

SECOND DIVISION

[A.M. No. MTJ-00-1242, January 20, 2000]

**DANIEL AND SUPREMA DUMO, COMPLAINANTS, VS. JUDGE
ROMEO V. PEREZ, MUNICIPAL TRIAL COURT, BAUANG, LA
UNION, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint filed by spouses Daniel and Suprema Dumo against respondent Judge Romeo V. Perez for gross ignorance of the law, grave abuse of discretion and patent partiality in connection with the enforcement of his decision in Civil Case No. 857, entitled "Severa J. Espinas v. Spouses Sandy and Presnida Saldaña." The case was for quieting of title and recovery of ownership and possession of a parcel of land in Paringao, Bauang, La Union, consisting of 1,514 square meters and covered by Tax Declaration No. 22893.

It appears that on November 17, 1995, Severa J. Espinas filed a complaint for quieting of title and recovery of ownership and possession against the spouses Sandy and Presnida Saldaña in the court of respondent with respect to this land which is claimed by complainants. For failure of Saldaña spouses to file their answer, judgment by default was rendered against them on February 5, 1996. Upon motion by Espinas, a writ of execution was issued by respondent on February 26, 1996 ordering the Saldañas to vacate and surrender possession of the subject property. A relocation survey of the land, however, showed that the concrete fence constructed by the Saldañas did not encroach on any part of the land being claimed by Espinas but that the land in question was actually being occupied by herein complainants. Consequently, the writ of execution was returned unsatisfied by the sheriff. The sheriff's return, dated March 12, 1996, reads:

Due to the apparent ambiguity of the aforesaid decision and the refusal of the Court of origin to extend any assistance in determining the exact boundaries of the subject land, the undersigned caused a relocation survey to be conducted on the same land on March 4, 1996 after a copy of the Writ of Execution was served to the defendants [spouses Saldaña] thru their caretaker named Rolando Nonog on February 28, 1996.

The relocation survey conducted by Geodetic Engineer Juanito O. Laces on the subject property (Lot 3/FSU 205832) showed that the concrete fence constructed by the defendants on the western portion of their lot (Lot 2/PSU 205832) did not encroach on the said subject land claimed by the plaintiff. A copy of the Location/Sketch Plan of PSU 205832, PSU 202273. SWO-1-000806 and SWO-1-000810 prepared by Engr. Juanito Laces is attached hereto as Annex "A" as integral part of this Return.

Considering the foregoing findings of the Geodetic Engineer hired by the

plaintiff herself showing that the concrete fence constructed by the defendants to separate their property from that of the plaintiff which are both covered by PSU-205832 did not encroach on the latter's property, the enforcement of the Writ of Execution dated February 26, 1996 issued in the above-entitled case is rendered moot and academic.

Lot 3 of PSU-205832 is also claimed by spouses Daniel and Suprema Dumo who are not parties to the above-entitled case which renders therefor the Writ of Execution unenforceable as against the said spouses.

WHEREFORE, the Writ of Execution dated February 26, 1996 [is] hereby returned to the Court of origin, UNSATISFIED.

Complainants filed a motion to quash the writ of execution, in which they alleged:

1. The undersigned was informed by the defendants in the above-captioned case that her property at Paringao, Bauang, La Union particularly described under Tax Declaration No. 13789 registered in her name was being subjected to a writ of possession/execution by the Office of the Provincial Sheriff of La Union through Sheriffs Victor Cariño and Romualdo Baladad;
2. She was likewise informed that the writ of execution was issued by this Court pursuant to a decision rendered in Civil Case No. 857 for "Quieting of Title and/or Ownership and Possession" filed by a certain Severa J. Espinas against Sps. Sandy and Presnida Saldaña where the latter in that proceeding were declared in default and as a result, judgment was rendered against them in favor of plaintiff;
3. In connection therewith, the undersigned wish to inform the Court of the following facts:
 - a. The property being claimed by plaintiff Severa J. Espinas subject of her complaint is not owned and/or being occupied by Sps. Sandy and Presnida Saldaña but is owned by and in possession of the undersigned;
 - b. Said property is presently covered under Tax Declaration No. 22839 registered in the name of Suprema T. Dumo as owner thereof photo copy of her Tax Declaration is hereto attached as Annex "A" to form an integral part of this manifestation;
 - c. The undersigned Suprema T. Dumo is not a party to the case filed by Severa J. Espinas against Sps. Sandy and Presnida Saldaña particularly in Civil Case No. 857 for Quieting of Title and/or ownership and Possession and is therefore not bound by said judgment;
 - d. The fact that the lot in issue is owned by the undersigned and not by the defendants Saldañas is verified and attested to by the former Sheriff that enforced the writ, Mr. Rowell Louis C. Eusebio, photo

copy of his Sheriff's Report is hereto attached for the Court's reference;

