

## THIRD DIVISION

[ G.R. No. 182371, September 04, 2013 ]

**HEIRS OF MELENCIO YU AND TALINANAP MATUALAGA (NAMELY: LEONORA, EDUARDO, VIRGILIO, VILMA, IMELDA, CYNTHIA, AND NANCY, ALL SURNAMED YU), REPRESENTED BY LEONORA, VIRGILIO AND VILMA, PETITIONERS, VS. HONORABLE COURT OF APPEALS, SPECIAL TWENTY-FIRST DIVISION (TWENTY-SECOND DIVISION); ROSEMARIE D. ANACAN-DIZON (IN HER CAPACITY AS DIVISION CLERK OF COURT); MARION C. MIRABUENO (IN HER CAPACITY AS OIC-CLERK OF COURT OF THE REGIONAL TRIAL COURT, GENERAL SANTOS CITY), AND HEIRS OF CONCEPCION NON ANDRES (NAMELY: SERGIO, JR., SOFRONIO AND GRACELDA, ALL SURNAMED ANDRES), REPRESENTED BY GRACELDA N. ANDRES, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure seeks to set aside the Order<sup>[1]</sup> and Writ of Preliminary Mandatory Injunction,<sup>[2]</sup> both dated April 3, 2008, issued by the Court of Appeals (CA) in CA-G.R. SP No. 02084-MIN, which granted to private respondents the possession *pendente lite* of Lot No. 2, Psu-135740<sup>[3]</sup>-Amd, situated in Sogod, Barangay Apopong,<sup>[4]</sup> General Santos City, South Cotabato.

The pertinent facts are as follows:

On May 24, 1972, the spouses Melencio Yu and Talinanap Matualaga filed Civil Case No. 1291 against John Z. Sycip (who died during the pendency of the case and was substituted by his heirs, namely: Natividad D. Sycip, Jose Sycip, John Sycip, Jr., Alfonso Sycip II, and Rose Marie Natividad D. Sycip) for the declaration of nullity of documents and recovery of possession of real property with a prayer for a writ of preliminary mandatory injunction (WPMI) and damages. The subject matter of the case was Lot No. 2, Psu-135740-Amd, the same lot being contested herein. The trial court initially dismissed the case on the ground of prescription, but the CA set aside the order of dismissal and remanded the case for further proceedings. After trial, wherein the court adopted the oral and documentary evidence presented in Civil Case No. 969,<sup>[5]</sup> the Court of First Instance (CFI) of South Cotabato, Branch 1, rendered its Decision on April 22, 1981, the decretal portion of which states:

ACCORDINGLY, judgment is hereby rendered declaring plaintiff Melencio Yu, Filipino, of legal age, married to Talinanap Matualaga (Mora) and residing in Dadiangas, Buayan, Cotabato, now General Santos City, as the registered and absolute owner of the land in question, entitled to its possession; ordering the defendants to deliver to him the property in

question, including the Owner's Copy of Original Certificate of Title No. (V-14496) (P-2331) P-523, and to pay to the plaintiffs the sum of One Thousand Five Hundred (P1,500.00) Pesos as attorney's fees.

With costs against the defendants.

SO ORDERED.<sup>[6]</sup>

Eventually, the case was elevated to the Supreme Court, which, in *Heirs of John Z. Sycip v. Court of Appeals*,<sup>[7]</sup> sustained the CA decision affirming the trial court's judgment. The Court's ruling is now final and executory.

During the pendency of Civil Case No. 1291, squatters entered the subject lot. Consequently, when a writ of execution and an order of demolition were issued by the trial court, a group of squatters known as Yard Urban Homeowners Association, Inc. (YUHAI) filed a complaint for injunction with damages and prayer for writ of preliminary injunction (WPI) or temporary restraining order (TRO). It was docketed as Civil Case No. 4647 and raffled before the General Santos City Regional Trial Court (RTC), Branch 22. In time, the trial court ruled in favor of petitioners. The CA affirmed the decision on August 28, 1998 in CA-G.R. CV No. 54003.<sup>[8]</sup>

Thereafter, the General Santos City RTC Br. 23, then hearing both Civil Case Nos. 1291 and 4647, granted petitioners' motion to implement the writ of demolition and, subsequently, denied the opposition/motion for reconsideration thereto.<sup>[9]</sup> On August 22, 2001, a Special Order of Demolition was issued by Presiding Judge Jose S. Majaducon to enforce the judgment in both cases, directing the Provincial Sheriff of General Santos City or any of his deputies, thus:

NOW THEREFORE, we command you to demolish the improvements erected by the defendants HEIRS OF JOHN Z. SYCIP (namely: NATIVIDAD D. SYCIP, JOSE SYCIP, JOHN SYCIP, JR., ALFONSO SYCIP II, ROSE MARIE SYCIP, JAMES SYCIP & GRACE SYCIP), Represented by NATIVIDAD D. SYCIP, in Civil Case No. 1291, and the plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION, INC., ET AL., in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case No. 1291 and defendants in Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA covered by Original Certificate of Title No. (V-14496) (P-2331) P-523, located in Apopong, General Santos City.

