Writ of Preliminary Injunction issued by the trial court and granting the petitioner's application for a writ of preliminary mandatory injunction was filed well within the sixty (60)-day reglementary period therefor.

The petitioner asserts that the CA focused on the probative weight of the evidence adduced before the trial court instead of on the issue of whether the said court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed orders and writs of preliminary prohibitory and mandatory injunction. Worse, the petitioner argues, the findings of the trial court which were based on the evidence adduced by her and as pointed out in her Memorandum were reversed by the CA. She insists that she has a clear legal right over Lot 896 which justified the issuance of the writs of preliminary injunction (prohibitory and mandatory). The petitioner maintains that in granting the respondent's petition for certiorari, the appellate court relied solely on unproven facts and failed to differentiate a writ of prohibitory injunction from a writ of preliminary mandatory injunction.

The petitioner's contentions have no factual and legal basis.

The RTC Committed Grave Abuse of Its Discretion Amounting to Excess of Jurisdiction in Issuing the June 4, 2002 and December 12, 2002 Orders, as well as the July 1, 2002 Writ of Preliminary Prohibitory Injunction.

Prefatorily, the findings and conclusions of the trial court on the propriety of the issuance of injunctive writs are premised solely on initial evidence and should be considered merely as provisional.[33] Section 3, Rule 58 of the Rules of Court provides that a preliminary injunction may be granted when the following are established:

- (a) That the Applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That the party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

An injunctive writ may be issued when the following requisites are established:

1. The invasion of the right is material and substantial;
2. The right of complainant is clear and unmistakable;
3. There is an urgent and permanent necessity for the writ to prevent serious damage.[34]

Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction.[35] A clear and positive right especially calling for judicial protection must be established. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an action which did not give rise to a cause of action. There must be an existence of an actual right.[36] Hence, where the plaintiff's right or title is doubtful or disputed, injunction is not proper.

An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.[37] The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.[38]

In deciding whether to grant an injunction, a court must consider established principles of equity and all the circumstances of the case. The test for issuing an injunction is whether the facts show a necessity for the intervention of equity in order to protect rights cognizable in equity.[39]

In general, a trial court's decision to grant or to deny injunctive relief will not be set aside on appeal unless the court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions.[40] In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon*:[41]

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[42]

The trial court granted the petitioner's plea for the issuance of a writ of preliminary prohibitory injunction anchored on the following findings it made in light of the evidence presented: (a) Severino Gonzales acquired equitable title over Lot 896 based on the deed of assignment executed by Nicanor Jacinto of his rights as vendee under Certificate of Sale No. 722; (b) the petitioner inherited the property, being the daughter and sole heir of Severino Gonzales; (c) considering that Certificate of Sale No. 722 and TCT No. 4477 were issued on the same date and time as appearing on pages 127 and 145 of the Registry Book, TCT No. 4477 was clearly spurious; and (d) the writs issued were needed to prevent the influence of squatters, the sale or lease of portions of the property to innocent third parties, and the construction of illegal structures thereon.[43]

On the other hand, the CA ruled that the RTC committed a grave abuse of its discretion amounting to excess of jurisdiction in granting the petitioner's plea for a writ of preliminary injunction, thus:

For a petition for a writ of preliminary injunction to prosper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to prevent serious damage. The requisites for an injunctive writ to be issued are: (1) that the petitioner/applicant must have a clear and unmistakable right; (2) that there is a material and substantial invasion of such right; and (3) that there is an urgent and permanent necessity for the writ to prevent serious damage.

In the case at bar, private respondent failed to show, at least for now, that she has a clear legal right over the subject property. She has not presented any valid title nor has she ever been in effective control and possession of the property she claims to be her own. Private respondent did not and failed to present specific acts of ownership to substantiate her claim of ownership and should not have just offered mere allegations of facts and conclusions of law, but factual evidence of possession and/or ownership of the property. Private respondent's reliance on her claim that she inherited the subject property from her alleged father, Severino Gonzales, who was purportedly an assignee in an Assignment of Sale executed sometime on November 4, 1926, is not substantial enough to establish her clear and unmistakable right over the subject property. On the contrary, it is the petitioner who has title to the property, as evidenced by Transfer Certificate of Title No. 270862, issued in his name, on September 16, 1993, by the Register of Deeds of Caloocan City. Although title does not vest ownership, a torrens certificate is evidence of an indefeasible title to property in favor of the person whose

name appears thereon.

