

**BENITO DILAG, SUSETTE DILAG, SUSSIE DILAG AND SUSAN DILAG,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND
MARCIANO ARELLANO, RESPONDENTS.**

G.R. No. 72727. July 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

This petition seeks the reversal of the decision[1] of the then Intermediate Appellate Court (IAC) promulgated on March 29, 1985 in AC-G.R. SP No. 03145, the dispositive portion reading as follows:

"WHEREFORE, a writ of certiorari is hereby issued setting aside as null and void the Order dated August 26, 1983 granting the writ of preliminary injunction. Let the records of this case be remanded to the trial court for further proceedings. No pronouncement as to costs.

SO ORDERED."

Likewise, this petition seeks to reinstate the Order[2] dated August 26, 1983 of the Regional Trial Court (RTC) Iloilo City in Civil Case No. 15085, its dispositive portion read-ing:

"PREMISES CONSIDERED, plaintiffs having shown at least colorable title and having been in actual possession of Lots 288 and 1927, Dumangas Cadastre, let there issue a writ of preliminary prohibitory injunction commanding the defendants, their agents, successors, representatives and/or persons acting in their behalves to desist from enter-ing and wresting possession of Lots 288 and 1927 pursuant to the writ of possession (x x x) and to refrain from disturbing the possession of plaintiffs upon the filing of the bond in the sum of FORTY THOUSAND (P40,000.00) PESOS, until further orders from this Court.

"SO ORDERED."

Antecedent to the filing of Civil Case No. 15085, pri-vate respondent herein, Marciano Arellano, as parent of the late Herminio Arellano who had died in a vehicular accident occurring on July 1, 1968 involving a truck owned by spouses Pablo and Socorro Dilag, was awarded by the trial court in an action for quasi-delict docketed as Civil Case No. 8714 the sum of P14,500.00 plus moral damages in the amount of P6,000.00 plus attorney's fees in the sum of P1,000.00 with legal interest from July 1, 1968 until fully paid by spouses Pablo and Socorro Dilag. Said decision having become final, a writ of execution was issued on February 16, 1979 by the trial court.

On March 29, 1979, the Dilag spouses filed before the Court in Civil Case No. 12832 a petition for relief from judgment praying that the decision in Civil Case No. 8714 be set aside. A compromise agreement between the parties in CC#8714 was presented but the same was disapproved by the Court in an order dated October 24, 1979 for failure of the Dilag spouses to sign it, although it was alleged by private respondent that the Dilag spouses made a partial payment of P9,000.00 to herein private respondent Marciano Arellano. Subsequently Civil Case No. 12832 was dismissed.

Pursuant to the Writ of Execution issued by the court on February 16, 1979, a Notice of Levy on Execution was

annotated on TCT No. 30137 on February 21, 1979, covering a parcel of land in Dumangas, Iloilo described as Lot No. 288 consisting of about 212,513 square meters registered in the name of spouses Pablo and Socorro Dilag.

An examination of TCT No. 30137 shows that inscribed therein is an Adverse Claim dated March 11, 1974 filed by Suzette, Benito, Sussie and Susan all surnamed Dilag to protect their rights and interests as vendees evidenced by a Deed of Absolute Sale executed in their favor by their parents Pablo and Socorro Dilag on November 21, 1973. The adverse claim further stated that the owner's duplicate certificate was then in the possession of the Development Bank of the Philippines to which the property had earlier been mortgaged. Said TCT further shows an inscription on July 25, 1979 of a Contract of Lease executed on February 9, 1979 by the spouses Pablo and Socorro Dilag in favor of David and Erlinda Diancin who took possession of the property (lot 288) described in said TCT as lessees thereof.

After compliance with the legal requirements of notice and publication and pursuant to the Writ of Execution, Lot 288 under TCT No. 30137 and Lot 1927 (unregistered but declared in the name of the Dilag spouses in Tax Declaration No. 411900-3039) were sold at public auction by the Provincial Sheriff on August 26, 1981 to Marciano Arellano as the highest bidder in the amount of P35,520.00. On August 27, 1981, at 9:00 a.m. the corresponding Certificate of Sale at public auction was inscribed on TCT No. 30137 bearing Entry No. 376586 subject to the right of redemption as provided for by law. Following said inscription and supposedly on the date and time, another inscription appears bearing Entry No. 375850, a Deed of Absolute Sale dated August 26, 1981 execute by Pablo Dilag, with the consent of Socorro Dilag, in favor of their children petitioners herein of Lot 288 for the sum of P30,000.00. TCT No. 30137 was cancelled and a new one TCT No. 104986 was issued in the name of Benito, Susette, Sussie and Susan, all surnamed Dilag on August 14, 1981.[3]

