

AVENTINO C. SASAN, MARTINIANO DELA CALZADA AND ZOSIMO DELA CALZADA, PETITIONERS, VS. THE HON. COURT OF APPEALS, THE HON. JUDGE LEONARDO CAÑARES OF THE REGIONAL TRIAL COURTS OF C...*G.R. No. 77201. September 26, 1988*

Ponente: SARMIENTO, J.

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This is an appeal by way of a petition for review on certiorari from the decision[1] dated September 5, 1986, of the Court of Appeals in CA-G.R. No. SP 08689, entitled "Aventino C. Sasan, et al. vs. Hon. Judge Leonardo Cañares, et al." The respondent appellate court in that decision, as well as in its resolution dated December 11, 1986, denied due course and dismissed the petition for certiorari which sought the annulment and setting aside of the order issued by the respondent Hon. Judge Leonardo Cañares of the Regional Trial Court of Cebu City, granting the execution pending appeal of his decision in favor of the private respondents in Civil Case No. R-20748.

A summary of the antecedent facts is necessary.

On May 8, 1985, the respondent trial court judge rendered a decision in Civil Case No. R-20748, entitled "Florencia dela Calzada Cierras, et al. vs. Aventino C. Sasan, et al." in favor of the therein plaintiffs, the herein private respondents. The petitioners, defendants in the trial court, filed a timely notice of appeal from the said decision on June 27, 1985. However, after the petitioners' notice of appeal was filed, the private respondents, the winning plaintiffs in the trial court, moved for execution pending appeal alleging as good reasons therefor, viz., that the appeal is merely dilatory[2] and that the petitioners intend "to encumber and/or dispose of the property subject of the case during the pendency of the appeal in order to defraud or deprive the plaintiffs (the herein private respondents) of their proprietary rights and defeat the ends of justice so as to render the decision ineffectual and nugatory." [3] Over the opposition interposed by the petitioners, the trial court, in an order dated March 10, 1986, granted the private respondents' motion conditioned upon their filing of a P10,000.00-bond which will answer for whatever damages the petitioners may suffer as a consequence thereof.[4]

From the order of the respondent trial court, the petitioners went to the respondent Court of Appeals by a petition for certiorari with a prayer for the issuance of a restraining order or injunction. The petitioners sought the nullification of the assailed order for having been issued in excess of jurisdiction and with grave abuse of discretion. The respondent appellate court on April 17, 1986, initially enjoined the trial court from enforcing the assailed order. Nevertheless, after considering the allegations and arguments raised by the parties, the appellate court, on September 5, 1986, dismissed the petition for lack of merit and lifted the restraining order it earlier issued. The petitioners moved for a reconsideration of the decision but their motion was denied on December 11, 1986. Hence, this petition.

The question now is whether or not the respondent Court of Appeals erred in finding that the trial court did not

commit any grave abuse of discretion in granting execution pending appeal of its decision.

We find no showing of any reversible error committed by the respondent appellate court in its decision. The same is in full accord with law and jurisprudence. Consequently, we deny the petition.

The provision of law governing execution pending appeal is Section 2, Rule 39 of the Revised Rules of Court, which states:

Sec. 2. Execution pending appeal. -- On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.

Three requisites must therefore concur for a valid execution pending appeal: (1) there must be a motion by the prevailing party with notice to the adverse party; (2) there must be good reasons for issuing execution; and (3) the good reasons should be stated in a special order. In the case at bar, the petitioners raised before the appellate court only one issue, i.e., whether or not the reasons stated by the trial court judge in his order are good reasons to justify execution pending appeal.

The Court of Appeals found that the grounds relied upon by the trial court in granting execution pending appeal, and which were raised by the private respondents in their application -- that the petitioners intend to dispose or encumber the subject property pending appeal, and that the appeal is merely dilatory -- constitute good reasons. We agree.

In any event, in compliance with the assailed order of the respondent trial court judge dated March 10, 1986, the private respondents have posted a surety bond in the amount of P10,000.00.[5] We have ruled that the posting of the required bond to answer for any damages that adverse party may suffer in case the execution pending appeal is later found unwarranted, constitutes good reason.[6]

The argument of the petitioners that the private respondents' fear of a probable disposition or encumbrance of the subject property during the pendency of the appeal, could easily be cured by the annotation of a notice of lis pendens on the title does not convince us. The respondent court correctly ruled that notice of lis pendens does not eliminate the potential hazard or danger to the private respondents' rights over the property.[7]

A notice of lis pendens only serves to warn a prospective buyer or encumbrancer that the particular property is under litigation and that he should avoid dealing with the same unless he wishes to gamble on the result of the litigation.[8] It does not however preclude the possibility of the said property being sold or encumbered to an adventurous buyer or encumbrancer. The prospect then that the private respondents' rights over the disputed property would be endangered continues to exist. Moreover, the dilatory nature of the appeal is another good and special reason to warrant execution pending appeal.[9] The advanced age of the private respondents is also worthy of consideration. We should help them survive the result of a protracted litigation albeit inconclusively.

WHEREFORE, the petition is hereby DENIED. Costs against the petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Victoriano, O.R., Chairman and ponente; Jurado, D.P., and Francisco, R.J., JJ., concurring.

[2] Rollo, 15.

[3] Id.

[4] Id., 16-17.

[5] Rollo, id., 72-73.

[6] De los Reyes vs. Capulong, No. L-62878, May 30, 1983, 122 SCRA 631.

[7] Id., 10.

[8] Nataño vs. Esteban, No. L-22034, October 28, 1966, 18 SCRA 481; Constantino vs. Espiritu, No. L-23268, June 30, 1972, 45 SCRA 557.

[9] Rollo, Id.

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