...

Finally, private respondent also failed to show the existence of extreme urgency necessitating the issuance of the assailed writ to prevent serious damage to her. As pointed out earlier, she possesses no clear title to the property nor is she in effective control and possession of the same, such that, there is no urgent and paramount necessity for the writ to issue for the purpose of preventing serious damage to the private respondent. On the contrary, it is the petitioner who stands to suffer great damage and injury, as he stands to lose in the meantime, his factory situated on the subject property, if and when the writ issued by the respondent judge is implemented.

As a final point, this court finds it disturbing, the premature if not unsupported conclusion of the respondent judge as regards the title of the petitioner and that of the other co-defendants, holding that the latter have no right whatsoever over the property in litigation, on the basis only of the allegation contained in the complaint and the attachments thereto, and the bare testimony of a supposed overseer of the private respondent over the property. It would appear to us that the respondent judge had already arrived at a conclusive finding of ownership of the subject property, which finding of ownership in favor of the private respondent is still improper at that stage of the proceeding. While in general, courts should avoid issuing a writ of preliminary injunction which, in effect, disposes of the main case without trial, this is precisely the effect of the writ of preliminary mandatory injunction issued by the respondent judge.[44]

We have reviewed the records and find that the decision of the CA is in accord with law. Contrary to the petitioner's assertion, the appellate court, in fact, resolved the issue of whether the trial court committed a grave abuse of its discretion in issuing the assailed orders, and, in so doing, based its decision on the records and the evidence adduced by the petitioner.

First. The petitioner failed to prove, by any of the means provided by law,[45] that she is the daughter and only heir of Severino Gonzales. Filiation and paternity must be judicially established. It cannot be left to the will or agreement of the parties.[46] The Court notes that the petitioner opted not to testify. She relied solely on the testimony of Santos Alberca, who testified on direct examination that the petitioner was his aunt, and, being the only child and heir of Severino Gonzales, was the owner of the property.[47] However, on cross-examination, Alberca could not explain how he became the petitioner's nephew, and could not describe the nature of his filiation with her:

Q: You said that the plaintiff is your aunt. Can you explain how she became your aunt?

A: The Almeda family is the cousin of family. I cannot explain very well because it is very long time ago, but I am recognized by Almeda Gonzales as a nephew and I recognize her as my aunt.

Q: Is that the best way you can explain your answer?

A: I cannot remember exactly the family tree of Almeda Gonzales and my family.[48]

Second. Even assuming, *gratia arguendi*, that she is really the daughter of the Spouses Gonzales, the petitioner still failed to adduce a morsel of evidence to prove that she inherited Lot 896 upon their death in 1940 and 1942. As gleaned from the appendages of the complaint, Lot 896 was deeded to Nicanor Jacinto by the government on July 10, 1910 under Certificate of Sale No. 722 executed by the Director of the Bureau of Lands. On November 4, 1926, Jacinto executed a Deed of Assignment of Certificate of Sale No. 722, approved by the Director of the Bureau of Lands, in favor of Severino Gonzales and Juana Libertad. The said deed became legally effective upon its filing with the Bureau of Public Lands and the approval thereof by the Director of Lands.[49] Hence, Severino Gonzales became the equitable owner of the property under the deed of assignment,[50] and upon his execution of the Deed of Assignment in favor of Pedro Gonzales and Aleja Gonzales, the latter, likewise, became the equitable

owners of the property. When the Spouses Gonzales died in 1940 and 1942, they were no longer the owners/assignees of Lot 896. Hence, the petitioner could not have inherited the said property from her parents. As the Latin adage goes: NEMO DAT QUOD NON HABET.

Third. The petitioner failed to adduce a scintilla of evidence to prove her claim that the Deed of Assignment of Certificate of Sale executed by Severino Gonzales in favor of Pedro and Aleja Gonzales is a forgery or a falsification. Case law has it that forgery or falsification cannot be presumed. He who alleges forgery has the burden of proving the same by clear and convincing evidence.[51] Thus, forgery cannot be proved by mere conjectures, surmises or speculations. The bare fact that TCT Nos. 4477 and 4495 were issued on the same day but were recorded on the book of registry on pages 127 and 145 thereof does not constitute clear proof that the said titles are spurious. There is no showing that Book No. T-284 in which page 127 appears is the same registry book where TCT No. 4495 appears. The Court further notes that the petitioner failed to present the Register of Deeds to explain the discrepancy alluded to by her.