On August 30, 1982, after the Dilag spouses failed to exercise their right of redemption, a Definite Deed of Sale over the property (Lot 288) was executed by the Provincial Sheriff in favor of Marciano Arellano. A writ of possession was issued on December 20, 1982. Sheriff's Return of Service, dated December 24, 1982 attested to the fact that on December 22, 1982, delivery of possession of the subject lot was made to Marciano Arellano, who executed a Delivery Receipt acknowledging receipt of the material possession of Lot No. 288, among other things. On December 24, 1982 Marciano Arellano sold Lot No. 288 to Marcelino Florete Jr. and Leon Co for P150,000.00. David Diancin, the actual lessee of the property in question, executed on July 2, 1983 a deed giving up his claim or interest as a lessee over the leased property in favor of Marciano Arellano and/or his successors-in-interest in consideration of P38,000.00 as payment for his fish fry placed in the fishpond. On July 3, 1983, Diancin informed the Dilag children that he had nothing to do anymore with the fishpond or lot in question because he had assigned whatever right he had thereon. On July 7, 1983, Sussie Dilag in behalf of her sisters and brother, executed a Notarial Recission effective July 2, 1983 of the Lease Contract dated July 7, 1974 entered into by Diancin and the Dilag spouses.

Subsequently the Dilag children filed Civil Case No. 15085 for the annulment of decision in Civil Case No. 8714 and all proceedings thereafter with prayer for injunction and temporary restraining order, alleging among other things, that the levy on execution on TCT No. 30137 was illegal since it was made on property no longer owned by judgment debtors (the Dilag spouses); that they (Dilag children) are not parties in Civil Case No. 8714 and that the claim of the judgment creditor should be brought against the administrator of the estates of the spouses Pablo and Socorro Dilag.

On July 8, 1983, the court issued a restraining order directing defendants (private respondent herein) and his agents to desist from entering and wresting possession of Lot No. 288 and from disturbing the possession of the Dilag children.

Motion to Dismiss was filed by defendants (private respondents herein) on the ground that the court has no jurisdiction to annul a judgment of another branch of the same. Motion was denied and on August 26, 1983, order was issued by the court granting the prayer of the Dilag children for preliminary prohibitory injunction.

On October 20, 1983, Marciano Arellano filed a Motion for Reconsideration and exception to the bond and offered a counterbond double that of the Dilag children. The lower court denied it on the ground that the answer with the defenses and counterclaim raised the issue of ownership, which is within the exclusive and original jurisdiction of the Regional Trial Court (RTC) and that the offer of a counterbond by Marciano Arellano cannot dissolve the injunction not being coupled with a clear legal right of possession over the land in question. Denied by the lower court of his motion for reconsideration, defendant Marciano Arellano filed his petition for certiorari, prohibition and/or injunction with preliminary mandatory injunction and damages to invalidate the Orders issued by the trial court in Civil Case No. 15085 with the Intermediate Appellate Court (now known as the Court of Appeals) relying on the following grounds:

"The respondent Judge exceeded his jurisdiction and/or gravely abused his discretion as amounting to lack of jurisdiction when he granted the writ of preliminary injunction.

"The respondent Judge acted without jurisdiction when he took cognizance of Civil Case No. 15085."

In sustaining the trial court's authority in taking cognizance of the complaint, the appellate court declared thus:

"While the complaint in Civil Case No. 15085 is captioned 'Annulment of Decision in Civil Case No. 8714 - RTC and all Posterior Proceedings thereafter....', the action in reality is one for the vindication of right of ownership of a third party on a property which was levied in execution, for 'it is not the caption of the pleading, but the allegations thereof that determine the nature of the action; that even without the prayer for a specific remedy, proper relief may nevertheless be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant'. (Chacon Enterprises vs. Court of Appeals, 124 SCRA 784). In that vein, the action prays for judgment declaring inoperative the levy and sale on execution against the property in question and for an award of damages. This cause of action is a proper remedy for the aggrieved third party x x x" (Dilag children).

As to the other issue, the Appellate Court sided with the petitioner Marciano Arellano (respondent herein) on the latter's contention that the conveyance relied upon by the Dilag children in giving them title to the property is a simulated sale between them and their parents (the former owners of Lot No. 288) on November 21, 1973. The Appellate Court took into consideration the following circumstances: 1) in 1979, years after the alleged sale in 1973 a contract of lease over the lot in question was executed by the Dilag spouses (parents of the Dilag children) in favor of David Diancin, clearly an act akin to ownership of the Dilag spouses; 2) in 1981, the same property was again the subject of a deed of sale from the Dilag spouses in favor of their children for an insufficient consideration or value of P30,000.00 for an area of 21 hectares when said land was mortgaged to Development Bank of the Philippines on June 6, 1973 for P86,300.00; 3) on July 7, 1983, Sussie Dilag purportedly in behalf of the other Dilag children executed a notarial rescission of the lease contract entered into between the Dilag spouses and Diancin in 1979, an indication that there was a valid contract of lease entered into in 1979 by the legal owners, the spouses Pablo and Socorro Dilag with David Diancin, and 4) in 1983 the leasehold right was waived by David Diancin the lessee, in favor of Marciano Arellano in consideration of P38,000.00 and Arellano, in turn, sold the property to Marcelino Florete for P150,000.00.

