

**S & A GAISANO INCORPORATED, CANUTO CUPIN,
REPRESENTED BY HIS SON SALVADOR P. CUPIN AS
ATTORNEY-IN-FACT; VICENTE CUPIN: EVARISTO CUPIN,
REPRESENTED BY HIS WIFE MARITES R. CUPIN A...**

G.R. No. 80397. December 10, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for Certiorari, Prohibition, Mandamus, and Injunction with Writ of Preliminary Injunction praying, among others that this Court: (a) nullify and set aside the September 30, 1987 Order of the Regional Trial Court of Agusan del Norte and Butuan City in Civil Case No. 3156, denying the prayer for the issuance of a writ of preliminary injunction; (b) order respondent Chan and all those acting in his behalf to desist and stop the encroachment in petitioner's property and place it in the same condition prior to the encroachment; (c) order respondent Building Official or representatives to revoke and cancel the questioned building permit as well as inhibit the issuance of any building permit without clearance from this Court; and (d) order respondent Register of Deeds not to allow any transfer of the disputed property to other parties.

As gathered from the records, the undisputed facts are as follows:

On March 4, 1987, petitioner S & A Gaisano purchased a parcel of commercial land from Isidro Villanueva known as Lot No. 423-A-1 covered by TCT-RT-935 with an area of 1,711 square meters and Lot No. 8-E-1 covered by TCT RT-1090 with an area of 296 square meters, both situated in the commercial section of Zamora Street, Butuan City. Subsequently, Gaisano discovered that a strip of land five (5) meters wide and 43 meters long with an area of 214 square meters, is situated in between the land it acquired from the Villanuevas and Zamora Street. To facilitate the expansion of Gaisano's business, the latter negotiated the purchase of said strip of land with its owners, the heirs of Generoso Cupin and the parties concerned have agreed to the sale although the formal execution of the Deed of Sale was deferred pending partition among the heirs of the late Generoso Cupin.

Meanwhile, respondent Victor Chan succeeded in buying the subject property and the sale was registered with the City Register of Deeds and a Transfer Certificate of Title was issued in his favor.

Petitioners Cupin maintained, among others, that the sale between them and respondent. Victor Chan is null and void because they were led to believe that the sale is only a conditional sale; that there is a defect in the execution of their contract and that there is no consideration.

On May 29, 1987, herein petitioners filed with the Regional Trial Court of Agusan del Norte and Butuan City, Branch V, presided by herein respondent judge, a complaint for annulment of deed of sale of land, cancellation of Transfer Certificate of Title No. RT-18812 of Victor Chan, damages, and injunction, against respondent Victor Chan and respondent Arturo Ricaforte, in his capacity as Registrar of the Registry of Deeds of Butuan City, docketed therein as Civil Case No. 3156.

Private respondent Chan, in his Answer with Counterclaim, denied all the material allegations of the complaint and alleged, among others, that in Civil Case No. 3151, before Branch III of the same court, entitled "S & A Gaisano, Inc. vs. Otis Enterprises and/or Victor Chan", petitioner Gaisano admitted that respondent Chan is the owner of the property in question when it said in paragraph 3 of its complaint in said case that -

"The respondents are the vendees of a parcel of land adjacent to the aforescribed property of petitioners, which parcel of land containing an area of Two Hundred Fourteen (214) square meters and located in between petitioner's land and the national highway called Zamora St., poblacion, Butuan City, was acquired by the respondents from the heirs of Nolasco A. Cupin through a Deed of Sale:

which judicial admission binds petitioner Gaisano and forecloses and defeats its alleged cause of action in the instant case. To this, petitioners filed their Reply and Answer to Counterclaim dated June 5, 1987.

Public respondent Register of Deeds Arturo Ricaforte, likewise, filed an answer dated June 15, 1987 wherein after denying the material allegations of the complaint, he prayed that the complaint, insofar as the Butuan City Register of Deeds is concerned, be dropped for utterly being devoid of merit.

Respondent judge, acting on the prayer for the issuance of a writ of preliminary injunction, issued an order on June 4, 1987 setting a hearing on the incident on June 23, 1987. After the parties have presented their respective evidence, respondent judge, in an order dated September 30, 1987 denied the prayer, to wit:

"IN VIEW OF ALL THE FOREGOING consideration, the Court finds no valid justification for the issuance of a writ of preliminary injunction. Considering that the title over the property in question has not been ordered cancelled, the owner may not be deprived of his right as owner thereof."

Petitioners filed a Motion for Reconsideration dated October 10, 1987 and a Supplemental to Motion for Reconsideration dated October 23, 1987, but without waiting for respondent judge to act on the same, petitioner, on November 5, 1987, filed the instant petition.

In a Resolution dated November 9, 1987, this Court resolved to require the respondents to comment, and to issue a temporary restraining order.

On November 13, 1987, respondents, instead of filing a comment, filed an answer dated November 12, 1987. Thereafter on November 19, 1987, respondents filed an Urgent Motion to Set Petition for Immediate Oral Arguments, Dissolve Restraining Order and Resolve Issues Raised in the Petition and the Answer, dated November 12, 1987 and on December 4, 1987, respondent Victor Chan's Offer of Bond to Dissolve Restraining Order.

In the resolution dated February 15, 1988, petitioners were required to put up a bond in the amount of P100,000.00, to which petitioners filed their compliance on March 17, 1988.