This Special Order of Demolition shall be returned by you to this Court within ten (10) days from date of receipt hereof together with your proceedings indorsed hereon.<sup>[10]</sup>

By virtue of the aforesaid Order, a notice to vacate was issued by Sheriff Nasil S. Palati and noted by Clerk of Court Atty. Elmer D. Lastimososa addressed to the heirs of John Z. Sycip, members of YUHAI and all adverse claimants and actual occupants of the disputed lot.<sup>[11]</sup> As a result, private respondents filed a Special Appearance with Urgent *Ex-Parte* Manifestation, praying that the "Provincial Sheriff or any of his deputies be properly informed [of the pending protest between petitioners and private respondents before the Department of Environment and Natural Resources] and enjoined from [implementing] the Special Order of Demolition on the

improvements made by Concepcion Non Andres, her heirs and assigns.”<sup>[12]</sup> As their demands went unheeded, private respondents filed a complaint for quieting of title, specific performance, reconveyance and damages with prayer for the issuance of TRO, WPI and WPMI. Docketed as Civil Case No. 7066 and raffled before RTC Br. 22, among those impleaded as defendants were petitioners, Sheriff Palati, Atty. Lastimoso, Retired Presiding Judge Majaducon, and the officers/directors of YUHAI. The trial court denied the issuance of a TRO and the case is still pending trial at this time.<sup>[13]</sup>

Likewise, YUHAI once more filed a complaint on October 10, 2001 against the spouses Melencio Yu and Talinanap Matualaga.<sup>[14]</sup> This time, the case was for quieting of title, damages and attorney’s fees with application for TRO and WPI. It was docketed as Special Civil Case No. 562 and raffled before RTC Br. 22. The trial court declined to issue a TRO on October 19, 2001; denied YUHAI’s urgent motion for clarification on November 5, 2001; and rejected for the second time YUHAI’s prayer for issuance of TRO or WPI on February 4, 2002.<sup>[15]</sup>

Meantime, on January 3, 2002, RTC Br. 23 directed the Sheriff to proceed with his duties of implementing the Special Order of Demolition.

The above prompted YUHAI to file a petition for *certiorari* before the CA. The petition, which was docketed as CA-G.R. SP No. 69176, sought to annul the Special Order of Demolition dated August 22, 2001 and Order dated January 3, 2002, both issued by RTC Br. 23, as well as all the adverse resolutions of RTC Br. 22. On March 5, 2002, the CA issued a TRO. However, on July 27, 2004, the appellate court revoked the TRO, denied due course to the petition and dismissed the same for lack of merit.<sup>[16]</sup> YUHAI’s motion for reconsideration was denied on November 29, 2006.<sup>[17]</sup> The CA essentially ruled that the issue of ownership over the subject lot was already passed upon in CA-G.R. CV No. 54003 and binds YUHAI under the principle of *res judicata*. Subsequently, YUHAI filed a petition before this Court, but it was denied on September 16, 2009.<sup>[18]</sup>

On December 27, 2006, petitioners filed a Motion to Resume and Complete Demolition<sup>[19]</sup> pursuant to the Special Order of Demolition dated August 22, 2001. The trial court, now RTC Br. 36, granted the motion on October 9, 2007, instructing the Provincial Sheriff of General Santos City or any of his deputies to resume and complete the demolition in Civil Case Nos. 1291 and 4647 as directed in the Special Order of Demolition issued by then Judge Majaducon.<sup>[20]</sup>

