

CIELITO T. SANTOS, PETITIONER, VS. COURT OF APPEALS, HON. FRANCISCO X. VELEZ, PRESIDING JUDGE, RTC, BRANCH 57, MAKATI, METRO MANILA, AND RHODERICK CASIS, RESPONDENTS.

G.R. No. 84954. March 22, 1991

Ponente: PARAS, J.

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PARAS, J.:

Petition for review of the decision[1] of the Court of Appeals which affirmed the decision[2] of the Regional Trial Court of Makati in Civil Case No. 17988, both courts enjoining the court a quo (MTC) from executing the MTC's Orders dated September 26, 1983 and November 20, 1984 in Civil Case No. 6253. Petitioner Santos claims that said enjoined orders have become final and executory and therefore, can no longer be enjoined.

The undisputed facts of the case are as stated in the decision of the Court of Appeals, to wit:

"x x x Factual antecedents show that a house and lot at No. 15, Cambridge Street, B. F. Homes, Paranaque, Metro Manila, was originally registered in the name of one Nenita Suroza. This was mortgaged to spouses Atty. and Mrs. Oscar Reyes. Upon Suroza's insistence, petitioner Cielito Santos, through his mother, Josefina Santos, redeemed the property for P180,000.00 on February 10, 1983. Atty. Reyes having executed on the same day a 'Deed of Release of Mortgage'. Suroza then executed a Deed of Sale in favor of petitioner herein on February 10, 1983. When petitioner tried to register the deed of sale, he found out that on May 17, 1983 Suroza had filed with the RTC of Pasay a petition for reconstitution of her title to the property claiming it was lost; and that on July 19, 1983 the same property was sold to private respondent, Rhoderick Casis, in whose favor a new title was issued on the basis of the reconstituted title.

"On the strength of a certificate of title in his name and claiming that petitioner, through certain persons under him, drove him and members of his family from the premises, private respondent filed Civil Case No. 6253 for Forcible Entry with restraining order before the court a quo on August 26, 1983 against petitioner, asking for a restraining order enjoining petitioner from occupying the premises and thereafter for a writ of preliminary mandatory injunction ordering said petitioner and all persons claiming under him to restore private respondent in the possession of the said premises.

"In an order dated August 26, 1983, the court a quo issued a restraining order.

"After conducting a hearing on the application for preliminary injunction and convinced that petitioner was entitled to prior possession of the premises, the court a quo in an order dated September 26, 1983 denied preliminary mandatory injunction and considered the restraining order issued on August 26, 1983 as vacated, holding that possession of subject property must be restored to petitioner.

"Private respondent moved to reconsider but reconsideration was denied in an order dated November 20, 1984.

"Private respondent filed a petition for certiorari with preliminary injunction and restraining order in the Regional Trial Court docketed as Case No. 9904 but was dismissed on the ground that the remedy was appeal, not certiorari. The order of the Regional Trial Court dismissing the petition dated January 22, 1985 was

appealed to this Court (CA-G.R. No. 006907), but in a decision dated February 4, 1987, the appeal was dismissed. The order of dismissal of this Court was taken to the Supreme Court on a petition for review on certiorari (G.R. No. 77418) which is still pending resolution (later denied in a decision dated December 29, 1989). x x x

As no appeal had been taken from the Orders dated September 26, 1983 and November 20, 1984 of the court a quo, the petitioner filed a motion for the execution of the aforesaid orders. Private respondent opposed and instead filed a motion to set Civil Case No. 6253 for hearing.

On August 12, 1987, the court a quo granted the petitioner's motion for execution and issued the corresponding writ prayed for.

Private respondent filed a petition for certiorari with preliminary injunction with the Regional Trial Court (Civil Case No. 17988) which issued a writ of preliminary injunction "for the purpose of preserving the status quo until such time as the court can determine the respective rights of the contending parties x x x." (p. 29, Rollo)

Santos filed a petition for certiorari with preliminary injunction with the Court of Appeals, but the latter affirmed the decision of the Regional Trial Court, ruling that the two orders of the court a quo could not be final and executory as they were unquestionably interlocutory.

Hence, the instant petition.

There is merit in the petition.

A perusal of the records of Civil Case No. 6253 shows that the court a quo had already disposed of the only issue in the ejectment case - possession. Thus, while the Orders dated September 26, 1983 and November 29, 1984 (the latter denying reconsideration of the former) granted injunctive relief, they have finally disposed of the case as they categorically declared the petitioner as the one entitled to the possession of the subject premises on the basis of the evidence presented by the parties in protracted hearings.

In its Order dated September 26, 1983, the court a quo 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 forum. 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 'C', p. 35, Rollo)

Deciding in favor of the petitioner, 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, caused the 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 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 mortgaged 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." (Annex 'D', pp. 38-39, Rollo)

As there are no more points in issue to be adjudicated, it follows that the Orders dated September 26, 1983 and

November 20, 1984 are final. A "final" order or judgment is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto.

And as no appeal was taken therefrom, said order or judgment has become final and executory, in respect to which, as the law explicitly provides "execution shall issue as a matter of right." (*Investments, Inc. v. Court of Appeals*, 147 SCRA 334)

WHEREFORE, the petition is hereby GRANTED and the assailed decision of the Court of Appeals is hereby REVERSED and SET ASIDE. Let the records of the case be remanded to the court a quo (the MTC) for the enforcement of the writ of execution.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Padilla, J., see separate opinion.

[1] Penned by Justice Oscar R. Victoriano concurred in by Justices Josue N. Bellosillo and Celso L. Magsino

[2] Penned by Judge Francisco X. Velez

SEPARATE OPINION

PADILLA, J.:

In an action for forcible entry, the plaintiff must show that he had been in prior possession of the land or building, object of the suit, and that he was deprived by defendant of such possession by force, intimidation, threats, strategy or stealth.

Since the petitioner, as defendant in the court a quo, and not the private respondent, as plaintiff in the court a quo, was in prior possession of the premises in question, the latter (private respondent) had no cause of action for forcible entry against petitioner. Hence, the complaint for forcible entry should have been dismissed by the court a quo.

While I agree with the setting aside of the decision of the Court of Appeals, I believe this Court should do more than merely remand the case to the court of origin for further proceedings. In the interest of justice, the Court should now order the dismissal of the private respondent's complaint for forcible entry in Civil Case No. 6253, and the private respondent should be ordered to surrender possession of the subject property to the petitioner within ten (10) days from notice. The petitioner has, as disclosed by the records, been deprived of possession of the subject property since the later part of 1983 to the present, or for almost eight (8) long years after acquiring the same for a proven valuable consideration.

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