

**RHODERICK CASIS, PETITIONER, VS. HON. COURT OF APPEALS,
HON. RAFAEL T. MENDOZA, HON. BERNARDO B. NATANAWAN, AND
CIELITO T. SANTOS, RESPONDENTS.**

G.R. No. 77418, December 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

This case involves a real property (house and lot) situated at #15 Cambridge St., B.F. Homes, Paranaque, Metro Manila originally titled in the name of Nenita Suroza.

A complaint for Ejectment with Restraining Order, Preliminary Injunction and Damages was filed with the court a quo or the Metropolitan Trial Court by Rhoderick M. Casis against Cielito T. Santos on August 25, 1983 docketed as Civil Case No. 6253.

On August 26, 1983, the court a quo, thru Judge Bernardo Natanawan, issued a Temporary Restraining Order, enjoining defendant Santos and all persons claiming under him to refrain from occupying the subject premises and also required him to show cause why the injunction should not be granted. On the same day, defendant filed a Motion for Reconsideration and prayed for the lifting of the Restraining Order.

On September 26, 1983, after due hearing, the Restraining Order was dissolved by the court a quo. Plaintiff Casis filed his motion for reconsideration of said order but it was denied by the court in its order dated November 20, 1984.

Contesting said denial plaintiff Casis filed a petition for certiorari and prohibition with preliminary injunction with the Regional Trial Court (RTC) docketed as Civil Case No. 9304. Said court, thru Judge Rafael Mendoza, dismissed said petition in its Order dated January 22, 1985. Plaintiff filed his Motion for Reconsideration which was again denied by the court in its Order dated February 26, 1985. Assailing said orders, Casis went to the respondent appellate court on appeal docketed as CA-G.R. SP No. 06907 with his prayer that after due consideration an Order be issued by the appellate court reversing the orders of the court a quo and the Regional Trial Court.

Earlier, on January 1, 1985, while the case for forcible entry was still pending, plaintiff Casis filed another complaint for Quieting of Title with Preliminary Injunction before the RTC of Makati, presided by Judge Ansberto Paredes, docketed as Civil Case No. 9547. Plaintiff's Motion for the Issuance of a preliminary mandatory injunction was denied by the court prompting plaintiff to file with the appellate court CA-G.R. No. 05434 a Petition for Certiorari questioning the order of Judge Paredes. In a decision of the First Special Cases Section promulgated January 13, 1986, penned by Justice Nathanael P. de Pano, concurred in by Justices Jose A. R. Melo and Luis A. Javellana, the petition was dismissed for lack of merit. Questioning said decision, plaintiff Casis filed a Petition for Certiorari before Us docketed as G.R. No. 75248. In Our resolutions, dated January 12, 1987 and April 6, 1987, said petition was denied for lack of merit. This became final and executory on April 10, 1987 as per Entry of Judgment (p. 167, Rollo of said petition).

Meanwhile, the respondent appellate court, in the forcible entry case promulgated its decision on February 14, 1987 penned by Justice Serafin E. Camilon, concurred in by Justices Arturo B. Buena and Alfredo Marigomen, dismissing the petition of plaintiff Casis for lack of merit. Plaintiff Rhoderick Casis now comes to Us alleging that the respondent appellate court seriously erred and committed grave abuse of discretion amounting to lack or excess of jurisdiction in the forcible entry case when it did not award possession of the subject property to him, by submitting the following issues:

I

WHETHER OR NOT CERTIORARI IS THE PROPER REMEDY OF PETITIONER.

II

WHETHER OR NOT G.R. NO. 75248 WHICH ORIGINATED FROM THE QUIETING OF TITLE CASE IS SIMILAR HENCE A BAR TO THE PRESENT PETITION.

III

WHETHER OR NOT THE QUESTIONED ORDER OF THE METROPOLITAN TRIAL COURT OF PARANAQUE, DATED SEPTEMBER 26, 1983, IS CONTRARY TO EXISTING LAWS AND JURISPRUDENCE AND EVIDENCE ON RECORD AND IF THE SAME WAS ISSUED IN GREAT ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. (Rollo, p. 181, Memorandum for Petitioner)

The following facts are gathered from the records of the case:

The property in question was sold twice by Nenita Suroza, first to defendant and private respondent herein Cielito T. Santos on June 30, 1983 and second, to plaintiff Rhoderick Casis on July 19, 1983. It appears that the owner's copy of the certificate of title was handed by Nenita Suroza to defendant Santos as early as February 10, 1983, upon payment by Santos of the mortgage redemption amount to a certain Atty. Oscar Reyes as part of the purchase price of the subject property. The deed of sale however in favor of Cielito Santos was executed by Suroza only on June 23, 1983, upon payment of the balance of the purchase price. Defendant Santos did not however register the deed of sale with the Registry of Deeds even if he took possession of the subject property by his acceptance of the key to the house which he started renovating thru the help of an architect. Meanwhile Suroza requested that she be given 45 days to look for another place in which to reside and for time to remove her personal belongings.