Fourth. The petitioner herself alleged in her complaint that based on the said deed of assignment in favor of Pedro and Aleja Gonzales, TCT No. 42126 was issued by the Register of Deeds on January 9, 1941 in favor of the said assignees. TCT No. 270862 was issued to Marcelina Sarangaya over Lot 896 based on a Deed of Sale executed in her favor on May 23, 1961. However, the Spouses Gonzales failed to file any action to nullify the said deed of assignment before their death in 1940 and 1942. Neither did the petitioner file any action to nullify the said deed of assignment and the said titles until January 23, 1998, when she finally filed her complaint against the respondent and the other defendants in the RTC. Considering her allegation in the complaint that she was already 73 years old, she must have been born sometime in 1925. Prescinding therefrom, the petitioner must have already been more than 20 years old shortly after the Second World War, yet, she failed to file any action, either for the nullification of the said deed of assignment, or to request the Bureau of Lands for an investigation relating to Severino Gonzales' execution of the Deed of Assignment in favor of Pedro and Aleja Gonzales and the approval thereof by the Bureau of Lands for more than forty (40) years. The petitioner's unexplained and resounding silence and inaction for such a considerable length of time enfeebls her plea for injunctive reliefs. If one maintains silence, when in conscience he ought to speak, equity will debar him from speaking, when in conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.[52]

Fifth. The respondent is the registered owner of Lot 896 under TCT No. 270862 issued on September 16, 1993. A perusal of the said title shows that the property is free from any liens and/or encumbrances. Moreover, there is no evidence on record that the respondent is a buyer in bad faith. It is settled doctrine that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the title. He is charged with notice only of such burdens and claims as are annotated on the title.[53] It is, likewise, settled that a fraudulent or forged document of sale may give rise to a valid title if the certificate of title has already been transferred from the name of the true owner to the name indicated by the forger and while it remained as such, the land was subsequently sold to an innocent purchaser. The vendee, in such case, has the right to rely upon the certificate of title.[54]

Moreover, the respondent constructed his factory on the said property in 1994 sans any claim from the petitioner or Alberca. Thus, being the registered owner of the property in question, he is entitled to the possession thereof.[55]

Sixth. The petitioner failed to prove that she would suffer irreparable injury which cannot be adequately compensated unless the trial court issued a writ of preliminary prohibitory injunction. To repeat, the petitioner failed to testify. She even failed to prove her claim that, through her overseer, she had been in actual physical

possession of the property since her parents' death before the Second World War up to the time she filed her complaint. Alberca testified that he became the petitioner's overseer only five years before he testified on August 20, 1999, or sometime in 1994, and that he was unaware of any overseer of the petitioner over the property:

Q: Since when have you been the overseer of the plaintiff with regards to Lot 896?

A: Five years ago, Sir.

Q: Prior to five years before you came in, do you know if there was any overseer employed by the plaintiff with regards to Lot 896?

A: No, Sir.[56]

It is worthy to note that the petitioner failed to present any other caretaker or overseer over the property.

The RTC Committed Grave Abuse of Discretion Equivalent to Excess of Jurisdiction When It Granted Petitioner's Plea for a Writ of Preliminary Mandatory Injunction

The CA nullified the trial court's December 12, 2002 Order granting the petitioner's motion for a writ of preliminary mandatory injunction, ratiocinating as follows:

Likewise, it is also the petitioner who has been in possession of the property from the time he purchased the same from Marcelina Sarangaya on September 9, 1993. A possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a better right. To summarily oust petitioner of his possession of the property which he has title to and possession of, is simply contrary to existing and settled jurisprudence. A court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto.

Finally, private respondent also failed to show the existence of extreme urgency necessitating the issuance of the assailed writ to prevent serious damage to her. As pointed out earlier, she possesses no clear title to the property nor is she in effective control and possession of the same, such that there is no urgent and paramount necessity for the writ to issue for the purpose of preventing serious damage to the private respondent. On the contrary, it is the petitioner who stands to suffer great damage and injury, as he stands to lose in the meantime, his factory situated on the subject property, if and when the writ issued by the respondent judge is implemented.[57]

We agree with the CA. As we ruled in *Subic Bay Metropolitan Authority v. Universal International Group of Taiwan*: [58]

