

**SPOUSES ISAGANI AND DIOSDADA CASTRO, PETITIONERS, VS.
SPOUSES REGINO SE AND VIOLETA DELA CRUZ, SPOUSES EDUARDO
AND CHARITO PEREZ AND MARCELINO TOLENTINO, RESPONDENTS.**

G.R. No. 190122. January 10, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For the Court's consideration is the propriety of the issuance of a writ of preliminary mandatory injunction in favor of respondent Spouses Regino Se and Violeta dela Cruz (Spouses dela Cruz).

Respondent Spouses Eduardo and Charito Perez (Spouses Perez) obtained a P250,000 loan from Spouses Isagani and Diosdada Castro (petitioners) on November 15, 1996, to secure which they executed a real estate mortgage in petitioners' favor covering an unregistered 417 square meter parcel of land, located in San Isidro, Hagonoy, Bulacan, covered by Tax Declaration (TD) No. 01844 (the property).

Respondent Spouses Perez having failed to settle their loan, petitioners extrajudicially foreclosed the mortgage and, as the highest bidder at the public auction, bought the property on February 4, 1999. It turned out that before the foreclosure or sometime in 1997 respondent Spouses Perez, contrary to a provision of the real estate mortgage, sold the property to respondent Spouses dela Cruz who had in fact caused the cancellation of TD No. 01844 by TD No. 01892 in their name on August 15, 1997.

Petitioners thus filed on April 8, 1999 a complaint against herein two sets of respondent Spouses, for annulment of Deed of Sale and TD No. 01892[1] and damages before the Malolos Regional Trial Court (RTC). Respondent Marcelino Tolentino, Municipal Assessor of Hagonoy, Bulacan was impleaded as defendant. The complaint was raffled to Branch 7 of the RTC.

By respondent Spouses dela Cruz's allegation, before buying the property, they inspected it and found no improvements thereon that would put them on guard against the integrity of the TD of the sellers-Spouses Perez which TD, contrary to petitioners' claim, bore no annotation of the mortgage. They had in fact constructed a house on the property in the course of which they were approached by petitioners who informed them of an existing mortgage thereover, but as petitioners did not present any document to prove it, they paid no heed to the information.

During the pendency of petitioners' complaint against respondents spouses, petitioners filed an ex-parte motion before Branch 16 of the RTC for the issuance of a writ of possession over the property by virtue of the foreclosure of the mortgage of the sale to them of the property. [2] Petitioners' motion was granted and a writ of possession dated August 2, 2001 was issued and enforced against respondent Spouses dela Cruz who were evicted from the property.

On December 7, 2002, petitioners amended, with leave of court, their complaint, alleging that, inter alia, respondent Spouses Perez failed to redeem the mortgage within the reglementary period.

In their Answer to the Amended Complaint, respondent Spouses dela Cruz prayed for the issuance of a writ of preliminary mandatory injunction to restore them to physical possession of the property, which prayer Branch 7 of the RTC granted by Order of October 29, 2004 in this wise:

. . . It is not disputed that the Sps. Isagani Castro and Diosdada Castro, herein plaintiffs, were placed in possession of the subject property by virtue of a writ of possession issued by Branch 16 of the Court. This writ of possession commanded the sheriff to require the spouses Eduardo Perez and Charito Lopez and all persons claiming rights under them to vacate subject property and surrender possession thereof to spouses Castro. At that time, the Spouses Regino Se and Violeta dela Cruz were in possession of the property as owners thereof, having already purchased the same from the Sps. Castro. Their evidence of ownership is Tax Declaration No. 01892 of the Office of the Municipal Assessor of Hagonoy, Bulacan, the property being still an unregistered property. They were not claiming rights under the spouses Perez. They were and still are the owners in their own right. Hence, the writ of possession issued was improperly implemented and under Art. 539 of the Civil Code, they must be restored to said possession by the means established by the laws and the Rules of Court. The writ of preliminary mandatory injunction prayed for is undeniably one of the means established by the laws and the Rules of Court. [3] (underscoring supplied)

Petitioners' motion for reconsideration of the trial court's Order of October 29, 2004 was denied by Order of March 5, 2007, hence, they filed a petition for certiorari before the Court of Appeals. Finding no grave abuse of discretion in the issuance of the Order, the appellate court denied petitioners' petition, by Decision of September 14, 2009.[4]

Hence, the present petition.

