

**BIENVENIDO PAZ, PETITIONER, VS. COURT OF APPEALS, LOVELY R. NEPOMUCENO, JOSE R. NEPOMUCENO, DENNIS R. NEPOMUCENO, GODOFREDO &#8220;EDDIE&#8221; NEPOMUCENO, BENJAMIN PAZ, AMORSOLO PAZ, JOSEF...**

*G.R. No. 85332. January 11, 1990*

Ponente: PARAS, J.

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**PARAS, J.:**

Before Us is an appeal by certiorari from the decision[1] of the respondent Court of Appeals, dated July 28, 1988 in CA-G.R. No. 14246, which dismissed the special civil action of certiorari and prohibition with preliminary injunction filed by petitioner herein to enjoin the court a quo from enforcing its summary judgment[2] dated October 12, 1987 in Civil Case No. 54158, LRC Case No. R-3730 and Civil Case No. 54408, its dispositive portion reading as follows:

"WHEREFORE, summary judgment is hereby rendered in favor of Lovely, Joey and Dennis, all surnamed Nepomuceno and assisted by their father and attorney-in-fact Dr. Godofredo Nepomuceno as against Bienvenido Paz, to wit:

"(1) Declaring said Lovely, Joey and Dennis Nepomuceno the lawful owners of Lots 2, 3, 4, 5 and 6 as mentioned in paragraphs 3 and 4 of the complaint in the above-captioned Civil Case No. 54158 and in the aforementioned portion of the same and upholding the validity of the sale in their favor;

"(2) Ordering Bievenido Paz to vacate Lots 2, 3, 4, 5 and 6 and deliver peacefully the possession thereof to the Nepomucenos;

"(3) Ordering the partition of the subject property in accordance with the Deed of Extrajudicial Settlement dated September 3, 1977 (Annex 'A', Motion for Summary Judgment) and directing Bienvenido Paz to refrain and desist from performing any act designed to frustrate the same; and

"(4) DISMISSING Civil Case No. 54408 and LRC Case No. R-3730.

"No pronouncement as to costs.

"SO ORDERED." (p. 41, Rollo)

The three related cases were filed as follows:

- Civil Case No. 54158, entitled "Lovely R. Nepomuceno, et al v. Bienvenido N. Paz," for Quieting of Title and Recovery of Possession;

- LRC Case No. R-3730 entitled "In The Matter of the Petition for the Bureau of Lands Commission to Undertake The Actual Survey, Etc.";

- Civil Case No. 54408, entitled "Bienvenido N. Paz v. Lovely R. Nepomuceno, et al.," for annulment of a deed of sale.

The lot in controversy consists of 330 square meters unregistered land which was extrajudicially settled among defendant or petitioner herein and his brothers and sisters upon the death of their common ancestors, as follows:

- Lot 1 to petitioner Bienvenido Paz
- Lot 2 to Benjamin N. Paz
- Lot 3 to Amorsolo N. Paz
- Lot 4 to Luzonica N. Paz
- Lot 5 to Josephina N. Paz
- Lot 6 to Roman N. Paz

The shares of petitioner's brothers and sisters or Lots Nos. 2 to 6, were sold to private respondents Lovely, Joey, and Dennis, all surnamed Nepomuceno. Said buyers filed on November 18, 1986, LRC Case No. R-3730, wherein they prayed that the same property being unregistered, be surveyed and subdivided by the Bureau of Land Registration Commission. On December 24, 1986, the same buyers or vendees, represented by their father and attorney-in-fact, Dr. Godofredo "Eddie" Nepomuceno instituted Civil Case No. 54158 for Quieting of Title, Recovery of Possession, Accounting and Damages with Preliminary Mandatory Injunction against Bienvenido N. Paz wherein said plaintiffs sought among others, to recover from said defendant possession of the lots which the former bought from the brothers and sisters of the latter (Bienvenido Paz) who refused despite repeated demands to turn over the possession of said lots and who refused to allow plaintiffs' geodetic engineers and those of the Bureau of Lands Commission to place the stone monuments separating the contested lots.

In his answer to the complaint in Civil Case No. 54158 defendant Bienvenido N. Paz claims that he was not given the opportunity to exercise his right of pre-emption to buy the property, there being no notice of sale thereof having been given to him and that he is ready and willing to buy said property, claiming that the sale to plaintiff Nepomucenos was null and void. Likewise, defendant Bienvenido invoked said pre-emptive right over the property and the pendency of Civil Case No. 54158 as a ground for the dismissal of the petition in LRC Case No. R-3730.

