

SECOND DIVISION

[G.R. No. 215807, January 25, 2017]

**ROSARIO E. CAHAMBING, PETITIONER, V. VICTOR ESPINOSA
AND JUANA ANG, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 28, 2014 of petitioner Rosario E. Cahambing that seeks to reverse and set aside the Decision^[1] dated November 29, 2013 and Resolution dated October 28, 2014 of the Court of Appeals (CA), affirming the Order^[2] dated September 22, 2009 and Resolution dated February 25, 2010 of the Regional Trial Court (RTC), Branch 25, Maasin City, Southern Leyte regarding the issuance of a writ of preliminary injunction in Civil Case No. R-2912 for Annulment of Deed of Extra-Judicial Partition.

The facts follow.

Petitioner and respondent Victor Espinosa are siblings and the children of deceased spouses Librado and Brigida Espinosa, the latter bequeathing their properties, among which is Lot B or Lot 354 with an area of 1,341 square meters, more or less, situated in Maasin City, Southern Leyte, to the said siblings in the same deceased spouses' respective Last Wills and Testaments which were duly probated.

Deceased Librado and Brigida bequeathed their respective shares over Lot 354 to respondent Victor Espinosa, however, Brigida subsequently revoked and cancelled her will, giving her one-half (1/2) share over Lot 354 to petitioner.

Brigida Espinosa and respondent Victor Espinosa, after the death of Librado Espinosa, entered into an Extrajudicial Partition of Real Estate subdividing Lot 354 into Lot 354-A, with an area of 503.5 square meters adjudicated to Brigida Espinosa, and Lot 354-B, with an area of 837.5 square meters, adjudicated to respondent Victor Espinosa, who eventually obtained a certificate of title in his name.

Not being included in the partition of Lot 354, petitioner filed a complaint against respondent Victor Espinosa and his representative, respondent Juana Ang, for, among others, the annulment of the Extrajudicial Partition of Real Property which was docketed as Civil Case No. R-2912.

Incidentally, a commercial building named as Espinosa Building stands on Lot No. 354. At the time of the filing of the complaint, the same building had twelve (12) lessees, four (4) of whom pay rentals to petitioner, namely: Pacifica Agrivet Supplies, Family Circle, Ariane's Gift Items, and Julie's Bakeshop. Petitioner alleged that respondent Juana Ang prevailed upon Pacifica Agrivet Supplies not to renew its lease contract with petitioner but to enter into a contract of lease with respondent

Victor Espinosa instead. According to petitioner, respondent Juana Ang also threatened to do the same thing with Julie's Bakeshop.

In one of the pre-trial conferences, the Clerk of Court, acting as Commissioner, issued an Order dated April 16, 1998 directing the parties to maintain the *status quo*.

Thereafter, respondent Victor Espinosa filed an Application for the Issuance of a Writ of Preliminary Injunction with Prayer for the Issuance of a Temporary Restraining Order dated March 3, 2009 against petitioner alleging that the latter violated the *status quo ante* order by allowing her sons to occupy the space rented by Jhanel's Pharmacy which is one of respondent Victor Espinosa's tenants. Respondent Victor Espinosa, through his attorney-in-fact, private respondent Juana Ang, alleged that petitioner's sons constructed a connecting door through the partition separating their cellular phone shop from Jhanel's Pharmacy and that the contract of lease between the latter and respondent Victor Espinosa is still subsisting, hence, the entry by petitioner's sons into the pharmacy's commercial space disturbed the *status quo ante*.

The RTC, finding merit to the application for temporary restraining order filed by respondent Victor Espinosa, granted the same on March 6, 2009. Thereafter, the RTC, on September 22, 2009, issued an Order for the issuance of a writ of preliminary injunction, the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, the defendant's prayer for the issuance of a writ of preliminary injunction is GRANTED. Accordingly, upon defendant's filing, within ten (10) days from receipt hereof, of the injunction bond in the sum of fifty thousand pesos (PhP50,000.00) conditioned on defendant's paying all damages, the plaintiff may sustain by reason of this injunction in case the Court should finally decide that the defendant is not entitled thereto, let a writ of preliminary injunction issue enjoining or restraining the plaintiff and all those claiming rights under her from disturbing the possession of the defendant to the leased premises or the "*status quo ante*" until after this case shall have been decided on the merits and/or until further orders from this Court.

