

RODOLFO GIRON, MIGUEL BALANCE, AND MAXIMA VDA. DE ANTISODA, PETITIONERS, VS. HON. HERMOGENES CALAUAG, HON. NICASIO YATCO, AND J. M. TUASON & CO., INC., REPRESENTED IN THIS INSTA...

G.R. No. 17995. June 27, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari.

Petitioners Rodolfo Giron, Miguel Balance and Maxima Vda. da Antisoda were the defendants in Civil Case Nos. Q-4560, Q-4413 and Q-4412, respectively, of the Court of First Instance of Rizal. The plaintiff in said three (3) cases was respondent J. M. Tuason & Co., Inc., which sought to recover the possession of a small parcel of land—with an area ranging from 200 to 500 square meters—allegedly hold illegally by each one of said petitioners herein, and forming part of the Santa Mesa Heights Subdivision, located at Quezon City and covered by Transfer Certificate of Title No. 1267 (37686-Rizal), in the name of said respondent Company. Respondent Hon. Hermogenes Caluag is the Judge who presides over Branch IV of said Court, to which said Case No. Q-4560 had been assigned, whereas respondent Hon. Nicasio Yatco is the Judge who presides over Branch V of said Court, to which said cases Nos. Q-4412 and Q-4413 were assigned.

Petitioners allege that, after service of summons to them as defendants in said three (3) cases and the filing of their respective answers therein, respondent Judges delegated the reception of the evidence in said cases to commissioners who, without securing an order of reference and without taking the oath required by the rules therefor, proceeded to receive said evidence, taking stenographic notes of the proceedings, and then prepared the respective decision, which were signed by said respondent Judges, without either a report of said commissioners or notice of said report or a hearing thereon; that respondent Judges had thereby violated the pertinent provisions of the Rules of Court and, rendered the proceedings before them, including the aforementioned decisions, null and void; and that, this notwithstanding, and despite the opposition of petitioners and their motions for reconsideration, respondent Judges have issued writs of execution of said decisions and pretty soon will, upon motion, issue orders of demolition of the houses and other constructions of said petitioners in the lots respectively held by them.

Petitioners pray, therefore, that the proceedings in the said three (3) cases, including the aforesaid decisions and writs of execution be set aside, and that, pending the determination of this case, a writ of preliminary injunction issue against respondent Judges commanding them to desist from further proceeding in said cases or from issuing demolition orders therein. This Court, however, refused to issue said writ.

In their answer, as twice amended, the respondents denied the allegations of the petition with respect to the irregularities allegedly committed by respondent Judges, and pleaded *res judicata* as regards cases Nos. Q-4412 and Q-4413. With respect to case No. Q-4560, respondents averred that the irregularities allegedly committed

therein cannot affect the validity of the decision rendered and the writ of execution issued therein; that petitioner Giron had acquiesced to the proceedings in that case; and that there was a plain, adequate and speedy remedy against said alleged irregularities, namely, to appeal from said decision, which petitioner Giron did not take.

It appears that, after the filing of the respective answers of petitioners Antisoda and Balance, as defendants in cases Nos. Q-4412 and Q-4413, the same were set for hearing on September 11, 1959, on which occasion respondent Judge Yatco referred the reception of evidence to a commissioner, before whom the parties, thereafter, introduced their respective proof. On September 14, 1959, respondent Judge Yatco rendered a decision for the plaintiff (herein respondent Company) and against the defendant (herein petitioner Antisoda) in case No. Q-4412. The next day, said respondent Judge rendered a similar decision for the plaintiff (herein respondent Company) and against the defendant (herein petitioner Balance) in case No. Q-4413. Copy of said two (2) decisions were served upon Antisoda and Balance, respectively, on September 18, 1959. Thirty-one (31) days later, or on October 19, 1959, both filed their respective notices of appeal, appeal bonds and records on appeal. On October 24, 1959, the court of first instance of Rizal issued an order requiring Antisoda and Balance to amend their aforesaid records on appeal within "10 days from today." This notwithstanding, the amended records on appeal were not filed until after the expiration of said period, or on November 16, 1959. Accordingly, on November 21, 1959, the court disapproved said records on appeal. A reconsideration of the orders to this effect was sought neither by Antisoda nor by Balance. Hence, on motion of respondent Company, the corresponding writs of execution were, thereafter, issued. These writs having been subsequently returned unsatisfied, said Company moved for the demolition of the houses of Antisoda and Balance on the lots respectively occupied by them. By an order of June 3, 1961, Antisoda was given, therefore, sixty (60) days from notice within which to remove his house. A similar order dated July 8, 1961, was issued in case No. Q-4413, as regards Balance.

