

MARIANO SONGCO, PETITIONER, VS. THE PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL

G.R. No. 50500. January 31, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Challenged in this petition for review for "being contrary to the very evidence on the record and against all known rules of evidence and jurisprudence," is the judgment of the defunct Court of First Instance of Quezon City in Civil Case No. 23700, entitled "Lim Hu versus Mariano Songco," which reversed the decision rendered by the City Court of Quezon City in Civil Case No. 28042, bearing the same title.

Considering that the assailed decision of the court of first instance was rendered in the exercise of its appellate jurisdiction over an action for forcible entry, and since said decision is challenged on both legal and factual grounds, the petitioner's recourse would properly be an ordinary appeal to the then Court of Appeals.

Notwithstanding said error in the selection of the proper forum, We are entertaining the present petition so as not to allow "technicalities in appeals to the wrong forum x x x heavily burden the attainment of substantial justice." [1]

Chronologically stated, the pertinent antecedents of this petition are the following:

Respondent Lim Hu and his wife, Maria Ramos Lim, were the registered owners of the house and lot covered by Transfer Certificate of Title No. 68721 of the Registry of Deeds of Quezon City. Sometime in 1964, they mortgaged said property to the Government Service Insurance System, GSIS for short, to secure payment of a P1,155,000.00 loan. Due to the spouses' repeated failure to pay the monthly amortizations, despite demands therefor, the GSIS, on January 16, 1974, extra-judicially foreclosed the mortgage. In the ensuing sale, the property was sold for P274,353.00 to the GSIS, as the highest bidder. The certificate of sale issued by the Sheriff of Quezon City in favor of the GSIS was re-registered with the Office of the Register of Deeds of said city on March 28, 1974.

On April 29, 1974, the GSIS, in order to obtain possession of the foreclosed property, filed in the Court of First Instance of Quezon, City a petition for the issuance of a writ of possession, docketed as G.L.R.O. Rec. No. 7681 Q-408 (74) and assigned to the sala (Branch XVI) then presided by Judge Sergio A.F. Apostol. On June 17, 1974, the latter ordered the issuance of a writ of possession over the premises in question in favor of the GSIS.

However, before said writ could be served, respondent Lim and his wife instituted in the Court of First Instance of Quezon City, a complaint against the GSIS for annulment of the extrajudicial foreclosure and damages, docketed as Civil Case No. Q-19169 and likewise assigned to the sala of Judge Apostol.

On September 12, 1974, the Deputy Sheriff of Quezon City served the writ upon respondent Lim. When the latter refused to vacate the premises, Judge Apostol, on motion of GSIS, issued another writ of possession which was duly served by the Sheriff upon Lim. However, in order to avoid the immediate enforcement thereof, Lim

executed an "Undertaking", promising, among others:

"1. To pay to the Government Service Insurance System on or before 27 August 1975 the amount of P6,500.00 representing two (2) months deposit and one (1) month advance rental on account for the monthly rentals on the pro-perty as may be determined by the GSIS;

2. x x x

3. To peacefully vacate the premises and turn-over possession thereof to the GSIS or whomever the GSIS may authorize, whenever required to do so by the GSIS;

4. x x x

5. To hold the System free and harmless from any suit and all liabilities, claims or damages of whatever kind and nature either connected with, occasioned by or arising from the execution and/or implementation of this undertaking;

6. x x x

7. That the writ of possession being pursued and/or implemented by the Quezon City Sheriff be held in abeyance pending final determination of the actual rental value of the subject property. In the event, however, that the LESSEE fails to pay the monthly rental herein agreed upon and /or to agree with the final determination of the actual rental value of the subject property, the LESSEE hereby agrees to vacate the premises within a period of five (5) days from notice hereof and that the writ of possession being held in abeyance will be executed in accordance with the order of the Court." (p.112, Rollo)

On September 2, 1975, after the redemption period had expired, the GSIS consolidated its title to the property. Consequently, TCT No. 68721 in the name of spouses Lim was cancelled and in lieu thereof, TCT No. 212766 was issued in the name of the GSIS.

On February 19, 1976, the GSIS, pursuant to a resolution adopted by its Board of Trustees,[2] sold the property in question to the Myjay Knitting and Industrial Co., represented by its managing partner, herein petitioner Mariano Songco.

On March 31, 1976, after multiple violations by respondent Lim of the terms of his aforementioned "Undertaking", the Court of First Instance of Rizal (Quezon City), Branch XVI, issued, on motion of the GSIS, another writ of possession. This was served by the sheriff of Quezon City upon Lim and his wife on April 1, 1976, together with a "Notification" giving them five (5) days within which to vacate the premises. The same, however, remained unheeded by the spouses Lim.

Thus, on May 21, 1976, the sheriff of Quezon City, on application by GSIS, took possession of the property in question and delivered the same to the GSIS. On the same day the latter turned over the possession of the premises to petitioner Songco who acknowledged receipt thereof. Respondent Lim was however allowed to occupy a portion of the house until the state of calamity declared by President Marcos by reason of typhoon Didang shall have ceased.

