

**CO CHUAN SENG, GEORGE TAN, TEODORA TAN ONG, ROSA TAN, ROSITA TAN AND MAURO UMALI TAN, PETITIONERS, VS. HON. COURT OF APPEALS, HON. CELESTINO C. JUAN, IN HIS CAPACITY AS PRESIDIN...**

*G.R. No. 50151. March 21, 1984*

Ponente: MELENCIO-HERRERA, J.

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**MELENCIO-HERRERA, J.:**

A "Joint Petition" for Certiorari and Prohibition seeking to set aside the Decision of respondent Appellate Court in CA-G.R. No. 08770-SP, which dismissed a petition also for Certiorari and Prohibition entitled "Co Chuan Seng vs. Hon. Celestino Juan, et al." on the ground that appeal and not Certiorari is the proper remedy.

It is undisputed that the late father of private respondent, D. Annie Tan, mortgaged a parcel of land and the building thereon at Nos. 619, 621, 623 and 625 Carvajal St., Binondo, Manila, to the China Banking Corporation (the Bank, for short). For failure to pay the loan secured by said mortgage, the Bank foreclosed and the mortgaged property was sold at public auction. After the lapse of the one year period of redemption, the Bank consolidated title to the property. However, through negotiations, the Bank allowed private respondent D. Annie Tan (Annie, for short) and her brothers and sisters (petitioners Tan herein) to repurchase the property for P180,000.00. The property was repurchased on August 10, 1974. According to Annie, she used her own personal funds to do so with none of petitioners Tan herein contributing any amount for the repurchase. Notwithstanding Annie's representations that the sale be in her favor alone, the Bank executed a deed of sale in favor of all the Tan brothers and sisters including Annie.

On May 16, 1975, Annie instituted an action for reconveyance against the Bank and petitioners Tan before the Court of First Instance of Manila, which was docketed as Civil Case No. 97656 (Reconveyance Case). Petitioners Tan resisted and contended that they had contributed in equal shares for the repurchase of the property. The Bank insisted that its sale had to be in favor of all the heirs in order not to involve the Bank in further litigation with any of them.

On April 13, 1976, Annie filed Civil Case No. 102043 in the Court of First Instance of Manila (actually, an Ejectment Case) against the lessee, petitioner Co Chuan Seng (petitioner Co, for short), who was occupying the ground floor of the building, for the "recovery of possession" of the premises for non-payment of rentals. Annie averred in her Complaint that she was the owner of the lot and building. In the course of the proceedings, Annie and petitioner Co entered into a compromise agreement wherein it was stipulated that the rentals, accrued and current, would be deposited in Court by petitioner Co and that they "shall be disposed of in favor of whoever shall prevail in Civil Case No. 97656 x x x as owner/owners of the property involved in this case".

Dispensing with other incidents which are irrelevant to this Petition, on January 2, 1979, respondent Judge rendered a Decision in the Ejectment Case, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing judgment is rendered as follows:

1. Defendant or any persons holding under him, is ordered to vacate and surrender to plaintiff the pre-mises located at Nos. 621, 623 and 625 Carvajal Street, Binondo, Manila;
2. Defendant is ordered to pay plaintiff the sum of P53,100.00 representing the monthly rentals from February 1974 to December 1978, at the rate of P900.00 a month, plus the sum of P10,000.00 representing the additional rental of P400.00 a month demanded by plaintiff prior to the filing of this case counted from February 1974 up to the filing of this case on April 13, 1976; plus the sum of P23,400.00 representing the additional rental on the premises starting from the filing of the complaint on April 13, 1976, and computed up to December 1978, giving a total of P87,300.00; and to pay plaintiff starting January 1979, the monthly rental of P1,600.00 until the premises is finally surrendered to plaintiff. In this connection, plaintiff is permitted to withdraw any amount deposited by the defendant to this Court and the same should be deducted from the total amount of P87,300.00. The Clerk of Court is ordered to release immediately upon receipt of a copy hereof, the said deposited rentals to plaintiff even if the deposit is in the name of the defendant. He has no right over the amount whatsoever as the money represents the payment of rental. The question of ownership over the money is strictly among the co-heirs or co-owners. Said deposits are covered by the following Official Receipts Nos. 0161468, etc. x x issued from October 14, 1976, up to December 15, 1976, inclusive;
3. Defendant is ordered to pay plaintiff the sum of P25,000.00 by way of moral damages; P5,000.00 as exemplary damages; P7,000.00 as attorney's fees; and to pay the costs;
4. Defendant is further ordered to pay plaintiff the legal rate of interest at 12% per annum on the amount due as rentals, minus the amount actually deposited in court by defendant. (Central Bank Circular No. 416 dated July 29, 1974). (*Italics supplied*)

