

THIRD DIVISION

[G.R. No. 192463, July 13, 2015]

**OMAIRA LOMONDOT AND SARIPA LOMONDOT, PETITIONERS,
VS. HON. RASAD G. BALINDONG, PRESIDING JUDGE, SHARI'A
DISTRICT COURT, 4TH SHARI'A JUDICIAL DISTRICT, MARAWI
CITY, LANA DEL SUR AND AMBOG PANGANDAMUN AND
SIMBANATAO DIACA, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before us is a petition for *certiorari* with prayer for the issuance of a writ of demolition seeking to annul the Order^[1] dated November 9, 2009 of the Shari'a District Court (SDC), Fourth Shari'a Judicial District, Marawi City, issued in Civil Case No. 055-91, denying petitioners' motion for the issuance of a writ of demolition, and the Orders^[2] dated January 5, 2010 and February 10, 2010 denying petitioners' first and second motions for reconsideration, respectively.

The antecedent facts are as follows:

On August 16, 1991, petitioners Omaisra and Saripa Lomondot filed with the SDC, Marawi City, a complaint for recovery of possession and damages with prayer for mandatory injunction and temporary restraining order against respondents Ambog Pangandamun (Pangandamun) and Simbanatao Diaca (Diaca). Petitioners claimed that they are the owners by succession of a parcel of land located at Bangon, Marawi City, consisting an area of about 800 sq. meters; that respondent Pangandamun illegally entered and encroached 100 sq. meter of their land, while respondent Diaca occupied 200 sq. meters, as indicated in Exhibits "A" and "K" submitted as evidence. Respondents filed their Answer arguing that they are the owners of the land alleged to be illegally occupied. Trial thereafter ensued.

On January 31, 2005, the SDC rendered a Decision,^[3] the dispositive portion of which reads:

WHEREFORE, judgment is rendered as follows:

1. DECLARING plaintiffs owners of the 800 square meter land borrowed and turned over by BPI and described in the complaint and Exhibits "A" and "K";
2. ORDERING defendants to VACATE the portions or areas they illegally encroached as indicated in Exhibits "A" and "K" and to REMOVE whatever improvements thereat introduced;

3. ORDERING defendants to jointly and severally pay plaintiffs (a) P50,000.00 as moral damages; (b) P30,000.00 as exemplary damages; (C) P50,000.00 as attorney's fees and the costs of the suit.

SO ORDERED [4]

Respondents filed an appeal^[5] with us and petitioners were required to file their Comment thereto. In a Resolution^[6] dated March 28, 2007, we dismissed the petition for failure of respondents to sufficiently show that a grave abuse of discretion was committed by the SDC as the decision was in accord with the facts and the applicable law and jurisprudence. Respondents' motion for reconsideration was denied with finality on September 17, 2007.^[7] The SDC Decision dated January 31, 2005 became final and executory on October 31, 2007 and an entry of judgment^[8] was subsequently made.

Petitioners filed a motion^[9] for issuance of a writ of execution with prayer for a writ of demolition.

On February 7, 2008, the SDC granted the motion^[10] for a writ of execution and the writ was issued with the following fallo:

NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment. If defendants do not vacate the premises and remove the improvements, you must secure a special order of the court to destroy, demolish or remove the improvements on the property. The total amount awarded to and demanded by the prevailing party is P150,000.00 (damages, attorney's fees and the cost) which defendants must satisfy, pursuant to Section 8 (d) and (e), Rule 39, Rules of Court.
[11]

The Sheriff then sent a demand letter^[12] to respondents for their compliance.

On February 3, 2009, petitioners filed a Motion^[13] for the Issuance of a Writ of Demolition to implement the SDC Decision dated January 31, 2005. The motion was set for hearing.

On March 4, 2009, the SDC issued an Order^[14] reading as follows:

The plaintiffs, the prevailing party, filed a Motion for Writ of Demolition and the motion was set for hearing on February 16, 2009. On this date, the plaintiffs, without counsel, appeared. The defendants failed to appear. Thus, the court issued an order submitting the motion for resolution.

Resolution of the motion for issuance of a Writ of Demolition should be held in abeyance. First, defendant Ambog Pangandamun has filed on February 6, 2009 an Urgent Manifestation praying deferment of the hearing on the motion for writ of execution. Second, Atty. Dimnatang T.

Saro filed on February 13, 2009 a Notice of Appearance with Motion to Postpone the hearing set on February 16, 2009 to study the records of the case as the records are not yet in his possession. Third, the recent periodic report dated January 26, 2009 of the Sheriff shows Sultan Alioden of Kabasaran is negotiating the parties whereby the defendant Ambog Pangandamun will be made to pay the five (5)-meter land of the plaintiffs encroached by him and that what remains to be ironed out is the fixing of the amount.

WHEREFORE, the resolution on the Motion for Writ of Demolition is HELD IN ABEYANCE. The Sheriff is DIRECTED to exert efforts to bring the parties back to the negotiating table seeing to it that Sultan Alioden of Kabasaran is involved in the negotiation. Atty. Saro is REQUIRED to file his comment on the motion for writ of execution within fifteen (15) days from notice to guide the court in resolving the incident in the event the negotiation fails.

SO ORDERED.^[15]

On May 5, 2009, the SDC issued another Order^[16] which held in abeyance the resolution of the motion for issuance of a writ of demolition and granted an ocular inspection or actual measurement of petitioners' 800-sq.-meter land.

The SDC issued another Order^[17] dated May 14, 2009, which stated, among others, that:

While the decision has become final and executory and a Writ of Execution has been issued, there are instances when a Writ of Execution cannot be enforced as when there is a supervening event that prevents the Sheriff to execute a Writ of Execution.

