

CHINA BANKING CORPORATION, SPOUSES JOEY & MARY JEANNIE CASTRO AND SPOUSES RICHARD & EDITHA NOGOY, PETITIONERS, VS. BENJAMIN CO, ENGR. DALE OLEA AND THREE KINGS CONSTRUCTION & R...

G.R. No. 174569. September 17, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner China Banking Corporation sold a lot located at St. Benedict Subdivision, Sindalan, San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 450216-R to petitioner-spouses Joey and Mary Jeannie Castro (the Castro spouses). It sold two other lots also located in the same place covered by TCT Nos. 450212-R and 450213-R to petitioner-spouses Richard and Editha Nogoy (the Nogoy spouses).

The lots of the Castro spouses and the Nogoy spouses are commonly bound on their southeastern side by Lot No. 3783-E, which is covered by TCT No. 269758-R in the name of respondent Benjamin Co (Co) and his siblings.

Co and his siblings entered into a joint venture with respondent Three Kings Construction and Realty Corporation for the development of the Northwoods Estates, a subdivision project covering Lot No. 3783-E and adjacent lots. For this purpose, they contracted the services of respondent, Engineer Dale Olea.

In 2003, respondents started constructing a perimeter wall on Lot No. 3783-E.

On November 28, 2003, petitioners, through counsel, wrote respondents asking them to stop constructing the wall, and remove all installed construction materials and restore the former condition of Lot No. [3]783-E which they (petitioners) claimed to be a road lot.[1] They also claimed that the construction obstructed and closed the only means of ingress and egress of the Nogoy spouses and their family, and at the same time, caved in and impeded the ventilation and clearance due the Castro spouses' residential house.[2]

Petitioners' demand remained unheeded, prompting them to file before the Regional Trial Court (RTC) of San Fernando, Pampanga a complaint,[3] docketed as Civil Case No. 12834, for injunction, restoration of road lot/right of way and damages with prayer for temporary restraining order and/or writ of preliminary injunction.

Before respondents filed their Answer,[4] petitioners filed an Amended Complaint,[5] alleging that the construction of the perimeter wall was almost finished and thus modifying their prayer for a writ of preliminary injunction to a writ of preliminary mandatory injunction, viz:

WHEREFORE, it is respectfully prayed of this Honorable Court that:

- Before trial on the merits, a temporary restraining order be issued immediately restraining the defendants from doing further construction of the perimeter wall on the premises, and thereafter, a writ of preliminary mandatory injunction be issued enjoining the defendants from perpetrating and continuing with the said act and directing them jointly and severally, to restore the road lot, Lot 3783-E to its previous condition.

x x x x [6] (Underscoring in the original; emphasis supplied)

After hearing petitioners' application for a writ of preliminary mandatory injunction, Branch 44 of the San Fernando, Pampanga RTC denied the same, without prejudice to its resolution after the trial of the case on the merits, in light of the following considerations:

After a judicious evaluation of the evidence, the Commissioner's Report on the Conduct of the Ocular Inspection held on February 14, 2004, as well as the pleadings, the Court is of the opinion and so holds that a writ of preliminary injunction should not be issued at this time. Plaintiffs have not clearly shown that their rights have been violated and that they are entitled to the relief prayed for and that irreparable damage would be suffered by them if an injunction is not issued. Whether lot 3783-E is a road lot or not is a factual issue which should be resolved after the presentation of evidence. This Court is not inclined to rely only on the subdivision plans presented by plaintiffs since, as correctly argued by defendants, the subdivision plans do not refer to lot 3783-E hence are not conclusive as to the status or classification of lot 3783-E. This court notes further that Subdivision Plan Psd-03-000577 of Lot 3783 from which the other subdivision plans originates [sic] does not indicate lot 3783-E as a road lot.

Even the physical evidence reveals that lot 3783-E is not a road lot. The Court noticed during the ocular inspection on February 14, 2004, that there is a PLDT box almost in front of lot 3783-E. There is no visible pathway either in the form of a beaten path or paved path on lot 3783-E. Visible to everyone including this court are wild plants, grasses, and bushes of various kinds. Lot 3783-E could not have been a road lot because Sps. Nogoy, one of the plaintiffs, even built a structure on lot 3783-E which they used as a coffin factory.

Plaintiffs failed to prove that they will be prejudiced by the construction of the wall. The ocular inspection showed that they will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway. With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated on the left side of the garage and its front entrance is still open and freely accessible.

This is indeed an issue of fact which should be ventilated in a full blown trial, determinable through further presentation of evidence by the parties. x x x

x x x x

WHEREFORE, premises considered, plaintiffs' application for the issuance of a writ of preliminary mandatory injunction is denied without prejudice to its resolution after the trial of the case on the merits.[7] (Underscoring supplied)

Their Motion for Reconsideration[8] having been denied, petitioners filed a petition for certiorari[9] before the Court of Appeals which dismissed the same[10] and denied their subsequent Motion for Reconsideration.[11]

Hence, the petitioners filed the present petition,[12] faulting the Court of Appeals in

I.

. . . DECID[ING] AND RESOLV[ING] A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE BASIC GOVERNING LAW (PRESIDENTIAL DECREE NO. 1529) AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.

II.

. . . PROMOTING THE LOWER COURT'S RATIOCINATION THAT PETITIONERS ARE SEEKING THE ESTABLISHMENT OF AN EASEMENT OF RIGHT OF WAY, WHEN THEY ARE CLAIMING THE

ENFORCEMENT OF THE STATUTORY PROHIBITION AGAINST CLOSURE OR DISPOSITION OF AN ESTABLISHED ROAD LOT.