Earlier on May 17, 1983, Suroza filed a petition for the reconstitution of her title to the property on the alleged ground that her original title was lost. Having been able to obtain a reconstituted title, Nenita Suroza again sold the same property on July 19, 1983 to plaintiff Rhoderick Casis who was able to register said sale and was able to obtain a certificate of title to the land in his name thereby cancelling the former certificate of title in the name of Nenita V. Suroza.

The court a quo in its assailed order dated September 26, 1983, declared that:

"The main issue to be resolved in the case at bar is who must be in possession of subject property at the present time before the question of ownership thereof, also being contested by the parties, is finally settled in another form. And assuming that a determination with regard to ownership of the property must be made incidental to the question of possession, a reading of the pleadings in the instant case would show that what is at issue is not who has the right to possession by virtue of being the rightful owner of said property but merely who has the better right to possess it at present by reason of antedating possession." (Annex "D" p. 35, Rollo)

(Underscoring ours)

Deciding in favor of the defendant Santos, the court a quo reasoned thus:

"To the mind of this Court, it is reasonable to consider defendant to have taken possession of subject property from the time of its sale to him on June 23, 1983, and after the key was handed over to his mother, although Mrs. Suroza might have stayed there for a little while more for the aforesaid purpose. And indicative of the fact that defendant was then already possessor of the property in the concept of owner thereof, his mother, according to her undisputed testimony, cause construction materials to be brought to the place for use in renovating subject property. The fact that Mrs. Suroza stayed for a while longer on the property or even for the whole period of 45 days as originally requested by her, for that matter - did not detract from defendant's being the true possessor of said property. Mrs. Suroza's extended stay was by mere tolerance of defendant and not by virtue of her being the owner any longer of the property. And if Mrs. Suroza, indeed, had been occupying the property even after being sold to defendant, how could plaintiff have occupied it on July 21, or July 22 as testified to by plaintiff's father? Admittedly, it was only by tolerance that she was able to stay since she turned over possession and presumably ownership of the property in question after she sold it to defendant on June 23, 1983. That she executed a deed of sale on this date is an undisputed fact."* (p. 36, Rollo)

Elucidating further, the court a quo in its questioned Order dated November 20, 1984, declared:

"With the sale of the property in question in favor of the defendant, plaintiff can have no better right of possession, and possibly ownership, for that matter over the property. It must be stressed that as early as February 10, 1983 Nenita Suroza somehow already recognized the right of ownership and possession of the defendant over the property in issue. In Exhibit '3' - opposition, the certification then issued by her, she promised that she would vacate the property not more than forty five (45) days from February 10, 1983, adding that she would deliver it for occupancy and possession by defendant. Instead of vacating the premises in question, however, Nenita Suroza on May 17, 1983, filed a petition for the reconstitution of her title to the property on the alleged ground that her original title was lost (tsn, p. 27, Oct. 21, 1983).

"With the facts thus established by the evidence of record, defendant's right of possession over the property is unassailable at this point in time. True, the sale by Suroza to plaintiff had been registered and a certificate of title had been issued in his favor, but the registration of the deed of sale and the issuance of a transfer certificate of title in his favor in this particular case do not in any manner vest from him any right of possession and ownership over the property in question. This must be so because at the time the subsequent deed of sale was executed on July 19, 1983 by Nenita Suroza, she had already lost whatever right or interest she might have had in the property by reason not only of the sale to defendant on June 23, 1983, but also of the certification she issued on February 10, 1983 in favor of the defendant's mother, whom she acknowledged therein as vendee.

"It would not be amiss to state by reference a case wherein the Supreme Court held that between an unrecorded title of a house of a prior date and a recorded mortgage of the same house of later date, the former is preferred for the reason that, if the original owner had parted with his ownership of the thing sold, then he no longer had the ownership and free disposal of that thing so as to be able to mortgage it (Reyes v. de Leon L-22331, June 6, 1967, 20 SCRA 369).