The defendants claimed they have not encroached as they have already complied with the Writ of Execution and their buildings are not within the area claimed by the plaintiffs. This to the Court is the supervening event, thus the order granting the request of Atty. Jimmy Saro, counsel for the defendants, to conduct a survey to determine whether there is encroachment or not. Thus, the Order dated May 5, 2009.

Wherefore, Engr. Hakim Laut Balt is hereby commissioned to conduct a survey of the 800 square meters claimed by the plaintiffs. Said Eng. Balt is given a period of one (1) month from notice within which to conduct the survey in the presence of the parties.^[18]

On November 9, 2009, the SDC issued the assailed Order^[19] denying petitioners' motion for demolition. The Order reads in full:

It was on February 3, 2009 that the plaintiffs filed a Motion for Issuance of a Writ of Demolition. The defendants filed their comment thereto on

March 24, 2009. They prayed that an ocular inspection and/or actual measurement of the 800 square meter land of the plaintiffs be made which the court granted, in the greater interest of justice, considering that defendants claimed to have complied with the writ of execution, hence there is no more encroachment of plaintiffs' land.

The intercession of concerned leaders to effect amicable settlement and the order to conduct a survey justified the holding in abeyance of the resolution of the pending incident, motion for writ of demolition.

After attempts for settlement failed and after the commissioned Geodetic Engineer to conduct the needed survey asked for relief, plaintiffs asked anew for a writ of demolition. Defendants opposed the grant of the motion, alleging compliance with the writ of execution, and prayed for appointment of another Geodetic Engineer to conduct a survey and actual measurement of plaintiffs' 800 square meter land.

At this point in time, the court cannot issue a special order to destroy, demolish or remove defendants' houses, considering their claim that they no longer encroach any portion of plaintiffs' land.

Gleaned from Engineer Hakim Laut Balt's Narrative Report, he could have conducted the required survey had not the plaintiffs dictated him where to start the survey.

WHEREFORE, the motion for issuance of a writ of demolition is DENIED. A survey is still the best way to find out if indeed defendants' houses are within plaintiffs' 800 square meter land. Parties are, therefore, directed to choose and submit to the court their preferred Geodetic Engineer to conduct the survey within ten (10) days from notice. ^[20]

Petitioners filed their motion for reconsideration which the SDC denied in an Order^[21] dated January 5, 2010 saying that the motion failed to state the timeliness of the filing of said motion and failed to comply with the requirements of notice of hearing. Petitioners' second motion for reconsideration was also denied in an Order^[22] dated February 10, 2010. The SDC directed the parties to choose and submit their preferred Geodetic Engineer to conduct the survey within 15 days from notice.

Undaunted, petitioners filed with the CA-Cagayan de Oro City a petition for *certiorari* assailing the Orders issued by the SDC on November 9, 2009, January 5, 2010 and February 10, 2010.

In a Resolution^[23] dated April 27, 2010, the CA dismissed the petition for lack of jurisdiction, saying, among others, that:

x x x x

In pursuing the creation of Shari'a Appellate Court, the Supreme Court En Banc even approved A.M. No. 99-4-06, otherwise known as Resolution

Authorizing the *Organization of the Shari'a Appellate Court*.

However, the Shari'a Appellate Court has not yet been organized until the present. We, on our part, therefore, cannot take cognizance of the instant case because it emanates from the Shari'a Courts, which is not among those courts, bodies or tribunals enumerated under Chapter 1, Section 9 of [Batas] Pambansa Bilang 129, as amended over which We can exercise appellate jurisdiction. Thus, the instant Petition should be filed directly with the Supreme Court.^[24]

Petitioners filed the instant petition for *certiorari* assailing the SDC Orders, invoking the following grounds:

RESPONDENT JUDGE, HONORABLE RASAD G. BALINDONG, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION IN DENYING THE MOTION FOR ISSUANCE OF THE WRIT OF DEMOLITION AFTER THE WRIT OF EXECUTION ISSUED BY THE COURT COULD NOT BE IMPLEMENTED AND INSTEAD DIRECT THE CONDUCT OF THE SURVEY.

RESPONDENT JUDGE HAD COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING IT APPEAR THAT HE WAS IN COURT AT HIS SALA IN MARAWI CITY LAST JANUARY 28, 2010 WHEN THE PARTIES WERE PRESENT AND HE WAS NOT THERE. ^[25]

Preliminarily, we would deal with a procedural matter. Petitioners, after receipt of the SDC Order denying their second motion for reconsideration of the Order denying their motion for the issuance of a writ of demolition, filed a petition for *certiorari* with the CA. The CA dismissed the petition for lack of jurisdiction in a Resolution dated April 27, 2010 saying that, under RA 9054, it is the Shari'a Appellate Court (SAC) which shall exercise jurisdiction over petition for *certiorari*; that, however, since SAC has not yet been organized, it cannot take cognizance of the case as it emanates from the Shari'a Courts, which is not among those courts, bodies or tribunals enumerated under Chapter 1, Section 9 of Batas Pambansa Bilang 129, as amended, over which it can exercise appellate jurisdiction.

Under Republic Act No. 9054, *An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao*, amending for the purpose Republic Act No. 6734, entitled, "An Act Providing for the Autonomous Region in Muslim Mindanao, as amended", the Shari'a Appellate Court shall exercise appellate jurisdiction over petitions for *certiorari* of decisions of the Shari'a District Courts. In *Villagrancia v. Fifth (5th) Shari'a District Court*,^[26] we said:

x x x We call for the organization of the court system created under Republic Act No. 9054 to effectively enforce the Muslim legal system in our country. After all, the Muslim legal system – a legal system complete with its own civil, criminal, commercial, political, international, and religious laws — is part of the law of the land, and Shari'a courts are part