A writ of mandatory injunction requires the performance of a particular act and is granted only upon a showing of the following requisites:

1. The invasion of the right is material and substantial;
2. The right of a complainant is clear and unmistakable;
3. There is an urgent and permanent necessity for the writ to prevent serious damage.[59]

It bears stressing that the respondent is the registered owner of the property; hence, he is entitled to the possession thereof. As a rule, a writ of preliminary mandatory injunction is not granted to take property out of the possession or control of one party to be placed into that of another whose title has not been clearly established by law.[60] In this case, the petitioner failed to establish a clear and unmistakable right to the possession of the property and to a writ of preliminary mandatory injunction. The trial court principally relied on mere allegations in the complaint, the appendages thereof, and the meager evidence on record. Moreover, the respondent would suffer serious damage if he would be ousted of his possession of the property and his factory demolished.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Cancio C. Garcia (now an Associate Justice of the Supreme Court) and Eloy R. Bello, Jr. (retired), concurring; Rollo, pp. 36-49.

[2] Presided by Judge Jaime T. Hamoy; Id. at 55-60.

[3] CA Rollo, p. 33.

[4] Ibid.

[5] Id. at 34

[6] TSN, 4 March 2003, p. 13.

[7] Records, p. 1.

[8] Id. at 54.

[9] Id. at 10-11.

[10] Id. at 214.

[11] Id. at 217-219.

[12] Id. at 214-221.

[13] Id. at 304.

[14] Id. at 304-305.

[15] CA Rollo, p. 223.

[16] Id. at 203.

[17] Id. at 214.

[18] Records, pp. 442-448. (Vol. II)

[19] CA Rollo, pp. 19-24.

[20] Records, p. 476. (Vol. II)

[21] Id. at 477.

[22] Id. at 501.

[23] Id. at 517-536.

[24] Id. at 560.

[25] Id. at 802.

[26] Id. at 787.

[27] Id. at 801.

[28] Id. at 874.

[29] CA Rollo, p. 2.

[30] Records, p. 966. (Vol. III)

[31] Id. at 1027.

[32] Records, p. 448. (Vol. II)

[33] *Tambaoan v. Court of Appeals*, 365 SCRA 359 (2001).

[34] *Verzosa v. Court of Appeals*, 299 SCRA 100 (1998).

[35] *Arcega v. Court of Appeals*, 275 SCRA 176 (1997).

[36] *Republic v. Villarama, Jr.*, 278 SCRA 736 (1997).

[37] *PNB v. Ritratto Group, Inc.*, 362 SCRA 216 (2001).

[38] *Mizona v. Court of Appeals*, 346 SCRA 727 (2000).

[39] 42 Am.Jur.2d, pp. 576-577.

[40] Id. at 578-579.

[41] 196 SCRA 665 (1991). (Italics ours.)

[42] Id. at 672-673.

[43] CA Rollo, pp. 42-43.

[44] CA Rollo, pp. 342-345.

[45] Art. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment;

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned;

In the absence of the foregoing evidence, the legitimate filiation may be proved by:

(1) The open and continuous possession of the status of a legitimate child, or

(2) Any other means allowed by the Rules of Court and special laws.

[46] *De Asis v. Court of Appeals*, 303 SCRA 176 (1999); *Go Kim Huy v. Go Kim Huy*, 365 SCRA 490 (2001).

[47] TSN, 20 August 1999, p. 6.

[48] Id. at 26.

[49] *Arayata v. Joya*, 51 Phil. 654 (1928); *Yatco v. The Intestate Estate of Pablo Manguerra*, 54 Phil. 661 (1930).

[50] *Solid State Multi-Products Corporation v. Court of Appeals*, 196 SCRA 630 (1991).

[51] Veloso v. Court of Appeals, 260 SCRA 593 (1996); Sumbad v. Court of Appeals, 308 SCRA 575 (1999).

[52] Santiago Syjuco, Inc. v. Castro, 175 SCRA 171 (1989).

[53] Sandoval v. Court of Appeals, 260 SCRA 283 (1996).

[54] Id. at 294-295.

[55] Javelosa v. Court of Appeals, 265 SCRA 493 (1996).

[56] TSN, 20 August 1999, p. 13.

[57] Rollo, pp. 45-46.

[58] 340 SCRA 359 (2000).

[59] Id. at 374-375.

[60] Zabat v. Court of Appeals, 338 SCRA 551 (2000).

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