The appellate court ruled that the deed of sale was simulated since it was executed in fraud of creditors having been entered into during the pendency of Civil Case No. 8714. Said contract, being fictitious, is according to the appellate tribunal, inexistent and necessarily the adverse claim of private respondents^[4] is likewise a nullity because an inexistent contract cannot give life to anything at all. Hence the filing of the present petition for

certiorari by the Dilag children with the following issues:

1. Whether or not petitioners as plain-tiffs below, are the owners of Lots 288 and 1927, of the Dumangas Cadas-tre at the time of the levy on execution in Civil Case No. 8714.
2. Whether or not the decision and the consequent writ of execution in Civil Case No. 8714 of the court below are operative against peti-tioners who admittedly were not parties to said civil case.

Petitioners' contentions do not hold water.

It is not disputed that at the time of the levy on execution in Civil Case No. 8714 the Dilag spouses were still the registered owners of Lot 288 as shown in TCT No. 30137 and they were also the declared owners of Lot 1927 as shown in Tax Declaration No. 411900-3039. On the other hand, it is alleged by private respondent herein and not refuted by petitioners herein that the title in the name of herein petitioners was issued on August 14, 1981, several days ahead of the deed of sale, dated August 26, 1981 on which the new title in the name of the petitioners was based, and inscribed on August 27, 1981. Clearly the Deed of Absolute Sale in favor of petitioners herein executed in 1974 after the filing of Civil Case No. 8714 was a simulated and fic-titious transaction to defraud Arellano who obtained a money judgment against the parents of petitioners.

The supposed sellers, spouses Pablo and Socorro Dilag who sold the lot in question to their children (petitioners herein) for an insufficient consideration continued exer-cising acts of ownership over Lot No. 288 by leasing the same to David Diancin and turning over material possession thereof to the latter as lessee. In fact, when the deed of sale in favor of Arellano was executed on August 30, 1982, by virtue of the failure of the former owners to redeem the property within the period prescribed by law, the actual possessor was David Diancin. He however recognized Arellano's right of ownership when he was notified of the delivery of possession to Arellano by the Provincial Sheriff as evidenced by a signed delivery receipt, dated December 12, 1983. Dian-cin ceased performing acts of cultivation on the fishpond situated within the lot in question and he merely requested for an extension of his stay while he looked for another place to stay. Subsequently, Arellano sold the lot to Marcelino Florete and Leon Coo. When Diancin was paid the value of the fish fry he placed in the fishpond, he executed a Discharge and Release Claim in favor of Florete, one of the vendees, on July 2, 1983. When the Dilag children (petitioners herein) filed Civil Case No. 15085 on July 5, 1983, they were not in possession of the property in ques-tion. There was therefore no factual and legal basis for the restraining order dated July 8, 1983 of the lower court ordering Arellano and/or his agents to desist from entering Lot No. 288. Thus Rule 39 Sec. 13[5] relied upon by petitioners will not apply in the case at bar.

Likewise it cannot be denied that in securing the cancellation of TCT No. 30137 covering Lot No. 288 in the names of Pablo and Socorro Dilag, petitioners had to rely on ano-ther deed of absolute sale supposedly executed by their parents in their favor in 1981, instead of relying on the first deed of sale executed in 1974, an indication that petitioners do not really consider the 1974 deed of sale valid and legal.

The records of the case do not support petitioners' contention that the obligation of spouses Pablo and Socorro Dilag was already extinguished when Arellano acknowledged the receipt of payment of the money judgment, by virtue of their own admission thru counsel in Civil Case No. 12832 that pay-ment was only partial and did not cover the whole amount of the money judgment in Civil Case No. 8714. It is also an undisputable fact that the compromise agreement in Civil Case No. 8714 was denied by the trial court in its order of October 24, 1979. This order of denial had become final and execu-tory because no appeal was taken by petitioners' predecessors--in-interest. Furthermore, even assuming that petitioners became the valid and legal owners of the lot in question by virtue of the deed of sale executed in their favor in 1981, they nonetheless failed to avail themselves of their right as registered owners to redeem the property from the private respondent herein (buyer in

the sale by public auction) within the period provided for by law.

WHEREFORE, the petition is hereby DENIED for lack of merit and the assailed decision of the appellate court is hereby AFFIRMED.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Hon. Justice Jose F. Racela, Jr., concurred in by Hon. Justices Simeon M. Gopengco, Lino M. Patajo and Fidel P. Purisima.

[2] Decided by Hon. Judge Nicolas Sian Monteblanco.

[3] Marked as Exh. 4-B in the Order of the RTC in Civil Case No. 15085 dated August 26, 1983, Annex "A" p. 24, Rollo.

[4] Petitioners herein (the Dilag children) namely: Benito Dilag, Susette Dilag, Sussie Dilag and Susan Dilag.

[5] Sec. 13. How execution for the delivery or restitution of property enforced. - The officer must enforce an execution for the delivery or restitution of property by ousting there-from the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution.

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