Without asking for reconsideration, petitioner Co availed of a Petition for Certiorari and Prohibition before the Appellate Court, docketed as CA-G.R. No. 08770-SP, to enjoin respondent Judge from enforcing his Order contained in paragraph 2 of his judgment directing the Clerk of Court "to release the amount of P87,300.00 and any other amount to be deposited by petitioner (Co)". The Appellate Court issued a Restraining Order enjoining the release.

It appears that on January 11, 1979, even before the judgment in the Ejectment Case had become final, Annie had filed an ex-parte Motion for the release of the deposited rentals, which was granted by respondent Judge on the same day.

On February 26, 1979, the Appellate Court[1] dismissed the Certiorari Petition before it and lifted the Restraining Order, which Decision is challenged herein. Said Court held:

"It should be noted, firstly, that judgment had already been rendered in Civil Case No. 102043. Petitioner's remedy, which is adequate, is to appeal the said judgment which embodied the order questioned by the petitioner. The extraordinary remedy of Certiorari is improper and not available (*Scott vs. Inciong*, 68 SCRA 473, 477-478; Rule 65, Section 1, Rules of Court). Certiorari is not a substitute for appeal.

Besides, petitioner has not demonstrated that respondent Judge had acted in excess of his jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.

Respondent Judge reasoned out, on page 17 of the decision, his ruling or judgment with respect to the release of the deposits. The reasons cannot be said to be flimsy. And, if there was error on the part of respondent judge in incorporating the impugned portion of his judgment relating to the release of the rentals to the winning party, such error is only an error of judgment and not an error of jurisdiction correctible by certiorari as prayed for.

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Furthermore, it is admitted by the petitioner that he did not file any motion for reconsideration with the court a quo. He did not give said court the opportunity to correct its error, if indeed it indubitably erred as claimed by petitioner."

After that dismissal by the Appellate Court, respondent Judge, on March 2, 1979, ordered the immediate release to Annie of the deposited back rentals in the total amount of P53,100.00.

On March 16, 1979, petitioner Co, joined by petitioners Tan, filed the instant "Joint Petition", "joint", presumably because petitioners Tan were not parties below in the Ejectment Case. Petitioners pray that respondent Judge be ordered to desist from enforcing the Order of March 2, 1979 and that the Decision of respondent Appellate Court in CA-G.R. No. 08770-SP be set aside.

We issued the Temporary Restraining Order prayed for, enjoining respondent Judge from enforcing the Order dated March 2, 1979 directing the release to plaintiff (Annie Tan) of the deposited rentals in the total amount of P53,100.00, and eventually gave due course to the Petition.

In her Comment, Annie contends that petitioners Tan have no personality to file the Petition; that she is entitled to receive the deposited rentals as they represent payments for use of the premises in the past; that, as respondent Judge had held, the compromise agreement between the parties was contrary to law and public policy; that the outcome of the Reconveyance Case (Civil Case No. 97656) has no bearing at all to the Ejectment Case below; and that petitioners' remedy is appeal and not Certiorari.