On June 28, 1961, Antisoda filed with the Court of Appeals a petition—which was docketed therein as CA-G. R. No. 293850R—for certiorari and mandamus, with preliminary injunction, against respondent Judge Yatco, respondent Company and the Sheriff of Quezon City, to restrain the execution of said demolition order of June 3, 1961 in case No. Q-4412, and compel Judge Yatco to approve the aforementioned (amended) record on appeal and to give due course to Antisoda's appeal, and for "such further relief as in equity proceeds," upon the ground that said respondent Judge Yatco had committed a grave abuse of discretion in disapproving the amended record on appeal therein; that the Land Tenure Administration had, on February 24, 1961, instituted proceedings for the expropriation of the Tatalon Estate, and, pursuant to Section 4 of Republic Act No. 2616, no ejectment proceedings already commenced shall be continued after the initiation of the aforementioned expropriation case; and that the reference of said case No. Q-4412 to a commissioner for the reception of evidence, and the reception thereof by the commissioner, who had not taken an oath as such and the rendition of a decision by respondent Judge Yatco, without a previous report of the commissioner, or notice of such report, or a hearing thereon, are violative of the Rules of Court. Soon thereafter, or on July 12, 1961, petitioner Balance filed, with the same Court of Appeals, a similar action—docketed as CA-G.R. No. 29489-R of said Court—against respondent Judge Yatco, the Sheriff of Quezon City and respondent Company, in connection with case No. Q-4413.

On August 23, 1961, the Court of Appeals rendered a decision in said case No. CA-G.R. No. 29385-R. In connection with the alleged irregularities relative to the reference to a commissioner, his failure to take an oath as such and to submit a report, as well as the absence of notice thereof and of a hearing thereon, the Court of Appeals held:

"* * * The foregoing contentions are best refuted by the admission in the record on appeal and reiterated in the amended record on appeal of the defendant that 'after due hearing wherein the parties entered into a stipulation of facts and introduced oral and documentary evidence, a decision was rendered by this Honorable Court * * *'. The foregoing manifestly shows that the proceedings in the lower court were regular. Nothing, apart from

the bare allegations in the petition, shows that the commissioner did not comply with the duties prescribed in the Rules of Court and required of him to be done and performed, and in the absence of a clear showing to the contrary, the presumption is 'That official duty has been regularly performed.' (Sec. 69, (m), Rule 123, Rules of Court.)"

The Court of Appeals, likewise, found that no expropriation proceeding covering the lot occupied by Antisoda had been filed and that her amended record on Appeal had been filed beyond the reglementary period. Hence, the petition in said case CA-G.R. No. 29385-R was dismissed for lack of merit. Six (6) days later, or on August 29, 1961, said Court rendered its decision in CA-G.R. No. 29489-R, from which we quote:

"* * * The contention that the reference of the case to a commissioner was without the consent and over the objection of the defendant, is best refuted by the admission of the defendant in the record on appeal and reiterated in the amended record on appeal, where n it is stated that 'After due hearing wherein the parties introduced oral and documentary evidence, a decision was rendered by this Honorable Court * * *.' The foregoing manifestly shows that the proceedings in the lower court were regular. Nothing, apart from the bare allegations in the petition, shows that the commissioner did not comply with the duties prescribed in the Rules of Court and required of him to be done and performed and in the absence of a clear showing to the contrary the presumption is "That official duty has been regularly performed' (Section 69, (m), Rule 123, Rules of Court). Granting ad arguendo that no notice was given to the parties that the commissioner's report had been submitted to the court, and the parties could interpose objections to said report within 10 days, or that no hearing on the report was had before the court, while the failure to do so may, in some cases, constitute an error, yet, when said report was attached to the record, and the court studied it in connection with the evidence attached to the record and approved it, and the attention of the lower court was not called to the supposed irregularity by a motion or petition to that effect, the supposed irregularity having been assailed only on July 12, 1961 in the instant petition, the contention loses its merit and cannot be a valid ground for the reversal of the judgment (Government of P. I. vs. Osorio, 50 Phil., 864)."

