

**PEDRO MANUEL, SIMON TARUC AND CONRADO PUNSALAN,
PETITIONERS, VS. MARIANO ROSAURO, JUDGE OF FIRST INSTANCE
OF PAMPANGA, DOMINADOR MANGUNE, PROVINCIAL SHERIFF OF
PAMPANGA, AND PED...**

G. R. No. 36505. December 19, 1931

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioners, Pedro Manuel, Simon Taruc, and Conrado Punsalan, instituted these prohibition proceedings to prevent the respondents and their agents from executing the writ of possession issued by the respondent judge on November 9, 1931 in case No. 305 of the Court of First Instance of Pampanga, G.L.R.O. Record No. 15447; they also prayed that a preliminary injunction be issued, and that after proper proceedings the same be declared final.

The petitioners filed a P500 bond, and the preliminary injunction was issued on November 18, 1931.

The following facts appear of record: In registration case No. 305 of Pampanga, G. L. R. O. Record No. 15447, Geronimo de Leon, an uncle of the respondent Pedro de Leon, was the applicant and obtained the final decree and certificate of title to lot No. 1, the subject matter of the application, in the year 1920. The present petitioners were not opponents nor did they take any direct part in that case. Subsequently Geronimo de Leon conveyed said land by absolute sale to the respondent Pedro de Leon, and his original certificate of title having been cancelled, a transfer certificate of title was issued to the vendee. On October 31, 1931 the latter filed a motion in said case, in which he petitioned for the issuance of a writ of possession. On November 9th of the same year, the court granted the motion and ordered that a writ of possession be issued and that all persons in possession thereof be ejected. The deputy sheriff of the province proceeded to execute the writ, and gave notice thereof to the petitioners Pedro Manuel and Simon Taruc, although he did not eject them or Conrado Punsalan, the other petitioner, neither did he proceed to demolish the houses on the land, by reason of his notice of, and in obedience to, the preliminary injunction issued in this case. It appears that the original owner and the respondent Pedro de Leon had not previously obtained a writ of possession, the subject of the present proceedings being therefore the first writ of possession ever issued. The petitioners are the present possessors of the land and their possession dates back many years according to the petition, while the respondent Pedro de Leon alleges, in turn, that the petitioner Pedro Manuel was once a tenant of his, and as the latter attempted to appropriate the portion leased to him, he brought an action against him for unlawful detainer in the justice of the peace court of San Simon, Pampanga, and secured a judgment in his favor which, upon appeal to the Court of First Instance of Pampanga, was affirmed, became final and was executed, said Pedro Manuel having been ejected from the premises. The latter admits he was defeated in that case but alleges that he has a pending motion filed under section 113, Code of Civil Procedure, praying that the judgment be set aside; and that in civil case No. 4790 which he and others brought against Geronimo de Leon and Pedro de Leon they seek to recover the ownership and possession of the property which is the subject of the writ of possession and of the decree and transfer certificate of title issued to the respondent Pedro de Leon.

The foregoing facts raise but one question of law, to wit, whether the respondent Pedro de Leon, as the registered owner of a parcel of land, is entitled to a writ of possession in the same proceedings in which the final decree was issued, for the purpose of ejecting the petitioners, who are occupants and possessors of the property and have been so for many years, in spite of the fact that they took no direct part in said registration proceedings either as opponents or in any other form, and although more than ten years had elapsed from the date on which the final decree was issued until the motion for said writ of possession was filed.

The respondent judge issued the writ of possession upon what he considers to be the ruling of this Supreme Court in the case of *Manlapas and Tolentino vs. Llorente* (48 Phil., 298). Counsel for the petitioners contends that the case cited is not applicable, but that of *Yuson and De Guzman vs. Diaz* (42 Phil., 22). The former case took into account the ruling in the *Yuson* case and established the marked difference between the two cases as follows:

"That case is different from the one before us. There before the petitioners *Yuson and De Guzman* had asked for a writ of possession against the respondents, one had already been issued in favor of *Saturnino Lopez*, applicant in the registration case and predecessor in interest of said petitioners, which writ of possession was directed against other possessors who were not the respondents therein, *Libunao, Hizon and Geronimo*, for the latter entered upon the possession of the land only after the issuance of the first writ of possession.