Responding to the Notice to Vacate that was served in accordance with the October 9, 2007 Order, private respondents wrote the Sheriff on November 26, 2007, contending that they should not be included in the implementation of the Order since they are not parties in Civil Case Nos. 1291 and 4647.<sup>[21]</sup> Three days after, private respondents filed a Special Appearance with *Ex-Parte* Manifestation and Motion before RTC Branch 36, again arguing that they should not be included in the demolition as they are not parties to both cases and that Civil Case Nos. 7066 and 7364<sup>[22]</sup> are still pending before RTC Branches 22 and 23, respectively. The pleading was, however, denied on December 7, 2007.<sup>[23]</sup> Hence, a petition for *certiorari* with prayer for TRO and/or WPI seeking to set aside the October 9, 2007 Order was filed

before the CA and docketed as CA-G.R. SP No. 02084-MIN.<sup>[24]</sup>

On December 14, 2007, the CA issued a TRO,<sup>[25]</sup> but, on February 13, 2008, the restraining order was vacated for being moot and academic after the appellate court noted the December 20, 2007 Order of the Presiding Judge of RTC Br. 36 manifesting that the writ of demolition was already executed and completed on December 13, 2007.<sup>[26]</sup>

Arguing in main that there was no complete demolition and no proper turn-over of the contested lot on December 13, 2007, private respondents filed a motion for reconsideration with very urgent prayer for immediate issuance of WPI and WPMI.<sup>[27]</sup> On April 3, 2008, the CA resolved to grant the prayer for preliminary mandatory injunction.<sup>[28]</sup> On the same day, the writ was issued by respondent Rosemarie D. Anacan-Dizon.<sup>[29]</sup>

Aggrieved, petitioners filed an Urgent Motion for Reconsideration<sup>[30]</sup> and, later, an Urgent Motion for Dissolution of the Writ of Preliminary Mandatory Injunction<sup>[31]</sup> on April 9, 2008 and April 14, 2008, respectively. Without waiting for the CA resolution on the two motions, petitioner filed the present case before Us on April 21, 2008.<sup>[32]</sup>

The petition is granted.

The rule is well settled that a motion for reconsideration before the respondent court is an indispensable condition to the filing of a special civil action for *certiorari* before the Supreme Court. Nonetheless, this rule admits of exceptions. In *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*,<sup>[33]</sup> We have painstakingly cited a number of jurisprudence on the matter and held:

x x x As early as *Director of Lands v. Santamaria*, this Court held that there are notable exceptions to the general rule that a motion for reconsideration must first be filed before resort to *certiorari* can be availed of. This rule has been applied by this Court in a plethora of cases. A motion for reconsideration is no longer necessary when other special circumstances warrant immediate and more direct action.

x x x x

Although a motion for reconsideration has often been considered a condition precedent for granting the writ of *certiorari*, this rule finds exception in this case where execution has been ordered and the need for relief is urgent. Otherwise, a motion for reconsideration of the contested order would have served no purpose. The rule on exhaustion of remedies does not call for an exercise in futility. In *Gonzales, Jr. v. Intermediate Appellate Court*, this Court said:

As a general rule, *certiorari* will not lie, unless an inferior court has, through a motion for reconsideration, a chance to correct the errors imputed to him. This, however, admits of exceptions, namely: (1) when the issue raised is one purely of

law; (2) where public interest is involved; and (3) in case of urgency.<sup>[34]</sup>

In the case at bar, the different issues raised by petitioners and countered by private respondents ultimately boil down to the propriety of the issuance of the writ of preliminary mandatory injunction, which, aside from the need to urgently resolve in view of the peculiar facts involved, is an issue that is purely a question of law.

From the procedural standpoint, petitioners correctly argued that respondent Anacan-Dizon hastily issued and released for service the Order and the Writ of Preliminary Mandatory Injunction simultaneously on the same day, April 3, 2008, without first waiting for private respondents to post the required bond in the amount of Php300,000.00 as mandated by the Order. Private respondents candidly admitted in paragraph 36, page 16 of their Comment that it was only on April 14, 2008 that they posted the required bond.<sup>[35]</sup> This is obviously contrary to the provision of the Rules of Court ("Rules"), Section 4, Rule 58 of which states in no uncertain terms:

**SEC. 4. Verified application and bond for preliminary injunction or temporary restraining order.** – A preliminary injunction or temporary restraining order may be granted only when:

x x x x

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. **Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.**<sup>[36]</sup>

To be sure, an Order granting a preliminary injunction, whether mandatory or prohibitory, does not automatically entitle the applicant-movant to an immediate enforcement. Posting of a bond is a condition *sine qua non* for the issuance of a corresponding writ.<sup>[37]</sup> In fact, under the Rules, the party filing a bond is mandated to serve a copy thereof to the other party, who may oppose the sufficiency of the bond or the qualifications of its surety or sureties. This is clearly expressed in Section 7, Rule 58 of the Rules:

**SEC. 7. Service of copies of bonds; effect of disapproval of same.**

– The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may except to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify a bond sufficient in amount with sufficient sureties approved