

**RONQUILLO PERATER, NESTOR YEBRA, RODOLFO GALAGNARA,
ANASTACIO MAURO, EDGAR LINGONDAN, ANASTACIO ENGLATERA,
CRISENTE SIMPAO, CESAR GALOPE, PETER ROA, ALVARO
CAHARIAN, ALVARO ICHO...**

G.R. No. 54553. May 29, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether the petitioners, as actual possessors of the land, may be ejected by the winning parties in a case where the petitioners were not parties, where the defeated parties were petitioners' alleged lessors or vendors and where the judgment did not touch upon the possession of the land.

Rodolfo Ygsi and his wife were the registered owners since April 26, 1972 of a portion, with an area of 17,109 square meters, of Lot No. 3716, located at Barrio Macabalan, now Vicmar, Puntod, Cagayan de Oro City as shown in OCT No. 0-530 (p. 39, Rollo). That portion is now known as Lot No. 18481 (p. 57, Rollo).

A part of Lot No. 18481, which part has an area of 7,676 square meters, was sold by the Ygsi spouses to Tinio Overland, Inc. By reason of that sale TCT No. T-15665 was issued to Tinio Overland for Lot No. 18481-A, while TCT No. T-14880 was issued to the Ygsi spouses for the remainder of the lot or Lot No. 18481-B (pp. 39-40; 61, Rollo).

On April 18, 1973, Cenona, Cornelio, Francisca, Uldarico, Casiano, Venancia, Prisca, Avelino and Pureza, all surnamed Yaba, filed Civil Case No. 4166 in the Court of First Instance of Misamis Oriental to annul, on the ground of fraud, the titles issued to the Ygsi spouses and Tinio Overland.

The lower court in its decision of November 29, 1974 dismissed the complaint and ordered the Yaba plaintiffs to pay solidarily the sums of P3,200 and P3,000 to Ygsi and Tinio Overland, respectively, as attorney's fees and litigation expenses (pp. 54-55, Rollo).

The possession of the land was not passed upon in that decision which was affirmed by the Court of Appeals (Yaba vs. Ygsi, CA-G. R. No. 57826-R, March 23, 1979, pp. 56-64, Rollo).

After the record was returned to the lower court, or on February 4, 1980, Tinio Overland filed a motion praying that writs of execution and possession be issued, ordering the sheriff to place it "in possession of the property litigated in his name" (sic) (pp. 65-66, Rollo).

The motion was granted. On March 10, 1980, writs of execution and possession were issued, commanding the sheriff to levy upon the properties of the Yaba plaintiffs to satisfy the judgments for P3,200 and P3,000 in favor of Ygsi and Tinio Overland, respectively, and to require the plaintiffs to vacate Lot Nos. 18481-B and 18481-A covered by TCT Nos. T-14880 and T-15665 and to place the Ygsi spouses and Tinio Overland in possession thereof (p. 68 and 69, Rollo).

The sheriff in his return dated April 26, 1980 indicated that Tinio Overland and the Ygsi spouses were placed in possession of their respective lots (p. 71, Rollo). But he also named thirty-three couples and individuals (aside from the Yaba plaintiffs), many of whom are now petitioners herein, who were occupying the two lots (pp. 71-73, Rollo).

On May 16, 1980, Ygsi and Tinio Overland filed a motion for demolition of petitioners' houses. Respondent judge gave them thirty days from notice to vacate the land or demolish their houses; otherwise, the sheriff would undertake the demolition at their expense.

The petitioners moved for the lifting of the order of demolition on the grounds that they were not parties in Civil Case No. 4166, they were lawful possessors and builders in good faith, and they would be deprived of their property without due process of law. The motion was denied in the order of August 5, 1980. The petitioners came to this Court on August 19, 1980.

We hold that the writ of possession and order of demolition directed at the petitioners are void. The petitioners should be heard first before they are ejected. Civil Case No. 4166 did not deal with the issue of possession. (See *Gatchalian vs. Arlegui*, L-35615 and *Tang Tee vs. Arlegui*, L-41360, February 17, 1977, 75 SCRA 234; *Asuncion vs. Plan*, G. R. No. 52359, February 24, 1981, 103 SCRA 181; *Olego vs. Rebuena*, L-39350, October 29, 1975, 67 SCRA 446, *Del Rosario vs. Court of Agrarian Relations*, G. R. No. 60819, January 28, 1983, 120 SCRA 422).

"Judgments for ownership; Possession not necessarily included. - Ownership is different from possession. A person may be declared owner but he may not be entitled to possession. The possession may be in the hands of another either as a lessee or a tenant. A person may have improvements thereon of which he may not be deprived without due hearing. He may have other valid defenses to resist surrender of possession. We, therefore, hold that a judgment for ownership does not necessarily include possession as a necessary incident." (Syllabus, *Jabon vs. Alo*, 91 Phil. 750).

"Judgment; When delivery of possession may not be ordered. - G sued T and E to annul a deed of sale of land made by E to T. E had previously sold same land to G. T argued that the sale to G was void. Complaint was dismissed and judgment became final. Later, T asked for execution and delivery of property to him. Held: Delivery may not be ordered on execution because judgment did not provide for transfer of possession." (Syllabus, *Talens vs. Garcia*, 87 Phil. 173).

However, in the interest of expeditious justice and fundamental fairness or due process, as a proceeding supplementary to execution, and to obviate unnecessary expenses, Ygsi and Tinio Overland may file in the same Civil Case No. 4166 a motion for the ejectment of all the occupants of Lots Nos. 18481-A and 18481-B (they should have been impleaded in that case), setting forth their names. The motion should be served by the sheriff in the same manner as a complaint.

The petitioners may be summoned through their lawyer, Bartolome F. Jatico. Other families, mentioned by respondents' lawyer in his motion of March 28, 1984, should be summoned. The occupants should answer the motion. They should plead their defenses and claims. The trial court should resolve the motion as may be warranted under the law and the environmental facts.

WHEREFORE, the writ of possession and order of demolition, insofar as the petitioners are concerned, are annulled and set aside. The case is remanded to the lower court for further proceedings. No costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

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