"True again, the act of registration shall be the operative act that would effect the land (Sec. 50, Act 496) but this provision of law is not for application in the instant case. First, it is established beyond dispute that the subject property was previously mortgage to Atty. Oscar Reyes by Nenita Suroza. The mortgage obligation was paid by defendant's mother through Maxima Perez and by reason of this redemption of the mortgage, a written receipt of the redemption price was issued (Exhibit '1') - opposition; certification was issued by Nenita Suroza in favor of the defendant's mother wherein she acknowledged in passing the latter as vendee of the property in question and promising to vacate in 45 days and deliver the same to her. (Exh. '3' - opposition) and a deed of sale was executed in favor of the defendant (Exhibit '2' - opposition); Secondly, it was admitted

by Nenita Suroza that by reason of this mortgage of her property to the spouses Oscar and Cecilia Reyes, she delivered her owner's duplicate copy of the transfer certificate of title to the mortgagees as security for the mortgage obligation. And finally Nenita Suroza admitted having filed in Court a petition for the reconstitution of her owner's duplicate copy of the transfer certificate of title on the alleged ground that her copy was lost when the truth and in fact, she admitted having delivered it to the mortgagees, the spouses Oscar and Cecilia Reyes which certificate of title was in turn delivered to the defendant after the deed of sale in his favor was executed by Nenita Suroza.

"After careful scrutiny of the evidence thus far adduced, this Court cannot but entertain serious misgivings as regard Nenita Suroza's transfer of subject property to plaintiff. It might be significant to note at this juncture that plaintiff cannot feign ignorance of the defect in his title to the property, especially so since plaintiff has failed to refute the testimony of Josefina Santos, mother of defendant bearing on the apparent irregularity by which he now claims ownership and possession of said property." (p. 3, Decision, Civil Case No. 6253; pp. 93-95, Rollo).

The evidence on record supports the fact that the main issue of who is entitled to the possession of the property in question was properly litigated before the court a quo and that there was full observance of due process requirements since both parties were given opportunities to be heard belying capricious, arbitrary and whimsical action on the part of the court a quo which jurisdiction is firmly established.

A reading of the instant petition before Us shows that the reasons relied upon for the allowance of the petition do not involve questions of law which We can take cognizance of. At most the questions and the arguments advanced by the petitioner deal mostly on the (1) admission or non-admission of the evidence or the factual findings and (2) the conclusions based on these factual findings by the lower courts. Petitioner alleges grave abuse of discretion on the part of the respondent appellate court but failed miserably to prove such accusation.

Be it noted that in dismissing the petition of the plaintiff (Casis), respondent appellate court found that the denial of injunctive relief by Judge Natanawan was premised on his evaluation of the evidence on record which led him to certain facts and conclusions. However, since petitioner Casis insisted that said Judge relied heavily on the hearsay evidence of private respondent which is worthless and should not have been admitted in the first place, respondent appellate court ruled that such line of argument merely tends to strengthen the view that appreciation or misappreciation of the evidence below is the real issue. The question, therefore, is factual.

It is a well-settled doctrine that only a question of law is subject to review by Us, a question which does not call for an examination of the probative value of the evidence presented by the parties. Taken otherwise We are bound by the findings and conclusions of facts made by the lower courts unless they were based on surmises and conjectures. Certiorari therefore is not the proper remedy to correct errors in the findings and conclusions of the Judge from the proven facts.

Furthermore, We find meritorious the findings of the appellate court that there is hardly any appreciable difference between the two cases to wit: the Forcible Entry and the Quieting of Title cases, given the following facts:

1) In the forcible entry case - petitioner Casis averred that 'in the meantime that the question on who has the better right of ownership over said premises is still pending, it is only fair, just and lawful to give the possession of the subject property to the registered and titled owner' and prayed that after due consideration, an Order be issued reversing the orders of the court a quo in Civil Case No. 6253 dated September 26, 1983 and November 20, 1984 and to grant his prayer for preliminary injunction.

2) In the Quieting of Title Case - petitioner argued that pending the determination of who between the parties has a better right of ownership, the issue of preliminary injunction is determinative of who should be in

possession of the subject property in the meantime and prayed that after due hearing, a judgment be rendered setting aside the questioned order, dated February 11, 1985 of respondent Judge Ansberto Paredes and ordering the latter to issue the preliminary injunction prayed for by the petitioner in his complaint in Civil Case No. 9547 of the Court a quo.

Moreover, at the time when the assailed decision of the appellate court was rendered, We had not yet made any pronouncement in the Quieting of Title Case elevated to Us by way of petition for Certiorari. As a result, the respondent appellate court in the forcible entry case or the petition at bar dismissed the appeal of petitioner in deference to whatever decision We may eventually render on the matter. It was only on April 10, 1984, as earlier aforementioned that Our resolution in the Quieting of Title case became final and executory where in effect We sustained the assailed orders or decision of the trial court and the appellate court in said case wherein it denied the prayer of petitioner Casis for preliminary injunction.

Premises Considered, petitioner has thus inadequately failed in meeting the burden imposed by his suit of demonstrating grave abuse of discretion or a jurisdictional defect on the part of the respondent court. Necessarily his suit must fail.

WHEREFORE, finding no reversible error in the assailed orders, We resolve to DENY the instant petition for lack of merit, with costs against the petitioner.

SO ORDERED.

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

* To look for another place in which to reside and for time to remove her (Mrs. Suroza's) belongings.

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