

**JULITO ZAMORA, LYDIA ZAMORA AND NGO KIENG, PETITIONERS,
VS. COURT OF FIRST INSTANCE OF BULACAN (BALIUAG) BRANCH IV
AND FELIBERTO V. CASTILLO, RESPONDENTS.**

G.R. No. 54012, December 15, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Special civil action of certiorari and prohibition with preliminary injunction and/or restraining order to annul and set aside the Order[1] of respondent court dated May 27, 1980, setting the motion of private respondent to declare petitioners in contempt of court together with the motion for their arrest for repeated defiance of the orders for their appearance in court, for hearing on June 11, 1980 at 9:00 a.m., as well as the subpoena[2] requiring petitioners to appear before said court for examination under oath on the said scheduled date of hearing, in connection with Civil Case No. 1065-B.

It appears that on October 8, 1979, private respondent Feliberto Castillo filed before the respondent court a complaint for recovery of possession and administration of conjugal partnership assets, docketed as Civil Case No. 1065-B, against his wife Salome M. Castillo and Pedro Almogela, by virtue of which, the respondent court, upon motion of private respondent, as plaintiff therein, issued a writ of preliminary mandatory injunction,[3] ordering defendant Salome M. Castillo, and/or her heirs, agents, privies, lawyers, or anybody acting under her, to surrender certain properties for plaintiff's administration as described in the complaint, one of which is the property located at 960-962 Adelina St., Sampaloc, Manila and another, at No. 8, Mango Road, Malabon, Manila, now being respectively leased to petitioners-spouses Julito Zamora and Lydia Zamora and allegedly to one Fernando Beng Kai, whose business partner and overseer is herein petitioner Ngo Kieng, who is the occupant of the latter above-mentioned property.

Under date of February 29, 1980, the respondent court, on motion of private respondent, issued an Order[4] requiring petitioners to appear before said court on March 7, 1980, at 8:30 a.m. for examination under oath in connection with their occupancy of the above-mentioned properties, together with all the improvements thereon, bringing with them the contract of lease, if they have any. However, at the aforesated date and time of hearing, petitioners failed to appear.

Under date of March 7, 1980, petitioners Julito Zamora and Lydia Zamora filed a motion[5] praying that they be exempt from appearing before the respondent court on the ground, inter alia, that the distance of travel from their place of residence to said court is not less than fifty (50) kilometers. Said motion was however denied by respondent court per order of April 7, 1980 and petitioners were ordered anew to appear on April 29, 1980 at 8:30 a.m. for examination under oath.[6] Again, during the aforesated scheduled hearing, petitioners failed to appear, thus prompting private respondent to file a motion[7] to declare them in contempt.

On May 27, 1980, the respondent court issued the herein questioned order setting for hearing the said motion for con-tempt filed by private respondent and on the day following, or on May 28, 1980, the corresponding subpoena

was issued commanding petitioners to appear before said court for examination under oath during the hearing scheduled for June 11, 1980. It is against these Order and Subpoena that the present recourse was filed. As prayed for, a temporary res-training order was issued in the resolution of June 16, 1980 enjoining the enforcement and/or carrying out of the said order.

From the pleadings, the critical issue for resolution is whether or not the respondent court has the power to compel the attendance of petitioners during the hearing of Civil Case No. 1065-B, for if it has, then the validity of the questioned order and subpoena will have to be upheld. It is the insistence of petitioners that pursuant to Section 9 of Rule 23, Rules of Court, they may not be compelled to testify out of the province in which they reside considering that the distance from their respective places of residence to the place of trial is not less than fifty (50) kilometers, to which private respondent disagrees on the assertion that "Baliuag is only about 46 kilometers from the Manila City Hall, since the inception of the Express way or Super Highway." Petitioners further argue that the writ of preliminary mandatory injunction issued by the respondent court, from which the questioned order proceeds, is unenforceable outside of the judicial district of the respondent court.

Considering however that, as claimed by the petitioners[8] and not denied by private respondent, Civil Case No. 1065-B was already considered submitted for decision as of the middle part of 1980 after this petition was filed, We perceive no further reason for the respondent court, much less the private respondent who is the very person interested in requiring petitioners to appear before said court, to insist for the attendance of petitioners to appear at the hearing of said Civil Case No. 1065-B. Hence, a determination and resolution of the issues raised in this petition would be superfluous.

WHEREFORE, the questioned Order and Subpoena are hereby declared without force and effect, and the temporary restraining order heretofore issued is hereby made permanent. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
Aquino, J., no part.

[1] Annex "M" Petition, p. 33, Rollo.

[2] Annex "N" Petition, p. 35, Id.

[3] Annex "A" Petition, p. 10, Id.

[4] Annex "E" Petition, p. 19, Id.

[5] Annex "F" Petition, p. 20, Id.

[6] Annex "J" Petition, p. 27, Id.

[7] Annex "H" Petition, p. 22 Id.

[8] Memorandum for Petitioners, p. 114, Rollo.

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