III.

. . . SANCTION[ING] THE LOWER COURT'S PATENT GRAVE ABUSE OF DISCRETION IN PERFUNCTORILY DENYING PETITIONERS' APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION.[13]

It is settled that the grant of a preliminary mandatory injunction rests on the sound discretion of the court, and the exercise of sound judicial discretion by the lower court should not be interfered with except in cases of manifest abuse.[14]

It is likewise settled that a court should avoid issuing a writ of preliminary mandatory injunction which would effectively dispose of the main case without trial.[15]

In the case at bar, petitioners base their prayer for preliminary mandatory injunction on Section 44 of Act No. 496 (as amended by Republic Act No. 440), Section 50 of Presidential Decree 1529, and their claim that Lot No. 3783-E is a road lot.

To be entitled to a writ of preliminary injunction, however, the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.[16]

Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the status quo and is thus more cautiously regarded than a mere prohibitive injunction.[17] Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute.[18] When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.

Section 44 of Act 496,[19] which petitioners invoke, provides:

xxxx

Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need of them and that the plan has been approved by the Chief of the General Land Registration Office, or by the Director of Lands as provided in section fifty-eight of this Act, the Register of Deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets and/or passageways, no new certificates shall be issued until said plan has been approved by the Court of First Instance of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the General Land Registration Office, may grant the petition, subject to the condition, which shall be noted on the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval of the court first had, or may render such judgment as justice and equity may require.[20] (Underscoring supplied by the petitioners)

Section 50 of Presidential Decree No. 1529,[21] which petitioners likewise invoke, provides:

SECTION 50. Subdivision and consolidation plans. - Any owner subdividing a tract of registered land into lots

which do not constitute a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated. x x x[22] (Underscoring supplied by petitioner)

The best evidence thus that Lot No. 3783-E is a road lot would be a memorandum to that effect annotated on the certificate of title covering it. Petitioners presented TCT No. 185702-R covering Lot No. 3783-E in the name of Sunny Acres Realty Management Corporation which states that the registration is subject to "the restrictions imposed by Section 44 of Act 496, as amended by Rep. Act No. 440." [23] The annotation does not explicitly state, however, that Lot No. 3783-E is a road lot.

In any event, TCT No. 185702-R had been cancelled and in its stead was issued TCT No. 247778-R [24] which, in turn, was cancelled by TCT No. 269758-R [25] in the name of respondent Co and his siblings.

TCT No. 247778-R and respondent Co's TCT No. 269758-R do not now contain the aforementioned memorandum annotated on TCT No. 185702-R re the registration being "subject to restrictions imposed by Section 44 of Act 496, as amended by Republic Act No. 440." Given the immediately foregoing circumstances, there is doubt on whether Lot No. 3783-E is covered by a road lot.

While petitioners correctly argue that certain requirements must be observed before encumbrances, in this case the condition of the lot's registration as being subject to the law, may be discharged and before road lots may be appropriated [26] gratuitously assuming that the lot in question was indeed one, TCT Nos. 247778-R and 269758-R enjoy the presumption of regularity [27] and the legal requirements for the removal of the memorandum annotated on TCT No. 185702-R are presumed to have been followed. [28]

At all events, given the following factual observations of the trial court after conducting an ocular inspection of Lot 3783-E, viz:

x x x The ocular inspection showed that [petitioners] will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway. [29] With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated on the left side of the garage and its front entrance is still open and freely accessible. [30]

and the absence of a showing that petitioners have an urgent and paramount need for a writ of preliminary mandatory injunction to prevent irreparable damage, they are not entitled to such writ.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., Concur

[1] Records, Vol. I, pp. 22-23.

[2] Ibid.

[3] Id. at 2-10.

[4] Id. at 68-86.

[5] Id. at 34-43.

[6] Id. at 40.

[7] Id. at 297-298.

[8] Id. at 299-312.

[9] CA rollo, pp. 2-34.

[10] Decision of July 7, 2005, penned by Court of Appeals Associate Justice Aurora Santiago-Lagman, with the concurrences of Associate Justices Conrado M. Vasquez, Jr. and Rebecca de Guia-Salvador. Id. at 328-341.

[11] Id. at 344-355, 380-381.

[12] Rollo, pp. 29-70.

[13] Id. at 40-41.

[14] Vide *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

[15] Vide *Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut*, G.R. No. 154407, February 14, 2005, 451 SCRA 275, 292.

[16] *Gateway Electronics Corporation v. Land Bank of the Philippines*, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462.

[17] Ibid.

[18] Ibid.

[19] The Land Registration Act.

[20] Rollo, pp. 55-56.

[21] The Property Registration Decree.

[22] Rollo, p. 56.

[23] Exhibit "I-1," records, p. 180.

[24] Exhibit "7," id. at 281.

[25] Exhibit "5," id. at 270.

[26] Rollo, pp. 60-63.

[27] Vide *Ocampo v. Ocampo*, G.R. No. 150707, April 14, 2004, 427 SCRA 545, 559; *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 412 Phil. 77, 79-80 (2001).

[28] Vide Rules of Court, Rule 131 Section 2 (m) and (ff).

[29] Vide TSN, February 6, 2004, p. 36.

[30] Records, Vol. I, p. 298.

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