SO ORDERED.

After the denial of petitioner's motion for reconsideration in a Resolution dated February 25, 2010, petitioner filed a petition on *certiorari* under Rule 65 of the Rules of Court, with the CA imputing grave abuse of discretion on the part of the RTC when it granted the application for the issuance of a writ of preliminary injunction filed by respondent Victor Espinosa. According to petitioner, respondents themselves violated the *status quo ante* order when they wrested the space rented by Pacifica Agrivet Supplies from petitioner's control and that there was no compliance with the requisites for the issuance of the writ of preliminary injunction.

The CA, on November 29, 2013, dismissed petitioner's petition on *certiorari*, thus:

WHEREFORE, the petition is DENIED. The Order and the Resolution, dated September 22, 2009 and February 25, 2010, respectively, both issued by respondent court in Civil Case No. R-2912 STAND.

SO ORDERED.

In a Resolution dated October 28, 2014, the CA denied petitioner's motion for reconsideration. Hence, the present petition.

Petitioner comes before this Court with the following Issues for resolution:

I.
ISSUES FOR RESOLUTION

A.

HE WHO SEEKS EQUITY MUST DO EQUITY. PRIVATE RESPONDENTS TOOK THE LAW INTO THEIR OWN HANDS BY WRESTING CONTROL OF THE SPACE BEING RENTED OUT TO PACIFICA AGRIVET SUPPLIES AND UNDER THE CONTROL OF MRS. ROSARIO CAHAMBING. THE HONORABLE COURT OF APPEALS COMMITTED LEGAL ERROR IN VALIDATING THE WRIT OF PRELIMINARY INJUNCTION GRANTED BY THE HONORABLE RTC IN FAVOR OF PRIVATE RESPONDENTS DESPITE THE LATTER'S CONDUCT WHICH DIRTIED AND SULLIED THEIR HANDS.

B.

THE WRIT OF PRELIMINARY INJUNCTION IS GRANTED ONLY IN EXTRAORDINARY CASES WHERE THE REQUISITES ARE COMPLIED WITH. THE HONORABLE COURT OF APPEALS COMMITTED LEGAL ERRORS IN VALIDATING THE WRIT OF PRELIMINARY INJUNCTION GRANTED BY THE HONORABLE RTC OF MAASIN CITY DESPITE THE LACK OF URGENCY AND DESPITE THE FACT THAT RESPONDENTS' CLAIM FOR DAMAGES ARE QUANTIFIABLE.

According to petitioner, the CA turned a blind eye and failed to consider respondents' violation of the *status quo* when it wrested possession and control of the space leased to Pacifica Agrivet Supplies and tried to do the same with Lhuillier Pawnshop; thus, committing a grave error and amounts to discrimination since the CA recognized the *status quo* as the situation where petitioner was the lessor of Pacifica Agrivet Supplies.

Petitioner further claims that respondents failed to prove the elements before an injunction could be issued and that the CA committed an error in validating the writ of preliminary injunction without those requisites. In particular, petitioner avers the following contentions: (1) the damage claimed by respondents is quantifiable at P12,000.00 per month, hence, not irreparable; (2) respondent, Victor Espinosa is at best a co-owner of the subject property, while respondent Juana Ang is a stranger, and a co-owner cannot exclude another co-owner, hence, respondent Victor Espinosa's right is not clear and unmistakable; (3) there is no urgency involved because the application for injunction was filed more than one year after the incident in question; (4) contrary to the conclusion of the CA, the space occupied by Jhanel's Pharmacy was voluntarily surrendered to petitioner by the lessee; and (5) the CA committed grave legal errors when it failed to correct the RTC's issuance of the writ of preliminary injunction.

In their Comment^[3] dated June 4, 2015, respondents argue that they did not have sullied hands when they applied for the writ of preliminary injunction. They also point out that the issuance of the writ of preliminary injunction was strictly in accordance with the Revised Rules on Civil Procedure.