

ROBERTO ULANG, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND NELIA SALAZAR, RESPONDENTS.

G.R. No. 99299. August 26, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for review seeks to annul and set aside the resolution[1] of respondent Court of Appeals, dated 28 February 1991, denying due course to the Petition for Certiorari with Prayer for Preliminary Mandatory Injunction docketed as CA G.R. SP No. 22944.

The antecedent events as culled from the pleadings and record of this case are as follows:

On 17 January 1975, Brigida Julian, mother of petitioner Roberto Ulang, sold a residential lot located at No. 60 Otero Avenue, Mayabuan, Olongapo City, to Valentina Salazar, mother of private respondent Nelia Salazar. The sale is evidenced by a Deed of Sale With Mortgage to secure payment of the balance of the purchase price in the amount of P40,000.00. Included in the sale were two (2) houses standing on the lot. One of these houses was occupied by petitioner Roberto Ulang who, at the time of the sale, was allowed by Valentina Salazar to stay in said house until the school term ended that year (1975). However, it was agreed that if petitioner stayed beyond that period, he shall pay a monthly rental of P250.00 to Valentina Salazar. The other house was rented by a certain Frank Collins who was served notice of the acquisition of the premises by Valentina Salazar. Roberto Ulang stayed beyond the agreed period.

On 16 November 1975, Frank Collins received a letter informing him that the premises were now owned by the spouses Casimiro and Nieves Ynares, Jr., by virtue of a Deed of Sale executed by and between the said spouses (as Vendees) and Roberto Ulang as attorney-in-fact of Brigida Julian (as Vendor). The letter further stated that rentals should then be paid to the spouses Casimiro and Nieves Ynares, Jr.

Sometime in December 1975, Frank Collins filed a complaint for consignment of rentals against Valentina Salazar and the spouses Casimiro and Nieves Ynares, Jr. The case was docketed as Civil Case No. 1832-0 with the Court of First Instance, Branch III, of Olongapo City. It was through this complaint that the second sale became known to Valentina Salazar. On 2 April 1979, the said court (Branch III) rendered a decision accepting the consignment made by Frank Collins and upholding Valentina Salazar's title and ownership of the property in question by virtue of the sale between Brigida Julian and Valentina Salazar dated 17 January 1975. The decision in said case which was appealed to and affirmed by the Court of Appeals in CA-G.R. CV 65571 subsequently became final.

Consequently, Valentina Salazar filed a case in the Court of First Instance, Branch I, of Olongapo City, for recovery of possession against Roberto Ulang who had refused to vacate the premises and to pay rentals to Salazar. The case was docketed as Civil Case No. 2380-0. After trial, the court a quo declared that the second sale to the Ynares couple was null and void, but decided that the sale between Brigida Julian and Valentina Salazar was a mere equitable mortgage. Valentina Salazar appealed the said decision of the lower court to the Court of

Appeals. The appeal was docketed as CA-G.R. CV No. 01089. On 8 May 1987, the Court of Appeals set aside the judgment of the lower court in said Civil Case No. 2380-0.

Said the appellate court:

"As may be gathered from the records, the question of ownership is not the issue being raised in the present case, for it has been established that the same had already been settled in a separate action brought before and adjudicated by, the then Branch III of the Court of First Instance of Olongapo. The decision in that case was appealed to and affirmed by Us in AC-G.R. CV 65571 (see p. 17, Rollo), and had already become final. There is no reason therefore for the trial court in the case at bar to pass upon the same question when the action brought before it was only for the recovery of possession of a particular property." [2]

Withal, the Court of Appeals ordered Roberto Ulang:

1. to vacate and deliver the premises occupied by him to appellant Valentina Salazar;
2. to pay the rentals of P250.00 a month from May 1975 until such time as he would vacate the property; and
3. to pay attorney's fees of P5,000.00 plus P100.00 per hearing.

The abovesaid Court of Appeals decision became final and executory on 4 July 1987. Consequently, on 8 February 1989, a motion for issuance of a writ of execution was filed by Valentina Salazar before the trial court in Civil Case No. 2380-0. On 6 March 1989, the motion was granted and a writ of execution was issued.[3] However, before the writ of execution could be carried out, petitioner Roberto Ulang filed an "Urgent Motion for Reconsideration and for Suspension of Implementation of the Writ of Execution dated 6 March 1989." Due to the intervening death of Valentina Salazar, a motion for substitution by her lone heir, Nelia Salazar, was filed. On 8 May 1989, the lower court issued two (2) orders in Civil Case No. 2380-0, one granting the substitution of Valentina Salazar as party plaintiff by her daughter Nelia Salazar and at the same time denying Roberto Ulang's motion for reconsideration and suspension of implementation of the writ of execution, and the other allowing an Alias Writ of Execution to issue. Petitioner filed a petition for certiorari to annul these two (2) orders before the Court of Appeals, docketed as CA-G.R. SP No. 17938. The petition was dismissed for lack of merit.[4]

On 17 July 1990, petitioner Ulang filed a suit for foreclosure of mortgage with preliminary injunction and damages against Nelia Salazar and the Sheriff of Branch LXII of the Regional Trial Court of Olongapo City. The new case was docketed as Civil Case No. 383-0-90. Both cases (Civil Case No. 2380-0 and Civil Case No. 383-0-90) pertain to one and the same property.

On 17 July 1990, or on the day the suit for foreclosure of mortgage was filed, the court a quo issued a restraining order enjoining Nelia Salazar and the respondent sheriff from ejecting Roberto Ulang pending the hearing of his application for a writ of preliminary injunction.

On 20 August 1990, the court a quo issued the Order denying Ulang's prayer for a writ of preliminary injunction on the ground that the foreclosure proceeding was still pending and the issue as to whether petitioner is justified to foreclose the mortgage had not yet been determined. His motion for reconsideration was likewise denied on 18 September 1990 for being moot and academic because on 28 August 1990, respondent sheriff succeeded in evicting petitioner Ulang from the premises in question and placed private respondent in possession thereof pursuant to the second alias writ of execution issued in Civil Case No. 2380-0, as evidenced by a Certificate of Delivery and Certificate of Acceptance.

On 29 September 1990, petitioner filed before respondent court a Petition for Certiorari under Rule 65 of the Rules of Court with prayer for the issuance of a Writ of Preliminary Mandatory Injunction directed against the

issuance by Judge Esther Nobles Dans of the abovesaid Orders dated 20 August 1990, on the ground of grave abuse of discretion amounting to lack of jurisdiction. The case was docketed as CA-G.R. SP No. 22944, where the resolution rendered on 28 February 1991 is now the subject of this appeal.

As aforesaid, the respondent Court of Appeals denied due course to the petition and dismissed the same. Finding no merit in the petition, respondent court stated:

"Once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution, the issuance of which is the trial court's duty (Torno vs. IAC, 166 SCRA 742). The issuance of the second alias writ of execution was ministerial on the part of the trial court in Civil Case No. 2380-0, and the denial of petitioner's prayer for the issuance of a writ of preliminary injunction was consistent with, and a necessary consequence of, the writ of execution. At the time that petitioner prayed for a writ of preliminary injunction, there was in fact no room for its applicability since the premises sought to be retained in petitioner's possession had under the law already been in the possession of private respondent. Preliminary injunction, by its very nature, is not one of the means whereby the execution of a final and executory judgment could be stayed.

"Foreclosure of mortgage proceedings does not require that the property sought to be foreclosed be in the possession of the mortgagee in order that the latter's rights be properly protected. Thus, even assuming that no final and executory judgment stands on the way for the issuance of a writ of preliminary injunction, still, the pertinent laws have to be applied to the attendant circumstances of the case to determine whether or not the writ applied for should be granted. The creditor cannot appropriate the thing given by way of mortgage. (Art. 2088, Civil Code). Moreover, the persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized. (Art. 2125 [2], Civil Code)."[5]

The respondent court likewise reiterated the rulings in AC-G.R. CV No. 01089 and CA-G.R. SP No. 17938 to the effect that the deed of sale between the deceased Valentina Salazar and Brigida Julian was absolute and the transfer of owner-ship unto the deceased Salazar was not conditioned upon full payment of the purchase price.

Petitioner interposed the present appeal on the main contention that respondent court erred in ruling that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution because such ruling admits of an exception.

According to petitioner, his right to remain in the property by virtue of the assignment to him made by his mother, Brigida Julian of the loan of Valentina Salazar in the amount of P40,000.00 and secured by a mortgage over the subject premises, which loan has not been paid by respondent Nelia Salazar, compelled him to seek the ancillary remedy of a preliminary injunction in order to prevent private respondent Salazar and the Deputy Sheriff from ejecting him from the premises until after said loan (which actually forms part of the purchase price) shall have been fully paid. It is for this reason, according to him, that he opted to foreclose the mortgage.

The above contention of petitioner is not well-taken.

"Injunction, whether preliminary or final, is not designed to protect contingent or future rights. An injunction will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. The possibility of irreparable damage, without proof of violation of an actual existing right, is no ground for an injunction, being mere *damnum absque injuria*."[6]

Admittedly, the ownership of the property in question had been settled in the complaint for consignment before Branch III of the Regional Trial Court of Olongapo City, in Civil Case No. 183-0 and in CA-G.R. CV No. 01089,

the latter being the appealed case, for recovery of possession and damages filed by Valentina Salazar against the petitioner.

Petitioner further argues that he resorted to the remedy of preliminary injunction so as to maintain the status quo in his favor as occupant of the subject premises, "for otherwise, his right to pursue the security over the premises x x x could become moot and academic once he is evicted therefrom." [7]

Records show that on 28 August 1990, respondent Sheriff succeeded in evicting petitioner from the premises and placed private respondent in possession thereof. Petitioner filed his petition for certiorari before public respondent on 28 September 1990, or one (1) month after his eviction from the premises. We find such act to be a mere ruse to prevent the enforcement of the final judgment in AC-G.R. CV No. 01089 (Civil Case No. 2380-0) which is the case for recovery of possession filed by Valentina Salazar against Roberto Ulang. A mandatory injunction will not lie to take the property out of control of the party in possession. [8] The respondent court, therefore, did not err in dismissing the petition for certiorari.

WHEREFORE, the resolution under review is hereby **AFFIRMED** and the petition is **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

[1] Penned by Associate Justice Jose C. Campos, Jr. with the concurrence of Associate Justice Jaime M. Lantin and Alicia Sempio-Diy

[2] Rollo, pp. 111-112

[3] Ibid., pp. 119-120

[4] Ibid., pp. 65-71

[5] Ibid., p. 24

[6] Talisay-Silay Milling Co., Inc. v. Court of First Instance of Negros Occidental, et. al., 42 SCRA 577, 582

[7] Petition, p. 10

[8] Pio vs. Marcos, et. al., 56 SCRA 726, 747

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