As earlier stated, respondent Appellate Court dismissed the Petition in CA-G.R. No. 08770-SP on the principal ground that petitioners' remedy from the judgment in the Ejectment Case is appeal and not Certiorari, and that if at all, respondent Judge committed an error of judgment and not of jurisdiction.

We are constrained to reverse. Appeal could not have been a plain, speedy and adequate remedy inasmuch as on January 11, 1979, even before the judgment of respondent Judge, dated January 2, 1979, had become final, he had already granted Annie's ex-parte Motion for the release to her of the deposited rentals. Moreover, Certiorari is available despite the existence of the remedy of appeal since said Order was an oppressive exercise of judicial authority amounting to excess of jurisdiction and grave abuse of discretion.

Respondent Judge was also in error in holding that the compromise agreement between the parties in the Ejectment Case (Civil Case No. 102043) was contrary to law and public policy on the theory that "any case should not be made to depend upon the result of another case". To avoid further litigious controversy, it is best that the release of the deposited rentals await the outcome of the Reconveyance Case, which would be determinative of the crucial issue of ownership between Annie, on the one hand, and petitioners Tan, on the other.

Besides, it turns out that petitioner Co had also appealed the judgment in the Ejectment Case (Civil Case No. 102043) to the Appellate Court in CA-G.R. No. 65604--R. That appeal was decided on October 29, 1980[2], which judgment affirmed respondent Judge's Decision but did not resolve the precise issue of whether or not respondent Judge had erred in allowing the release of the rentals to Annie due to the pendency of that question before this Court in these proceedings.

Also, on September 1, 1980, in the Reconveyance Case (Civil Case No. 97656) the then Court of First Instance of Manila, Branch XXXII, rendered its Decision dismissing Annie's Complaint but finding that it was only she who had, in fact, paid the repurchase price to the Bank. Thus, the judgment decreed:

"ACCORDINGLY, judgment is hereby rendered as follows:

- (1) Dismissing the complaint as well as defendants' counterclaim;
- (2) Ordering each of the defendants, namely George Laurel Tan, Teodora Tan Ong, Rosa Tan, and Rosita Tan to reimburse the plaintiff the sum of P30,000.00 plus 12% interest from August 30, 1974 until the whole amount is fully paid;
- (3) Ordering the defendant Mauro Umali Tan who had been ordered in default to execute the deed of sale of his rights and interest over the property covered in Transfer Certificate of Title No. 64806 in favor of the plaintiff in accordance with his instrument of waiver dated June 25, 1974; and
- (4) Without pronouncement as to costs."

Although the case is still pending appeal in CA-G.R. No. 68502 of the Appellate Court, the foregoing judgment rejecting Annie's sole ownership of the disputed property confirms the need for awaiting the final outcome of that case before the release of the deposited rentals to any of the heirs could be justified.

At any rate, insofar as the amount of P53,100.00 is concerned, the issue has become moot and academic inasmuch as this Court, on September 2, 1981, had allowed Annie to withdraw the same, without objection from petitioners Tan, for the payment of real estate taxes on the mortgaged property.

WHEREFORE, judgment is hereby rendered:

- (1) setting aside the Decision of respondent Appellate Court, in CA-G.R. No. 08770-SP; and
- (2) ordering the issuance of a Writ of Prohibition permanently enjoining the enforcement of that portion of the judgment of respondent Judge in Civil Case No. 102043 of the then Court of First Instance of Manila ordering the immediate release of the deposited rentals (now less P53,100.00) to private respondent D. Annie Tan solely. Those rentals shall be released in favor of the prevailing party/parties in CA-GR. No. 68502 of the Appellate Court.

No costs.

**SO ORDERED.**

Abad Santos, Plana, Escolin and Relova, JJ., concur.

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[1] Former Fourth Division, composed of Messrs. Justices Ramon G. Gaviola, Jr., B.S. de la Fuente, ponente, and Edgardo L. Paras.

[2] Eleventh Division, composed of Messrs. Justices Hugo E. Gutierrez, Jr., ponente, Pedro D. Cenzon and Onofre A. Villaluz.

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