On March 25, 1987, petitioner herein Bienvenido N. Paz, filed Civil Case No. 54408, to annul the sale of the lots in question to the private respondents again invoking his right of pre-emption which had been denied him in view of the lack of notice of said sale to him.

On August 6, 1987,[3] private respondents herein (Nepomucenos) filed a Motion for Summary Judgment in the aforementioned three cases invoking Rule 34 of the Rules of Court on Summary Judgment and submitting verified affidavits and annexes in support thereof, arguing that there is no genuine issue as to the material facts and the law.

On October 12, 1987, the court a quo rendered the assailed summary judgment which was affirmed by the respondent appellate court. After a denial of his motion for reconsideration by the respondent appellate court, petitioner filed the instant petition submitting that said court committed grave abuse of discretion in affirming the lower court's summary judgment which was rendered without the mandatory pre-trial conference in Civil Case No. 54408 (annulment of sale).

The petition deserves our consideration.

Under Rule 34, of the Rules of Court, summary judgment may be rendered by the court upon application of a party when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as

a matter of law. By genuine issue is meant an issue of fact which calls for the presentation of evidence as distinguished from an issue which is sham, fictitious, contrived set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits and/or counter affidavits submitted by the parties to the Court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

In the case at bar, not only did petitioner herein and defendant in Civil Case No. 54158 assert genuine issues of fact and law which must be heard and tried, but he even filed Civil Case No. 54408 for the annulment of sale of the controversial lots in favor of the Nepomucenos and also opposed the survey of the controversial lots in LRC Case No. R-3730. The court a quo failed to consider that the affidavits of the two vendors Ramon and Luzonica Paz presented to the court by private respondent only stated that they merely informed their brother Bienvenido of the sale by way of showing their deeds of sale. The deeds of sale in favor of the Nepomucenos were already fait accompli when they were shown to the petitioner, hence does not justify a summary judgment. Petitioner asserts that he was unjustly denied as a co-heir of his right of legal pre-emption or redemption provided for under Art. 1623 of the Civil Code by the failure of his co-heirs to give him notice in writing of their intended desire to sell their shares, as well as the terms/consideration thereof, in order to enable him to match private respondents — Nepomuceno's offer to buy or his co-heirs selling price at P450.00 per square meter. Petitioner's allegation of the lack of written notification to him by all his co-heirs is a factual and legal issue which cannot justify dispensation of a trial on the merits.

Courts should not render summary judgment hastily but rather, carefully assuming a scrutiny of facts in a summary hearing, considering that this remedy is in disparagement of a party's right to due process. A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant or the private respondents in the instant case.

Petitioner, who tendered in his pleadings genuine issues resolvable only in a trial on the merits, was summarily deprived of his rights aggravated by the lack of pre-trial in Civil Case No. 54408, an undisputed fact admitted by the respondent appellate court in the body of its assailed judgment. (p. 5, Decision, CA-GR SP. 14246; Annex "A", Petition).

We have consistently held that a pre-trial is mandatory, where the parties as well as their counsel are required to appear thereat. Pre-trial is designed to promote amicable settlement or to avoid or to simplify the trial. Sec. 3 of Rule 20 of the Rules of Court provides that:

"Section 3. Judgment on the pleadings and summary judgment at pre-trial. — If at the pre-trial, the court finds that facts existed upon which a judgment on the pleadings or a summary judgment may be made, it may render judgment on the pleadings or a summary judgment as justice may require."

Petitioner was substantially prejudiced and denied of his right to due process of law by the trial court's unmindful failure to calendar the case for pre-trial. Undoubtedly, due process was not observed by the trial court in rendering the assailed summary judgment which is tantamount to an abuse of discretion or lack of jurisdiction wherein certiorari and not appeal is the proper remedy.

WHEREFORE, the petition is hereby GRANTED. The appealed judgment is hereby SET ASIDE. Let the records of Civil Cases Nos. 54158 and 54408 be REMANDED to the trial court for pre-trial and trial on the merits.

**SO ORDERED.**

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

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[1] Penned by Justice Arturo B. Buena, concurred in by Justices Santiago M. Kapunan and Eduardo R. Bengzon

[2] Penned by Judge Apolonio R. Chavez, Jr.

[3] The date appearing in the records of the court a quo and the appellate court is August 6, 1986, which is treated by Us as August 6, 1987, considering the chronological dates of the other pleadings.

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