On May 28, 1976, respondent Lim, after vacating the premises, instituted a complaint for forcible entry against petitioner Songco in the City Court of Quezon City, docketed as Civil Case No. 28042.

While this case was pending, a decision was rendered on September 22, 1976 in Civil Case No. Q-19169, dismissing the complaint of respondent Lim against the GSIS.[3] Lim appealed this decision to the Court of Appeals, which affirmed the same on June 22, 1979.[4] His motion for reconsideration having been likewise denied, Lim came to this Court on a petition for review, which We dismissed on February 6, 1980. (p. 330, Rollo)

Meanwhile, the case for forcible entry (Civil Case No. 28042) filed by respondent Lim against Songco was dismissed by the City Court on April 20, 1977. On appeal, however, the Court of First Instance set aside said dismissal, ruling as follows:

"WHEREFORE, the decision of the City Court dated April 20, 1977 is reversed, and another one entered ordering defendant to vacate the residential house, bodega, and lot at 19 Scout Madriñan Street, Diliman, Quezon City, more particularly described in paragraph 2 of the complaint, and to restore possession thereof to plaintiff; ordering defendant to pay plaintiff the amount of P5,000.00 a month from May 21, 1976 until possession is restored to plaintiff, with legal rate of interest of 12% from said date, until fully paid, and ordering defendant to pay plaintiff the amount of P10,000.00 as attorney's fees, with costs against defendants." (p. 183, Rollo)

The above decision is now assailed in this petition.

While this decision was promulgated on November 24, 1978, petitioner's counsel learned of the promulgation thereof only on February 8, 1979, when he checked the records of the case after he was served with a copy of respondent Lim's motion for immediate execution. A motion for reconsideration was filed by petitioner on March 7, 1979, but the same was denied on April 18, 1979. On May 3, 1979, the CFI issued a writ of execution ordering the return of the disputed property to respondent Lim.

We reverse the decision of the respondent Court of First Instance. Said decision was based primarily on its conclusion that the dispossession of respondent Lim Hu of the premises was absolutely bereft of legal authority "as there was no court order authorizing the defendant (herein petitioner) to take possession of the property and notwithstanding that there was existing a litigation over the validity of the foreclosure proceedings in Civil Case No. Q-19169 pending before the CFI of Rizal, Quezon City, Branch XVI." [5] This conclusion is patently unwarranted for it ignored two (2) significant considerations, to wit: [1] That such dispossession was effected pursuant to a writ of possession issued on March 31, 1976 by the CFI of Rizal in GLRO Rec. No. 7681, which was duly served upon respondent Lim on April 1, 1976; and [2] That the issuance of said writ was based upon respondent Lim's violation of terms and conditions of his own Undertaking, consisting in the repeated failure to pay the stipulated rent for his continued stay in the premises.

It must be noted that respondent Lim, in his "Undertaking" dated August 13, 1975, agreed, among others:

"3. To peacefully vacate the premises and turn-over possession thereof to the GSIS or whomever the GSIS may authorize, whenever required to do so by the GSIS;

"7. That the writ of possession being pursued and/or implemented by the Quezon City Sheriff be held in abeyance pending final determination of the actual rental value of the subject property. In the event, however, that the LESSEE fails to pay the monthly rental herein agreed upon and/or to agree with the final determination of the actual rental value of the subject property, the LESSEE hereby agrees to vacate the premises within a period of five (5) days from notice hereof and that the writ of possession being held in abeyance will be executed in accordance with the order of the Court."

Having thus entered into such agreement, respondent Lim cannot belatedly object to its enforcement, particularly where it was well within his power and volition to prevent the execution of the writ through faithful observance of his "Undertaking".

The fact that the action for annulment of the foreclosure proceedings was still pending at the time respondent Lim was dispossessed of the premises is of no consequence. As explained by this Court in *Marcelo Steel Corp. v. Court of Appeals*: [6]

"Sections 7 and 8 of Act No. 3135, as amended, provide:

"SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province of place where the property or any part thereof is situated, to give him possession hereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form or an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings if the property is registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six, as amended by Act Numbered Twenty-Eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

"SEC. 8. The debtor may, in the proceeding in which possession was requested but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

"As may be seen, the law authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceedings for this is ex parte."

The right of possession being clearly vested on the GSIS, the petitioner's predecessor-in-interest, not only by reason of a writ of possession validly issued by the court, but likewise by reason of respondent Lim's recognition of such right as embodied in his Undertaking, the dismissal of the action for forcible entry instituted by the latter against herein petitioner is proper.

WHEREFORE, the decision of the Court of First Instance of Rizal, Quezon City, Branch XXXI in Civil Case No. 23700 is hereby reversed. No costs. SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] *Molet v. Workmen's Compensation Commission*, 83 SCRA 170.

[2] Annex "E", p. 113, Rollo.

[3] Annex "L", p. 131, Rollo.

[4] Annex "AA", p. 241, Rollo.

[5] p. 176, Rollo.

[6] 54 SCRA 89.

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