

**NEVILLE Y. LAMIS ENTS. AND/OR NEVILLE Y. LAMIS, PETITIONERS,
VS. HON. ALEJANDRO SILAPAN, JUDGE OF THE COURT OF FIRST
INSTANCE OF DAVAO PROVINCE, BRANCH I, TAGUM, AND SANTIAGO
MA...**

G.R. No. 61419. December 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This concerns a Komatsu Bulldozer which was delivered to Neville Y. Lamis Ents. by Santiago Maningo as evidenced by a Memorandum Agreement. In Civil Case No. 1395 of the Court of First Instance of Davao Maningo sought, among other things, the payment of the value of the bulldozer from Neville Y. Lamis Ents. who moved to dismiss on the ground of multiplicity of suits and improper venue. When the motion was denied, Neville Y. Lamis Ents. went to Us. In G. R. No. 57250, Neville Y. Lamis Ents., et al. vs. Lagamon, et al. , October 30, 1981, 108 SCRA 740, We granted the petition for certiorari and ordered the dismissal of Civil Case No. 1395.

In granting the petition, We found that Civil Case No. 1395 was a duplication of Civil Case No. 35199 of the Court of First Instance of Rizal which Neville Y. Lamis Ents. had previously filed against Santiago Maningo. In Our decision We said, among other things, that: "Similarly, the private respondent's claim for the purchase price of the tractor [the Komatsu Bulldozer] is barred. This claim should have been set up in Civil Case No. 35199, of which, in one of the causes of action it was alleged that there was a misdelivery of tractor for which reason the plaintiff therein asks for the delivery of the tractor specified in the Memorandum Agreement." (At p. 755 of 108 SCRA.)

In December, 1981, Maningo filed in the Court of First Instance of Davao at Tagum Civil Case No. 147 against Neville Y. Lamis Ents. for "FORECLOSURE OF CHATTEL MORTGAGE, INTEREST, DAMAGES AND ATTORNEY'S FEES WITH REPLEVIN AND PRAYER FOR ATTACH-MENT." But on December 14, 1981, the complaint was amended as only for "REPLEVIN, DAMAGES and ATTORNEY'S FEES."

On December 21, 1981, over the opposition of Neville Y. Lamis Ents. the court a quo granted the application for replevin and ordered the seizure of the Komatsu unit. The court reasoned that the issue before it is possession, not the price of the unit.

In the instant petition, Neville Y. Lamis Ents. complains that Civil Case No. 147 is not only again duplicitous but it also disregards Our decision in G. R. No. 57250. Hence We are asked to order the dismissal of Civil Case No. 147.

The petition is impressed with merit. It is obvious that the private respondent is embarked on a campaign of harrassment by filing suit after suit against the petitioner.

While it is true, as We have said, that the private respondent's claim for the purchase price of the Komatsu tractor is barred in Civil Case No. 35199 and in any suit for that matter, there is nothing in Our pronouncement to prevent

the Rizal Court of First Instance from deciding the question of possession in respect of the tractor. Therefore, litigation in any other case of said possession is not only unnecessary and improper but it is also barred by Our decision in G.R. No. 57250.

WHEREFORE, the petition is granted; the respondent judge is ordered to dismiss Civil Case No. 147. Private respondent shall pay treble costs.

SO ORDERED.

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

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