As regards the alleged expropriation proceedings and the amended record on appeal of Balance, the Court of Appeals reiterated its ruling in case CA-G.R. No. 29385-R. Accordingly, the petition in case CA-G.R. No. 29489-R, was, also, dismissed for lack of merit.

Inasmuch as the parties, the subject matter and the cause of action in the case at bar and in said cases CA-G. R. Nos. 29385-R and 29489-R are identical, insofar as the alleged irregularities in cases Nos. Q-4412 and Q-4413 of the Court of First Instance of Rizal are concerned, it is clear that the cause of action of Mrs. Antisoda and Balance as petitioners herein, in relation to these two (2) cases (Nos. Q-4412 and Q-4413), is barred by said decisions of the Court of Appeals, which are final and executory (Pua vs. Lapitan, 107 Phil., 95; Ganaden Vda. de Ursua vs. Pelayo, 107 Phil., 622 Wenzel, et al. vs. Surigao Consolidated Mining Co., et al., 108 Phil., 530; Dominguez, et al. vs. De Jesus, et al., L-15089, April 28, 1962; Pichay, et al. vs. Kairuz, L-12658, May 18, 1962).

With respect to petitioner Giron, we note that on September 11, 1959, when case No. Q-4560 was called for hearing, respondent Judge Caluag issued an order reading:

"By agreement of the parties, the clerk of court is hereby commissioned to receive the evidence in the case who should submit the same to the undersigned for the corresponding decision."

It is conceded that both parties introduced their respective evidence therein. Subsequently, Judge Caluag rendered Judgment for the plaintiff (herein respondent Company) and against the defendant (herein petitioner Giron) therein. No appeal having been taken by the latter, said decision became final and executory. Hence, on motion of plaintiff therein (herein respondent Company), a writ of execution was issued. The writ having been later returned unsatisfied, a motion for demolition of the house and other constructions of Giron on the lot involved in the case was filed. This motion was pending at the time of the institution of the present case.

The jurisdiction of the lower court over the parties and over the subject matter of said case No. Q-4560 is not disputed. Hence, the decision therein rendered by said court is valid. If any irregularities had been committed therein, affecting his substantial rights, Giron could have secured a plain, adequate and speedy remedy by seeking a reconsideration of said decision and, had said reconsideration been denied, by appeal. Giron did not do so. He did not question the regularity of the proceedings leading to the rendition of said decision until after the same had become final and executory. Consequently, he cannot now avail himself of the writ of certiorari, his present predicament being the effect of his deliberate inaction. (Government of the United States vs. Judge of First Instance of Pampanga, 50 Phil., 97.5; Prof eta, et al. vs. Gutierrez, et al, 71 Phil., 582; Philippine Surety & Insurance Co. vs. Jacala, et al., 108 Phil. 177; Pachoco vs. Tumangday, et al., 108 Phil., 238; Hodges vs. Arellano, et al, 109 Phil., 284; Jose et al. vs. Zulueta, et al. L-16598, May 31, 1961; Daus vs. Eleosida et al, L-15950, April 20, 1961; City of Manila vs. Macadaeg, et al., L-15134, November 29, 1961; Francisco et al., vs. Caluag, et al, L-15365, December 26, 1961.) As a matter of fact, the record before us suggests that he had and has no meritorious defense on the merits of the case. What is more, he does not even claim to have been denied the opportunity to introduce any evidence in his favor, or that his evidence has been misconstrued.

Viewed from any angle, the petition in this case should therefore, be, as it is hereby dismissed, with costs against petitioners herein. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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