

SECOND DIVISION

[G.R. NO. 166558, March 28, 2007]

**NORA BUENO PASION, PETITIONER, VS. SIMPLICIO R.
MELEGRITO, REPRESENTED BY ANSELMA TIMONES,
RESPONDENT.**

D E C I S I O N

TINGA, J.:

On 4 February 1999, respondent Simplicio R. Melegrito (respondent), represented by Anselma Timones, filed a complaint^[1] for forcible entry against Filipina M. Bueno, Divina M. Bueno, and Regina M. Bueno (Bueno sisters) with the 5th Municipal Circuit Trial

Court (MCTC), Gerona, Tarlac. The case was docketed as Civil Case No. 1243-99. As plaintiff, respondent claimed that the Bueno sisters constructed a two-story concrete residential structure on his land located in Nilasin, Pura, Tarlac through stealth and strategy and without his knowledge and consent. He further claimed that despite notice and demand, the Bueno sisters still retained possession of the land and refused to remove the structure.

On 22 July 1999, the MCTC rendered its judgment,^[2] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendants, Filipina Bueno & Divina Bueno or their agents or any person or persons, [sic] occupying said building in question in their names or by virtue of any authority by them:

(1) To vacate the premises occupied by said house/improvements thereon or to remove said building or improvements constructed thereon and restore the said possession to [respondent];

(2) To pay [respondent] attorney's fees in the amount of P10,000.00 plus P500.00 appearance fee per hearing;

(3) To pay the sum of P2,000.00 as damages representing the monthly rental of the land from February 1999 until possession is fully restored to [respondent]; and

(4) To pay the costs of suit.

SO ORDERED.^[3]

Acting on the appeal^[4] interposed by the Bueno sisters, on 13 December 1999, the Regional Trial Court (RTC), Branch 63, Tarlac, Tarlac set aside the 22 July 1999 judgment of the MCTC and ordered the case dismissed.^[5] The RTC denied respondent's motion for reconsideration.

Respondent thereafter filed a petition for review before the Fourth Division of the Court of Appeals.^[6] On 16 June 2000, the appellate court reversed and set aside the decision of the RTC and reinstated *in toto* the MCTC's judgment.^[7]

On remand of the case, the MCTC granted respondent's motion for execution and that led to the issuance of a writ of execution on 28 June 2001. On 24 January 2002, the MCTC granted respondent's motion for the issuance of a writ of demolition for failure of the Bueno sisters to comply with the 22 July 1999 judgment.

Subsequently, on 12 September 2002, an *alias* writ of demolition^[8] was issued directing the sheriff or his deputies to demolish the improvements erected by the Bueno sisters on the subject land belonging to respondent.

On 4 November 2002, petitioner Nora Bueno Pasion (petitioner), the recognized agricultural tenant on a portion of respondent's land and sister of the Bueno sisters, filed with the RTC, Branch 65, Tarlac, a Complaint^[9] for Injunction with Writ of Preliminary Injunction and Temporary Restraining Order and Damages against respondent, Judge Luisito T. Adaoag,^[10] and the Provincial Sheriff of Tarlac, seeking to restrain the enforcement of the writ of demolition issued in Civil Case No. 1243-99. Petitioner claimed that the judgment in Civil Case No. 1243-99 was being implemented against her although she was not a party to the case. She further claimed that she was a bonafide agricultural tenant of respondent and that she, as such tenant, owned and actually occupied the house sought to be demolished which was a reconstructed old family house on the lot. She offered as proof of such ownership the building permit^[11] for the house's construction and a tax declaration covering the house.^[12]

On 7 November 2002, the RTC, Branch 65, granted a temporary restraining order for a period of seventy-two (72) hours,^[13] which was extended for another seventeen (17) days, completing the maximum twenty (20) day lifetime.^[14] On 10 December 2002, the RTC denied the prayer for preliminary injunction.^[15]

On 8 January 2003, petitioner filed a Petition^[16] for Certiorari under Rule 65 with the Court of Appeals imputing grave abuse of discretion to the Presiding Judge of RTC, Branch 65 in allowing a writ of demolition to be enforced against her although she was not a party to Civil Case No. 1243-99 and in finding that she was not the owner of the house sought to be demolished.