In the resolution dated August 15, 1988, the petition was given due course; the parties were required to file their respective memoranda; respondent Chan's motion for reconsideration was denied, which denial was declared final; and the petition for intervention of the Republic of the Philippines which also claimed a legal interest in the land in question allegedly having been formed as part of the national highway along Zamora Street, Butuan City was granted.

In compliance with the said resolution of August 15, 1988, petitioners filed their memorandum on October 3, 1988, to which respondent Chan filed a brief reply thereto on October 17, 1988: while respondent Chan filed his Memorandum on October 11, 1988. On the other hand, the Solicitor General, on December 13, 1988, manifested for respondent Registry of Deeds, that he be excused from filing his memorandum.

In petitioners' memorandum, the following issues were raised:

I

WHETHER OR NOT RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION WHEN IT ISSUED THE QUESTIONED ORDER OF SEPTEMBER 30, 1987, DENYING PETITIONERS' PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION; AND

II

WHETHER OR NOT RESPONDENT VICTORIO GO, IN HIS CAPACITY AS NATIONAL BUILDING OFFICIAL ABUSED HIS DISCRETION WHEN HE ISSUED IN FAVOR OF RESPONDENT CHAN A BUILDING PERMIT FOR THE CONSTRUCTION OF A BUILDING ON THE QUESTIONED LAND.

The instant petition is devoid of merit.

To put matters in the proper perspective, the case before the lower court is one for Annulment of Deed of Sale of Land, Cancellation of TCT No. RT-18812 issued in favor of respondent Victor Chan, Damages and Injunction.

After the initial presentation of their evidence, both parties petitioned the Court that they be allowed to submit their formal offer of their exhibits in writing as well as their respective comments/opposition thereto.

Petitioners' exhibits were admitted only for purposes of the motion for the issuance of an injunction while respondent Victor Chan's Formal Offer of Exhibits were all admitted. As previously stated, the issuance of a writ of preliminary injunction was denied.

The only issue, therefore, is whether or not respondent judge gravely abused his discretion in denying said injunction. The other issues refer to factual matters yet to be determined by the trial court in the trial on the merits.

It is a well-established rule that the grant or denial of an injunction rests upon the sound discretion of the court in the exercise of which, appellate courts will not interfere except on a clear case of abuse (*Belisle Investment and Finance Co., Inc. v. State Investment House, Inc.*, 151 SCRA 630, 636 [1987], citing the case of *Yaptinchay v. Torres*, 28 SCRA 489 [1969]).

Equally well-settled is the rule that injunction will not lie to take the property out of the control of the party in possession (*Ortigas & Co. Ltd. Partnership v. Ruiz*, 148 SCRA 327 ([1987])). In actions involving realty, two requisites are necessary if an injunction is to issue, namely: the existence of a right to be protected and that the facts against which the injunction is to be directed are violative of said right. Furthermore, in such actions, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action brought for the purpose. To authorize temporary injunction, the complainant must make out at least a prima facie showing of a right to the final relief (*Buayan Cattle Co., Inc. v. Quintillan*, 128 SCRA 276; 286-287 [1984]; *Ortigas & Co. Ltd.*, supra). In order that a preliminary injunction may be granted at any time after the commencement of the action and before judgment, the right thereto must be established (*Rosauro v. Cuneta*, 151 SCRA 574-575 [1987]).

Hence, the existence of a right violated, is a prerequisite to the granting of an injunction. An injunction will not issue to protect a right not in esse and which may never arise. Failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction or that the defendant has committed or has attempted to commit any act which has endangered or tends to endanger the existence of said right, is a sufficient ground for denying the injunction (*Rosauro v. Cuneta*, supra, p. 575).

In the case at bar, the right of private respondent to the possession and enjoyment of the property in litigation is

clearly unassailable. It is founded on the right of ownership. Thus, as correctly found by the trial court, it is not disputed that the transfer certificate of title over subject property is in the name of Victor Chan. Equally important is the fact that petitioners do not have a sufficient cause of action. Under the above-cited doctrines of this Court petitioners' prayer for injunctive relief would necessarily fall.

In fact, even the claim of the government that the same land was reserved to increase the width of the national highway was withdrawn by the Secretary of the Ministry of Public Works and Highways in his letter of May 6, 1988 informing the Solicitor General* of the basis of his request for withdrawal as follows:

"Subsequent to February 4, 1988, we directed our ADB-PM0 to ascertain the approved Road Right-of-Way of the ADB-assisted Iligan-Cagayan de Oro-Butuan Road from Km. 320+400 to Km. 322+100 (Butuan side) where the property subject of the litigation in this case is situated. In a certification dated May 4, 1988, the Project Director confirmed that according to approved Plans and Profile for this particular portion of this highway the Road Right-of-Way is only 20 meters while from Km. 320+400 going towards the Municipality of Buenavista the Road Right-of-Way is 30 meters." (Annex "A", Rollo, p. 579).

Finally, this Court is not a trier of facts (*Rosauro v. Cuneta*, 151 SCRA 576 [1987]). The parties must litigate the other issues including the annulment of the sale in the lower court if they have not as yet done so.

WHEREFORE, the petition is Dismissed, the assailed order of September 30, 1987 of the Regional Trial Court of Agusan del Norte and Butuan City is Affirmed, the restraining order issued by this Court is Dissolved; and the case is hereby ordered re-manded to the lower court for trial on the merits.

SO ORDERED.

Fernan, C.J., (Chairman), and Gutierrez, Jr., J., concur.
Feliciano, J., on leave.

* The Solicitor General subsequently filed a "Motion to Withdraw Petition in Intervention" dated November 15, 1990 which was granted on November 28, 1990.

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