

JULIO BARANDA AND ROBERTO BARANDA, PETITIONERS, VS. HON. ALFONSO BAGUIO, THE PROVINCIAL SHERIFF OF BACOLOD, RURAL BANK OF HINIGARAN, INC., RESPONDENTS.*G.R. No. 76415. August 30, 1990*

Ponente: PARAS, J.

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This is a petition for certiorari and prohibition with preliminary injunction seeking the annulment of the September 16, 1976 Order of the Regional Trial Court, Branch XLIV Bacolod City* granting the petition for issuance of a writ of possession in T.C.T. Nos. T-47199 L.R.C. No. 105 entitled In Re: "Petition for Issuance of Writ of Possession Rural Bank of Hinigaran Inc. - Petitioner".

Herein petitioners are the children of the late Lumen Baranda who, in 1975, acquired a loan of P37,000.00 from herein private respondent Rural Bank of Hinigaran, Inc. (BANK for short). To secure the loan, she mortgaged two parcels of land covered by Transfer Certificates of Title Nos. T-55533 and T-47199. She also executed an affidavit that the said parcels of land are not tenanted and have no tenancy obligation whatsoever (Rollo, p. 80). In 1976, the loan was increased to P42,000.00. Lumen Baranda failed to pay the loan on its maturity date. The said parcels of land were foreclosed and then sold at public auction to respondent BANK, being the highest bidder. The right of redemption was not exercised and respondent BANK consolidated ownership over said parcels of land in June 1979, and the Registry of Deeds of Negros Occidental issued in its favor TCT No. T-1129989 and TCT No. 1-112995. Upon representations made by Lumen Baranda with respondent BANK, the latter agreed to resell the foreclosed properties to the former. Meanwhile, Lumen Baranda continued in possession and occupation of the said properties but failed to raise the necessary amount to repurchase the said properties.

Accordingly, respondent BANK filed with the then Court of First Instance of Negros Occidental a Petition for the Issuance of a Writ of Possession dated January 11, 1982 (Ibid., pp. 35--39). This case was assigned to Branch V of the said court, presided over by herein respondent judge, and docketed as L.R.C. No. 105 - TCT No. T-55533 and TCT No. T-47199. Respondent BANK prayed for the issuance of a writ of possession in its favor in order to eject or oust the mortgagor, her heirs, assigns, or successors-in-interest, and all other adverse occupants, or persons claiming any title thereon, from the premises of the aforesaid properties; to which, Lumen Baranda filed an opposition (Ibid. pp. 76-79).

Lumen Baranda, thereafter, now joined by her two (2) sons, herein petitioners, filed a Complaint dated September 23, 1982 (Ibid., pp. 22-23) with the Court of Agrarian Relations, Branch II,* docketed therein as CAR Case No. 811-135, for violations of P.D. Nos. 316, 383 and 1038 and damages, with a prayer for temporary restraining order and/or injunction and prohibition.

Judge Britanico, in an Order dated September 30, 1982, directed the Deputy Sheriff to investigate and find out whether petitioners are actual tillers of the land and to ascertain the length of their occupation or cultivation thereof, including the fishpond.

On October 4, 1982, the Deputy Sheriff submitted his report, wherein he stated -

"a) That it is, in fact, the plaintiff Julio Baranda and Roberto Baranda who are actually tilling the land subject of the present litigation by occupying the same since 1972 (when they were instituted therein by their mother Lumen Baranda) up to the present; and

"b) That such occupancy consists of: cultivating the low and elevated portions of the land covering an area of four (4) hectares, more or less, and planting the same to palay under rainfed condition; raising bangus in a two hectares fishpond; and taking care of the other plants such as coconuts, bamboos and nipas growing at random over the east portion of the land, including the planting of ipil-ipil trees for the purpose of selling firewoods;" (p. 60, Rollo)

Accordingly, Judge Britanico, in an Order dated October 4, 1982 (Ibid., pp. 20-21), granted the issuance of a restraining order -

"WHEREFORE, in the light of the foregoing, the prayer of the plaintiffs for the issuance of a restraining order is tenable and meritorious. Consequently, the same is granted.

"The defendant Rural Bank of Hinigaran, Inc., its officers and employees, agents, representatives, or persons acting for and in its behalf, are hereby ordered to stop, cease, desist and refrain from disturbing, harassing, threatening, ousting, removing or ejecting, in any manner, the plaintiffs in the peaceful possession and cultivation of the landholdings in question pending final determination of this case on the merits."

After the judiciary reorganization in 1983, CAR Case No. 811-135 was re-assigned from Judge Britanico of the CAR Court to the Regional Trial Court of Bacolod City, Br. II.* In an Order dated July 7, 1983, the case was referred to the Ministry of Agrarian Reform Region IV for certification that the case is proper for the court to hear in accordance with the provision of Sec. 2 of P.D. No. 316 and Sec. 2 of P.D. No. 1038 (Ibid., pp. 33-34). A certification that the case is proper for trial was issued by the Regional Director of Region IV, Ministry of Agrarian Reform.

Meanwhile, on October 14, 1982, petitioners filed with the Court of Appeals a Petition for Certiorari, Mandamus, Prohibition and Injunction. In the same, petitioners claim that they are the tenants and cultivators-owners of the disputed landholding, and as such, they are entitled to security of tenure, and that it is only the Court of Agrarian Relations that has original and exclusive jurisdiction to decide and settle questions involving tenancy relationship. On this premise, they prayed that (1) respondents be ordered to desist from disturbing the petitioners' peaceful possession of the land in question until Case No. 811-135 of the Court of Agrarian Relations is terminated; (2) to deny the Writ of Possession applied for by respondent bank; (3) order respondents to desist from filing false, malicious and fictitious suits; (4) order respondents to recognize the tenancy of petitioners to the land; and (5) order respondent bank to sell subject property to petitioners at a price within the purview and contemplation of Presidential Decree No. 27. The Court of Appeals, however, in a Decision promulgated on April 29, 1982, holding that respondent judge has jurisdiction over the case, dismissed the petition (Ibid., pp. 82-87).