The trial court anchored its assailed Order granting the writ of preliminary mandatory injunction on Article 539 of the Civil Code. The Article reads:

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein, he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

x x x x

Undoubtedly, respondent Spouses dela Cruz actually took possession of the property before the real estate mortgage covering it was foreclosed, and had in fact cancelled the TD in Spouses Perez' name and had one issued in their name. It appears, however, that petitioners did not inform Branch 16, RTC of the previous sale of the property to third parties, herein respondent Spouses dela Cruz, and the latter's actual possession thereof.

For an injunctive writ to issue, a clear showing of extreme urgency to prevent irreparable injury and a clear and unmistakable right to it must be proven by the party seeking it. The primary objective of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard.[5]

[T]he rule is well-entrenched that the issuance of the writ of preliminary injunction rests upon the sound discretion of the trial court. It bears reiterating that Section 4 of Rule 58 gives generous latitude to the trial courts in this regard for the reason that conflicting claims in an application for a provisional writ more often than not involve a factual determination which is not the function of appellate courts. Hence, the exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse, which is wanting in the present case.[6] (emphasis and underscoring supplied)

Indeed, the rule is well-entrenched that for grave abuse of discretion to exist as a valid ground for the nullification of an injunctive writ, there must be a capricious and whimsical exercise of judgment, equivalent to lack or excess of jurisdiction. Or the power must be exercised in an arbitrary manner by reason of passion or personal hostility,

and it must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law. [7]

Recall that respondent Spouses dela Cruz had long before the foreclosure of the mortgage or sometime in 1997 bought and took possession of the property, and had in fact cancelled the seller-respondent Spouses Perez' TD and had one issued in their name. By petitioners' seeking ex parte the issuance to them on February 1999 of a writ of possession over the property, which was granted and the writ enforced against respondent Spouses de la Cruz, they disturbed the status quo ante litem. The trial court did not thus commit grave abuse of discretion when it issued the writ of preliminary mandatory injunction in favor of Spouses de la Cruz.

For the enforcement of the writ of possession against respondent Spouses dela Cruz, who did not take part in the foreclosure proceedings, would amount to taking of real property without the benefit of a proper judicial intervention. The procedural shortcut which petitioners is impermissible. Even Article 433 of the Civil Code instructs that "Actual possession under claim of ownership raises disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property." The contemplated judicial process is not through an ex-parte petition as what petitioners availed of, but a process wherein a third party, Spouses de la Cruz herein, is given an opportunity to be heard.[8]

The jurisdictional foundation for the issuance of a writ of injunction rests not only in the existence of a cause of action and in the probability of irreparable injury, among other considerations, but also in the prevention of multiplicity of suits.

Since petitioners failed to show that the appellate court erred in upholding the trial court's exercise of its discretion in issuing the writ of preliminary mandatory injunction, the challenged Decision stands.

Parenthetically, the issuance of the challenged writ does not render petitioners' case closed. Whether there existed a conspiracy between both sets of respondent spouses to defraud petitioners can be only be determined after the principal action is tried on the merits during which the parties are afforded the opportunity to present evidence in support of their respective claims.[9]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Tax Declaration No. 01844 in the name of Spouses Perez was cancelled by Tax Declaration No. 01892, registered in the names of respondents.

[2] Vide CA rollo, pp. 62-63. Petitioners filed a petition for the issuance of a writ of possession on December 7, 2000, during the pendency of the instant case.

[3] Id. at 80.

[4] Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Mario L. Guarina, III and Mariflor P. Punzalan Castillo, rollo, pp. 153-165.

[5] Dolmar Realty Estate Development Corp. v. Court of Appeals, G.R. No. 172990, February 27, 2008, 547 SCRA 114-115.

[6] Land Bank of the Philippines v. Continental Watchman Agency, Incorporated, G.R. No. 136114, January 22,

2004, 420 SCRA 624, 625.

[7] *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492, 494.

[8] *Villanueva v. Cherdan Lending Investors Corporation*, G.R. No. 177881, October 13, 2010.

[9] *Philippine National Bank v. RJ Ventures Realty & Development Corporation and Rajah Broadcasting Network, Inc.*, G.R. No. 164548, September 27, 2006, 503 SCRA 639.

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