

**LAGRIMAS V. ABALOS AND JOSEFINA A. PANGAN, HEIR OF THE
LATE JOSE R. ABALOS, PETITIONERS, VS. THE HON. COURT OF
APPEALS, PEPITO LACULOB, NICOLAS LACURUM, MATEO RESPICIO,
LUIS DE ...**

G.R. No. 94436. April 30, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The focal issue in this case is the legal effect of Presidential Decree No. 1508 in the resolution of the suit where the parties nevertheless proceeded to the trial of the case until judgment was rendered.

On July 22, 1983, a complaint for recovery of possession of property and damages was filed by spouses Jose R. Abalos and Lagrimas V. Abalos against private respondents in the Regional Trial Court, Quezon City, designated as Lot 12, Block 122-D, situated in Quezon City with an area of about 408 square meters, registered in the name of the Abalos spouses under TCT No. 287646 issued by the Register of Deeds of Quezon City.

After the issues were joined and the trial on the merits, a decision was rendered by the trial court on May 20, 1986, the dispositive part of which reads as follows:

ACCORDINGLY, in the light of the foregoing disquisition, judgment is hereby rendered —

- 1) Adjudging the plaintiffs Jose R. Abalos and Lagrimas V. Abalos as the true and lawful registered owners of the property covered by TCT No. 287646;
- 2) Ordering the intervenors Federico Miones and Onofre Fujiwara, Jr., the defendants Mateo Respicio, Luis de la Cruz and Benjamin Maracha and all persons claiming rights under them, to vacate the premises and to remove their houses thereon within sixty (60) days from the finality of this decision; and
- 3) In the event of failure or refusal by the said defendants and intervenors to vacate the premises and remove their houses on plaintiffs' land within the period herein specified, ordering each of the aforesaid defendants and intervenors to pay the plaintiffs the amount of P250.00 a month, until said defendants and all persons claiming right under them shall have vacated the lot in question and removed all improvements thereon.

Without pronouncement as to cost.

SO ORDERED.[1]

Private respondents appealed to the Court of Appeals raising the following issues —

I

THE LOWER COURT ERRED IN NOT DISMISSING THE CASE FOR FAILURE TO COMPLY WITH THE CONCILIATION PROCESS PROVIDED FOR IN SECTION 6 OF P.D. NO. 1508, OTHERWISE KNOWN AS THE KATARUNGAN PANGBARANGAY LAW.

II

THE LOWER COURT ERRED IN ORDERING THE EVICTION OF DEFENDANTS-APPELLANTS AND INTERVENORS-APPELLANTS, IN VIOLATION OF SECTION 2 OF P.D. NO. 2016.

III

ASSUMING IN GRATIA ARGUMENTI THAT THE DECISION OF THE LOWER COURT EVICTING DEFENDANTS-APPELLANTS FROM THE PROPERTY IS NOT VIOLATIVE OF THE LAW, STILL THE LOWER COURT ERRED IN ORDERING SUCH EVICTION WITHOUT A SURVEY OF THE PROPERTY BY A DULY LICENSED SURVEYOR TO DETERMINE THE EXACT LOCATION OF THE HOUSES OF DEFENDANTS-APPELLANTS AND INTERVENORS-APPELLANTS IN RELATION TO THE PROPERTY."^[2]

In due course, the appellate court promulgated a decision on February 26, 1990 setting aside the appealed judgment, dismissing the complaint and counterclaims with costs against the plaintiff-appellees therein. A motion for reconsideration thereof filed by the plaintiffs was denied on July 6, 1990.

Hence, this petition for review of said decision and resolution the main thrust of which is that the appellate court erred in dismissing the complaint for failure to go through the pre-litigation process under P.D. No. 1508 and to order the respondent court to resolve the merits of the appeal.

The petition is impressed with merit.

It is true that in the complaint, the residence of plaintiffs (petitioners herein) was alleged to be at 77 West Avenue, Quezon City, while the private respondents were alleged to be at Lot 12, Block E-122 D Bo. Piñahan, Quezon City. In the answer of private respondents they allege, among others, that the court has not acquired jurisdiction over the case as there was no previous compliance with the conciliation requirement under P.D. No. 1508. In their reply and answer to the counterclaim, the petitioners, with leave of court, changed and corrected their address to 552 Reparo St., Caloocan City, as their correct residence. Private respondents did not object thereto.

The trial court as above related decided the case on the merits and rendered a judgment for the petitioners. However, the appellate court dismissed the complaint on the ground that there was a failure to bring the dispute for possible conciliation conference at the barangay level.

From the foregoing set of facts, the requirement of conciliation before the barangay where the property is located cannot be enforced. Petitioners reside in Caloocan City while private respondents reside at Barangay Piñahan, Quezon City. Section 2 of P.D. No. 1508 provides as follows:

"SECTION 2. Subject matters for amicable settlement. — The Lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

- 1) Where one party is the government, or any subdivision or instrumentality thereof;
- 2) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- 3) Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00;
- 4) Offenses where there is no private offended party;
- 5) Such other classes of disputes which the Prime Minister may in the interest of justice determine, upon recommendation of the Minister of Justice and the Minister of Local Government.

Moreover, while private respondents raise this defense in their answer, they effectively waived their right thereto when they failed to object to the correction of the residence of petitioners from Quezon City to Caloocan City, in the reply, with leave of the court. And without raising this issue any further, private respondents participated in the trial of the merits of the case.

The fact that private respondents took part in the trial, argued their case and adduced their evidence amounts to a waiver of this defense.

Of course, the respondent court nevertheless opined that the true address of petitioners is in Quezon City and not in Caloocan City as the reply stating the change of residence was made only by petitioners after the issue of non-compliance with Presidential Decree No. 1508 was raised and that the reply was not verified unlike the complaint.

The Court is not persuaded. The finding of the respondent court is based on surmises and assumptions. It should be predicated on the facts brought before it. Petitioners asserted that their true address is in Caloocan City. Private respondents did not object thereto and even went to the trial on the merits. It was only when the judgment against private respondents was rendered that they remembered to raise anew and on appeal the non-compliance with Presidential Decree No. 1508. It is much too late. The conclusion of the respondent court that petitioners were not being truthful in correcting their place of residence is totally without basis. On the contrary, in this case, it appears the defense of non-compliance with P.D. No. 1508 was availed of by private respondents only to further delay the determination of the merits of the case.

No rule is more settled than that once a party to a case submits to the jurisdiction of the court and participates in the trial on the merits of the case, he cannot thereafter, upon a judgment unfavorable to his cause, take a total turn about and say that the condition precedent of compliance with P.D. No. 1508 had not been met. One cannot have the cake and eat it too.

WHEREFORE, the petition is GRANTED and the appealed judgment of the appellate court dated February 26, 1990 and its resolution dated July 6, 1990 are hereby SET ASIDE. Let the records of the case be remanded to the appellate court for a determination of the merits of the appeal with deliberate dispatch. No costs in this instance.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 39, rollo.

[2] Pages 46 to 47, rollo.

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