On 5 May 2004, the Fifth Division of the Court of Appeals promulgated a Decision^[17] in CA-G.R. SP No. 74784 denying the petition for lack of merit. The appellate court ruled:

In denying petitioner's petition for the issuance of a preliminary injunction to enjoin the implementation of the writ of demolition issued

by the 5th MTC of Gerona-Ramos-Pura, public respondent Judge had as its basis the findings of [the] MTC, which was later affirmed by the 4th Division of this court. Their findings indicate that the house which is now the subject of a writ of demolition, was erected by the sisters of the petitioner and not by petitioner herself. On this score alone, public respondent Judge denied petitioner's application for injunction. The rule is well-entrenched that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the right of party in a pending case rests upon the sound discretion of the trial court.^[18] Rule 58, Section 7 of the Rules of Court gives generous latitude to the trial court in this regard for the reason that conflicting claim[s] in an application for a provisional writ more often than not involve a factual determination which is not the function of the appellate courts. Hence, the exercise of sound judicial discretion by the trial court in injunctive matters must not be interfered with except when there is manifest abuse.

Also, it is worthy to note that in this case, petitioner's grounds in support of the petition calls for an evaluation of the evidence presented which is not within the province of certiorari. Even if this court were to delve on the grounds raised by the petitioner, the findings of this Court would preempt the trial court's findings wherein the main action for injunction is still pending.

Moreover, the assailed Order of the public respondent Judge is only a denial of petitioner's application for a preliminary injunction, which is distinct from the main action for injunction filed with the trial court. Thus, in the case of *Tambaoan v. Court of Appeals*,^[19] the Supreme Court held: the inquiry in the proceedings for the issuance or denial of a writ of preliminary injunction is premised solely on initial evidence, and the findings thereon by the trial court should be considered to be merely provisional until after the trial on the merits of the case would have been concluded.^[20]

Petitioner moved for reconsideration^[21] of the 5 May 2004 Decision, but the Court of Appeals denied the motion in its 15 December 2004 Resolution.^[22]

Hence, petitioner filed this Petition for Review under Rule 45 of the Rules of Court.

The issue raised by petitioner may be formulated as follows: whether the denial of petitioner's prayer for a writ of preliminary injunction to enjoin the enforcement of a writ of demolition issued in another case to which she was not a party is tenable.

Questioning the enforcement of the writ of demolition against her, petitioner claims ownership of the structure sought to be demolished on the strength of a building permit and a tax declaration as well as harps on the fact that she was not a party to Civil Case No. 1243-99. Being a non-party in said case, she asserts, the judgment therein may not be implemented to prejudice her rights as the alleged owner and possessor of the subject structure.

The petition is without merit.

An ejectment suit is an action *in personam* wherein judgment is binding only upon parties properly impleaded and given an opportunity to be heard.^[23] However, the rule admits of the exception that even a non-party is bound by the judgment in an ejectment suit where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee pendente lite; (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant.^[24]

In the case at bar, it is not disputed that petitioner falls under situation (f) above because she is a relative of the Bueno sisters, the defendants in Civil Case No. 1243-99.^[25] She herself admitted this fact in her complaint in Civil Case No. 9420 when she referred to the Bueno sisters as her legitimate sisters.

Besides, petitioner cannot deny her knowledge of the pendency of Civil Case No. 1243-99. Even the judgment in the said case acknowledges the fact that she went to the hearings with Geronimo Zafra, the representative of her sisters.

Indeed, if she truly had an interest in the structure sought to be demolished as she claims, she could have so informed respondent even before the filing of the case to enable the latter to take the necessary and appropriate action. Had respondent known that petitioner was claiming ownership over the structure, he could have, for example, allowed her to merely continue with its possession or he could have impleaded her in Civil Case No. 1243-99 as a necessary party, defined in Sec. 8, Rule 3 of the Rules of Court as "one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action." However, respondent apparently had been unaware of petitioner's ownership claim over the structure as she divulged the same only when she filed the complaint in Civil Case No. 9420.

Even if petitioner was prevented by the 1991 Revised Rules on Summary Procedure from intervening in Civil Case No. 1243-99, a motion for intervention being a prohibited pleading therein, she was not precluded from filing a separate case to assert and claim her ownership over the structure. Curiously, it was only on 4 November 2002, a month after the issuance of the alias writ of demolition in Civil Case No. 1243-99, that petitioner filed the complaint for injunction to restrain the implementation of the writ. At that time, Civil Case No. 1243-99, which originated in the MCTC, had already been appealed to the RTC whose decision was eventually reviewed

and reversed by the Court of Appeals. Through all these court proceedings spanning a number of years, petitioner did not do or say anything. She claims having filed a motion to quash the writ of demolition but even this came too late in the day and was definitely not enough to negate her apparent lackadaisical attitude in protecting her alleged right.

Verily, the principle of equitable *estoppel* would now operate to prevent petitioner from asserting her alleged ownership over the structure and defeating the *alias* writ of execution issued in execution of the decision in Civil Case No. 1243-99. Sec. 2(a), Rule 131 of the Rules of Court states: