

VICTOR CLAPANO, ALEJANDRO ABEJARON, TERTULIANO ABEJARON, FERNANDO ABELLON, CONCHITA ABELLON, ANIAS MAHINAY AND MARCELO SAYCON, PETITIONERS, VS. HON. FILOMENO GAPULTOS, IN HIS CA...

G.R. Nos. 51574-77. September 30, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Certiorari and Prohibition with Preliminary Injunction and Damages seeking to annul and set aside the Order, dated March 14, 1978, of the then Court of First Instance of South Cotabato, Branch II, Koronadal, in Special Civil Case No. 395, directing the Provincial Fiscal of said province to file five (5) separate Informations for Indirect Contempt against herein petitioners, as well as the Order of the same Court of October 19, 1978 in Criminal Cases Nos. 1431 to 1434 inclusive, denying petitioners' Motion to Quash the Informations filed against them.

The pertinent antecedental facts follow:

The spouses Conrado Crisostomo and Thelma Gallaza mortgaged three (3) parcels of land, one a coconut plantation located at Maasim (formerly Kiamba), South Cotabato, and the other two parcels situated at General Santos City, with respondent Philippine National Bank, General Santos City Branch (PNB for brevity), as security for a loan. The mortgage was extrajudicially foreclosed because of the spouses' failure to settle their obligation, and the properties were sold at public auction to the PNB as the highest bidder. After the expiration of the one-year redemption period without said properties being redeemed by the spouses, PNB took possession of the same.

On October 8, 1974, the PNB appointed Matilde Abejeron as caretaker.

On October 21, 1975, the PNB executed a Deed of Promise to Sell said land in favor of respondent Princessita Jabido-Maulit, and thereafter cancelled the appointment of Matilde Abejeron as the bank's "encargado" and directed her to vacate the premises.

When the vendee, Princessita, tried to take physical possession of the land, petitioners Fernando Abellon and his wife Conchita Abellon (the Abellons, for short) claiming to be the tenants of the former owner, Conrado Crisostomo, and to have planted most of the coconuts in said land, refused to give up possession.

On September 17, 1976, in Miscellaneous Case No. 326, respondents PNB and Princessita filed with the Court of First Instance of South Cotabato, Branch II, Koronadal (the Lower Court) an "Ex-Parte Motion for the Issuance of Writ of Possession". The Writ was issued on November 3, 1976 placing PNB and/or Princessita in possession, to the exclusion of the former owners and PNB's former caretaker Matilde Abejeron.[1]

As the Writ was not fully satisfied because of the refusal of the Abellons and their workers to leave the subject

property, private respondents moved for the issuance of an Alias Writ of Possession[2] , which was granted on February 11, 1977.[3]

The Alias Writ of Possession was followed by another Order, dated March 24, 1977, directing respondent Provincial Sheriff to place private respondents in complete possession of the subject property, and to remove and destroy the temporary huts and/or dwellings and other improvements in the premises that appear to obstruct and prevent execution.[4] That was accomplished on March 29, 1977 and private respondents were thus placed in complete possession.[5]

In another proceeding, however, before the then Court of Agrarian Relations of Cotabato City (CAR), Branch II, docketed as CAR Case No. 44, the Abellons filed a Petition for Reinstatement. On April 5, 1977, the CAR issued a Restraining Order enjoining respondents and/or their representatives from further depriving the Abellons of the peaceful possession of the land they were tenanted.[6] Attempts by private respondents to dissolve that Order were unsuccessful.[7]

On April 27, 1977, because the Abellons then re-entered the area, and harvested coconuts, respondents PNB and Princessita charged, on May 16, 1977, the Abellons, their people Marcelo Saycon, Boy Aswang, Anias Mahinay, Alejandro Abejeron, Baby Abejeron, and Victor A. Clapano (petitioners' counsel) with contempt of Court before the Lower Court docketed as Special Civil Case No. 395.[8] Atty. Victor A. Clapano was included because he had allegedly instructed petitioners not to vacate the property.

On March 14, 1978, said Court issued the challenged Order finding that there existed prima facie evidence of contempt of Court against petitioners and directed the Provincial Fiscal to file five (5) separate Informations against them covering five allegedly contemptuous acts committed on different dates.[9] Complying, the Provincial Fiscal filed four (4) separate Informations for Indirect Contempt against petitioners in the Lower Court, docketed as Criminal Cases Nos. 1431, 1432, 1433 and 1434[10] for the incidents of March 25, 1977, March 26, 1977, April 27, 1977, May 2, 1977 and May 3, 1977, when petitioners were said to have committed contumacious acts by defying and disobeying a lawful Court Order and in respect of Atty. Victor A. Clapano for inducing his clients, his co-petitioners, to forcibly enter and stay within the questioned premises.

Petitioners moved to quash the Informations but quashal was denied on October 19, 1978.[11]

Petitioners Victor Clapano, Alejandro Abejeron, Tertuliano Abejeron, Fernando Abellon, Conchita Abellon, Anias Mahinay and Marcelo Saycon are now before us assailing the above Orders of March 14, 1978 and October 19, 1978 of respondent Court.

We issued a Temporary Restraining Order enjoining respondent Judge from proceeding with the hearing of the four Criminal Cases Nos. 1431, 1432, 1433 and 1434.

We sustain petitioners. *Fuentes, et al vs. Leviste, et als.*,[12] is authority for the doctrine that the mere refusal of the defeated party to surrender the property to the winning party upon the order of the sheriff does not constitute contempt. And although it has been held that there is contempt of Court when the defeated party re-enters the land after possession thereof has been delivered to the prevailing party by the sheriff in the enforcement of the writ of execution[13] , the peculiar circumstances of this case exculpate petitioners from any charge of contempt.

In the first place, in their Petition for Reinstatement in CAR Case No. 44, petitioners were successful in obtaining an Order upholding their tenancy status and enjoining the defendants therein from depriving them of their possession and cultivation of the subject property. The Provincial Commander was directed by the Agrarian Court to execute that Order.

Secondly, even under Section 35, Rule 39 of the Rules of Court, made applicable in extrajudicial foreclosures of real estate mortgages by Section 6 of Act No. 3135, the possession of property is given to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor." In this case, the subject land was being possessed and cultivated by the Abellons as third parties, whose status as tenants was recognized in CAR Case No. 44.

In fact, in the said CAR Case No. 44, the parties eventually entered into a Compromise Agreement, wherein they stipulated among other things, that the Abellons were being conceded to be tenants of the subject property as of July 6, 1977, and were being allowed to re-enter the landholding. A Decision was rendered on July 7, 1977 on the basis of that agreement.[14]

Thirdly, as tenants, petitioners-spouses are protected by Presidential Decree No. 1038, which provides that no tenant-tiller of private agricultural lands devoted to crops other than rice and/or corn, including but not limited to abaca, banana, coconut, coffee, mongo, durian and other permanent crops shall be removed, ejected, ousted or excluded from his farmholding unless for causes provided by law and directed by a final decision or order of the court.[15] Sale of the land is not included as one of the just causes for removal of tenants.[16]

Although the evidence discloses that on February 10, 1978, respondent Princessita Maulit and her husband, represented by their attorney-in-fact, filed CAR Case No. 48 for Termination of Tenancy Relationship and/or Ejectment against the Abellons, and that judgment was rendered against the latter on May 10, 1979, that case was instituted after the incident in question and will not affect the outcome hereof.

Finally, even assuming that petitioners could properly be charged with contempt, and notwithstanding that contempt proceedings are in their nature penal, there was no procedural necessity for the filing of separate criminal cases. The acts complained of could have been considered as incidents in the same civil action, Miscellaneous Case No. 326, itself.

WHEREFORE, the assailed Orders of respondent Judge dated March 14, 1978 and October 19, 1978, respectively, are hereby SET ASIDE and the Informations filed against petitioners in Criminal Cases Nos. 1431, 1432, 1433 and 1434 in the Court of First Instance of South Cotabato, Branch II, at Koronadal, are hereby declared null and void. The Temporary Restraining Order heretofore issued is hereby made permanent. No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

[1] Annex "B", p. 21, Rollo.

[2] Pp. 130-131, *ibid*.

[3] P. 132, *ibid*.

[4] Annex "E", p. 25, *ibid*.

[5] Annex "F", p. 26 *ibid*.

[6] Annex "I", pp. 29-30, *ibid*.

[7] Pp. 243-253; 254-291, *ibid*.

[8] Pp. 139-146, *ibid*.

[9] Pp. 204-206, *ibid.*

[10] Annexes "L", "L-1", "M", "M-1", pp. 38-43, *ibid.*

[11] Annex "O", pp. 54-55, *ibid.*

[12] 117 SCRA 958 (1982).

[13] *Flores vs. Ruiz*, 90 SCRA 428 (1979).

[14] Pp. 237-238, *Rollo*.

[15] Section 1, P.D. 1038, October 21, 1976.

[16] Section 50, R.A. 1199; Section 36, R.A. 3844.

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