

JAIME PELEJO AND BELEN C. ZABALLERO, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, PATERNO C. ZABALLERO AND AURORA GONZALES, RESPONDENTS.

G.R. No. 60800, October 18, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

In Our decision which was promulgated on August 31, 1982, We stated the following:

"On July 3, 1979, herein petitioners filed Civil Case No. 124771 for Annulment of Deed, Title, Reconveyance and Damages. According to petitioners, respondents Paterno C. Zaballero and his wife Aurora Gonzales Zaballero approached them sometime in 1974 for assistance. They borrowed the title TCT No. T-49125, covering the property so that they could have a collateral for a loan from the Monte de Piedad Bank, the proceeds of which would finance respondents' rice mill business in San Juan, Batangas. To accommodate herein private respondents, who are the brother and sister-in-law, respectively, of petitioner Belen C. Zaballero, a simulated Deed of Absolute Sale with Assumption of Mortgage was executed in favor of Mr. and Mrs. Paterno C. Zaballero. The Zaballeros took the Deed of Sale to mean what it stated and had the title transferred to their names. As a consequence, TCT No. T-49125 was cancelled and TCT No. 130117 was issued in the names of the Zaballeros.

"In their answer to the complaint, respondents denied the allegations of simulated sale and claimed that the Deed of Absolute Sale was properly executed in good faith before a notary public of the Philippine National Bank; that the P400,000.00 stated in the deed was paid to herein petitioners while the P200,000.00 PNB Mortgage was eventually paid to the bank; that the P600,000.00 was a fair price for the properties in 1974 when the conveyance was executed; that petitioner Belen Zaballero, an older sister of respondent Paterno Zaballero, now regrets having sold the property for only P600,000.00 because a relative volunteered to help her negotiate a one-million peso loan on the property as collateral.

"On August 22, 1980, the trial court issued an order dismissing the complaint but allowing the petitioners to file an amended complaint within ten (10) days. The original complaint was dismissed upon motion of the private respondents on the ground that it did not state a cause of action, and assuming there was a cause of action, it was already barred by statute. The petitioners filed their amended complaint after September 18, 1980 which was beyond the ten-day period.

"On October 14, 1980, the trial judge denied the admission of the amended complaint in an order which reads:

'Acting on the Motion to Admit Amended Complaint as well as the opposition thereto, and it appearing that said amendment is studiedly not in accordance with what the parties have agreed upon in open Court, which is inimitably for collection of a Sum of Money, the same should be, as it is hereby, DENIED.'

"This order dismissing the complaint in Civil Case No. 124771 was not appealed or otherwise elevated to an appellate court. Instead, petitioners filed a new complaint for 'Annulment of Deed, Title, Reconveyance and Damages' which was docketed as Civil Case No. 140996 and assigned to another branch of the Manila Court

of First Instance.

"On September 9, 1981, Judge Fidel P. Purisima of Branch XX dismissed the new case (Civil Case No. 140996) on the ground that the dismissal of Civil Case No. 124771 and the subsequent denial of the Motion to Admit Complaint amounted to res judicata barring the new complaint.

"The dismissal of the second case (Civil Case No. 140996) was appealed to the Court of Appeals where it is still pending resolution.

"In the meantime, respondents Paterno Zaballero and Aurora Gonzales Zaballero filed Civil Case No. 144435, captioned 'Accion Reinvidicatoria or Publiciana, with Collection and Damages,' but the same was dismissed by Court of First Instance Judge Maximo A. Maceren on February 4, 1982 on the ground that it was actually an action for illegal detainer which is not within the jurisdiction of his court.

"The dismissal of said Civil Case No. 144435 was appealed by private respondents to this Court where it is still pending action.

"Thereafter, herein private respondents filed a motion for the issuance of a Writ of Possession in Civil Case No. 124771. On March 30, 1982, Judge Abelardo Dayrit of the Court of First Instance granted the motion and issued a Writ of Possession 'ordering the Sheriff of the City of Manila to place in possession the herein defendants Paterno C. Zaballero and Aurora Gonzales Zaballero, in the premises at 541 M.V. delos Santos Street, Sampaloc, Manila, and eject therefrom the herein plaintiffs Jaime Pelejo and Belen Zaballero Pelejo, and all persons claiming under said plaintiffs.'"

As a consequence, on April 6, 1982, the possession of the property in question was turned over to herein respondents when the City Sheriff of Manila enforced the writ of possession, dated March 30, 1982, issued in Civil Case No. 124771.

In Our decision, dated August 31, 1982, We found merit in instant petition because the order of the lower court dated August 22, 1980, was a dismissal of the complaint (Civil Case No. 124771) on the grounds alleged in defendants' motion to dismiss. However, on grounds of justice and equity, We set aside this decision based on the following grounds:

1. The writ of possession has already been implemented;
2. In the complaint filed by herein petitioners (Civil Case No. 124771 for Annulment of Deed, Title, Reconveyance and Damages) they admitted that subject property is now covered by TCT No. T-130117 in the names of private respondents, spouses Paterno C. Zaballero and Aurora Gonzales. Likewise, the Court of Appeals, in its decision, dated April 29, 1982, stated that "the lot and buildings are now covered by TCT #130117 in the names of the respondents."
3. A mandatory injunction is granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damages. Petitioners' right over the property is not clear. As stated above, the title to the property in question is already in the names of private respondents who, therefore, have better right to the possession thereof.
4. The procedural error incurred by private respondents in not asking for affirmative relief in the dispositive portion of the lower court's order dismissing the case and which led to the dispute surrounding the propriety of the issuance of the writ of possession is a mere technicality which would not prevail over considerations of substantial justice. There is no point in prolonging the litigation when private respondents are the owners of the property and therefore are entitled to its possession. It would be an injustice to allow petitioners to continue

holding subject property.

ACCORDINGLY, We reconsider and set aside Our decision dated August 31, 1982 and hereby DISMISS instant petition.

SO ORDERED.

Teehankee, (Chairman), Plana, and Vasquez, JJ., concur.

Melencio-Herrera, J., in the result.

Gutierrez, Jr., J., took no part.

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