"For this reason, it was held in that case that, a writ of possession having on a previous date been issued to the applicant *Lopez*, if afterwards he lost the physical possession of the land which he had obtained through said first writ, he or his successors could no longer ask for another writ of possession against the new possessors of the land.

"In the instant case no writ of possession had been issued previous to the one here in question, and the possessors of the property did not enter the land after its registration, but were there before said registration and have been occupying it ever since.

"There is, therefore, no legal reason why the writ should not be issued, whether it be considered from the standpoint of the one asking for it, namely, the respondent corporation which has the right to the possession, of the occupant *Leandra Manlapas*, who is not a new possessor, but the same one who was a party to the registration proceeding and who is directly and personally affected and reached by the decree."

In the *Manlapas* case quoted above, the writ of possession was upheld because the record showed that none had been issued previously and the person occupying the land had been an opponent in the registration proceedings where the final decree was issued.

In the *Yuson* case, the writ of possession was denied because it appeared that another had already been issued and that the persons in possession of the land, and against whom the relief was sought had occupied the land after the final decree had been issued; furthermore, they had not been parties to the registration proceedings nor had they appeared as opponents; for which reason the court said: "* * * Such was the case here. But when other persons have subsequently taken possession of the property, claiming the right of possession thereto, the owner of the registered land, or his successors, cannot dispossess them by merely asking the court for a writ of possession. The Land Registration Law (sec. 46) provides that title to registered land in derogation of that of the registered owner cannot be acquired by prescription or adverse possession. Nevertheless, in order to recover the ownership or possession of land possessed by a third person, it is absolutely indispensable to resort to the proceedings established by law. This court has repeatedly declared that it is sufficient for a person to be in possession in order that he may be respected in the possession enjoyed by him of a real property, so long as no other claimant appears who has and proves a better right. (*Dancel and Mina vs. Ventura*, 24 Phil., 421.) He who believes himself entitled to deprive another of the possession of a thing, so long as the possessor refuses delivery, must request the assistance of the proper authority. (Art. 441, Civil Code.) In other words, he who believes himself entitled to

deprive another of the possession of real property must come to the courts of justice, instituting, as the case may be, an action for unlawful entry or detainer under section 80 of the Code of Civil Procedure, or the revindictory action authorized by article 348 of the Civil Code."

Briefly, what this court held in both cases in harmony with the others cited therein, is that the writ of possession will not issue: (a) When it has already been issued at the instance of the applicant or his successors, who hold transfer certificates of title; and (b) when the persons against whom it is sought to be used have occupied the premises after the final decree was issued, and have not taken direct part as opponents in the registration proceedings where said final decree was issued.

In the present case it appears that nearly eleven years had elapsed from the date on which Geronimo de Leon obtained the final decree in the registration proceeding until the petition for the writ of possession was filed; that the petitioners against whom the said remedy is to be used have been in possession of the land for at least ten years; that apparently their possession began after the final decree had been issued, and that none of the petitioners was an opponent in the registration proceedings. Applying to these facts the principles laid down in the two cases of Yuson and Manlapas, the conclusion is that the writ of possession issued by the respondent judge is untenable and must be set aside.

The respondents' contention that the sheriff had already executed the writ of possession carries little weight, for it appears that this official did not enforce it in its entirety, but postponed the ejection of the petitioners and the demolition of their houses upon the premises. At any rate the writ of possession was not carried out in its entirety because the preliminary injunction issued in the present case arrived in time.

For the foregoing reasons, the remedy sought is hereby granted, the writ of possession issued by the respondent judge is vacated and set aside, and the preliminary injunction heretofore issued is hereby made final, with costs against the respondent Pedro de Leon. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez. and Villa-Real, JJ., concur.

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