The Barandas filed a Petition and/or Motion to Dismiss or Opposition to Second Motion to Resolve Petition for Issuance of Writ of Possession dated October 28, 1985 at the Regional Trial Court of Negros Occ. Branch XLIV - Bacolod City where the petition for issuance of Writ of Possession was pending and where it was alleged, among others, that respondent judge has lost jurisdiction and/or has no more jurisdiction to issue a writ of possession (Ibid., pp. 40-46).

Respondent Judge Baguio of aforementioned court in an Order dated September 2, 1985 (Ibid., pp. 47-50), denied the aforesated petition and/or motion as follows:

"WHEREFORE, the Court finds the manifestation and motion to dismiss not well-taken and the same is hereby

denied."

Thereafter, the questioned Order of September 16, 1986 was issued (*Ibid.*, pp. 51-53), granting the petition for the issuance of a writ of possession, to wit:

"In view thereof, the petition for issuance of a writ of possession being well-taken, the same is hereby granted and the Clerk of Court is hereby directed to issue said writ and to place the petitioner in the possession of the two parcels of land, namely, Lot No. 3032-3-2 covered by Transfer Certificate of Title No. T-55533 of the Municipality of Hinigaran, Neg. Occ., as well as Lot No. 3032-K, covered by Transfer Certificate of Title No. T-47199 of the Hinigaran Cadastre, upon payment of required fees."

Meanwhile, in June, 1986, Lumen Baranda died.

On October 16, 1986, petitioners filed a Notice of Appeal. In the same, they gave notice that they are appealing the Order of September 2, 1986, copy of which was allegedly received on September 25, 1986. Nevertheless, no appeal was made, but instead, on November 13, 1986, the instant petition was filed.

The Second Division of this Court, in a Resolution dated September 16, 1987 (*Ibid.*, p. 119), after the parties had submitted the required pleadings, resolved to give due course to the petition and to require the parties to submit their respective memoranda. Petitioners submitted their Memoranda on November 6, 1987 (*Ibid.*, pp. 129-143); while respondent BANK filed its Memorandum on January 27, 1988 (*Ibid.*, pp. 161-165).

The instant petition is devoid of merit.

The main issue in this case is whether or not respondent judge acted with abuse of discretion and/or exceeded his jurisdiction in ordering the issuance of a writ of possession.

The answer is in the negative.

At the outset, it should be stated that for certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil and common law traditions (*Francisco vs. Mandi*, 152 SCRA 711 (1987); and that the grave abuse of discretion must be shown (*Palm Avenue Realty Development Corporation vs. Presidential Commission on Good Government*, 153 SCRA 579 (1987)).

In the instant case, considering that: (1) Lumen Baranda executed an affidavit that the parcels of land in question are not tenanted and have no tenancy obligation whatsoever; (2) the ownership to the parcels of land in question were already consolidated in the respondent Bank; (3) the petition for issuance of a writ of possession was filed in January, 1982, whereas CAR Case No. 811-135 was filed in September, 1982, or eight (8) months later; and (4) it is already a well settled rule that the purchaser in a foreclosure sale of mortgage property is entitled to a writ of possession and that upon an ex-parte petition of the purchaser, it is ministerial upon the court to issue such writ of possession in favor of the purchaser (*Barican vs. Intermediate Appellate Court*, 162 SCRA 358), it is evident that respondent judge did not err much less abused his discretion, in holding that the claim of tenancy appears only as an after thought on the part of Lumen Baranda to give reason to oppose the issuance of a writ of possession.

Moreover, from the facts of this case, it is crystal clear that no tenancy relation exists between petitioners and respondent BANK, and as such, petitioners are not entitled to security of tenure. The essential requisites of tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. All these requisites must concur in order to create a tenancy relationship between the parties.

The absence of one does not make an occupant of a parcel of land, or a cultivator thereof, or planter thereon, a de jure tenant. Unless a person has established his status as a de jure tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the government under existing tenancy law. (Prudential Bank vs. Hon. Filomeno Capultos, et al., G.R. No. L-41835 and G.R. No. L-49293, January 19, 1990; citing the case of Caballes vs. DAR, et al., G.R. No. 78214, Dec. 5, 1988). In the instant case, the relationship between the petitioners and respondent BANK is mortgagor and mortgagee, not landowner and tenant. Granting that petitioners are the actual tillers since 1972, they are tillers as owners and not as tenants. In fact, their mother, Lumen Baranda, executed an affidavit that the said properties are not tenanted and have no tenancy obligation whatsoever.

Besides, it will be recalled that petitioner filed a notice on appeal. In the same, they alleged that they received the Order of September 2, 1986 on September 25, 1986. No appeal was filed, and after the reglementary period, petitioners filed the instant petition on November 13, 1986. As ruled by this Court, the extraordinary remedy of certiorari cannot be resorted to as a substitute for the lapsed remedy of appeal (Distileria Limtuaco & Co., Inc. vs. IAC, 157 SCRA 706 (1988)).

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

* Presided over by Judge Alfonso Baguio

* Presided over by Judge Lucas B. Britanico

* Presided over by Judge Quirico C. Calasera

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