- e. The complaint of plaintiff Severa J. Espinas for Quieting of Title and/or Ownership and Possession in Civil Case No. 857 is just a resurrection and a re-filing of a previous complaint initiated by her husband Marcelino Espinas on the same property as against the parents of the undersigned filed on March 13, 1964 and formally ended on October 9, 1980 where it was held that:

IN VIEW OF THE FOREGOING, the Court hereby dismiss the application of Marcelino Espinas for his failure to prove a registrable title to the land he is applying for.

photo copy of the decision of the Court of First Instance of La Union, Branch II in LRC Record No. 25525 is hereto attached as Annex "B" while the Court of Appeals decision affirming in toto the CFI's judgment is hereto appended as Annex "C" hereof.

- 4. In view of the foregoing indubitable facts, there is a need to quash the writ of execution issued by this Court.

In his order, dated April 26, 1996, respondent granted complainant's motion, thus:

After a careful reading of the ground on which the manifestation and motion was predicated, the Court finds the same to be meritorious. However, the Writ of Execution was already returned to this Court with the information that spouses Daniel and Suprema Dumo came and opposed its enforcement. Nevertheless, the sheriff had just formally read the dispositive portion of the decision and announced to the parties present that the particular land in question is lawfully owned by Severa J. Espinas and that the defendants were therein ordered to vacate the property and surrender possession of the same. However, since spouses Daniel and Suprema Dumo are not impleaded as party defendants in this case, the decision of this Court will not bind them, so the Writ of Execution issued by this Court cannot be enforced against them.

WHEREFORE, in view of the foregoing premises, the Manifestation and Motion To Quash the Writ of Execution as to the enforcement against them is set aside and no effect being not a party to the case. However, as regards spouses Sandy and Presnida Saldaña, said Writ remains enforceable as against them.

Despite this ruling that complainants were not bound by the decision in the case, respondent granted a later motion filed by the Espinas for the issuance of a writ of possession. The writ of possession, dated September 30, 1986, reads:

TO: Clerk of Court/Ex-Officio Sheriff
Office of the Clerk of Court
Bauang, La Union

G r e e t i n g s :

WHEREAS, the applicant, SEVERA J. ESPINAS in the above-entitled case has presented to this Court a motion praying for the issuance of a writ of possession of the property by virtue of the Decision dated February 5, 1996 and said property being described as follows:

A parcel of land (Unirr. Riceland) declared under Tax Declaration No. 9302413823 A, with an area of 1065 sq. meters more or less. Bounded on the North, Felizarda N. Mabalay, East, Pedro Trinidad, south, Girls Scout of the Philippines and on the West, China Sea.

Now, therefore, you are hereby commanded to place said applicant, SEVERA J. ESPINAS in possession of the property hereinbefore described, and to eject therefrom all adverse occupants.

Return of this writ shall be made within the period of sixty days from the date of its receipt by you.

The writ of possession was likewise returned unsatisfied. The sheriff's return, dated November 4, 1996, reads:

I hereby certify that on October 18, 1996, the undersigned received a copy of a Writ of Possession issued by the Hon. Judge Romeo Perez of the MTC Bauang, La Union ordering to place applicant Severa J. Espinas in possession of the property described and to eject therefrom all adverse occupants.

On October 29, 1996, the undersigned sheriff caused the service of said Writ but was opposed by Atty. Manuel Sanglay, claiming that said property is owned by Spouses Suprema and Daniel Dumo and not by Spouses Sandy and Presnida Saldaña defendants on the said case. Thus the undersigned sheriff failed to place the plaintiff Severa Espinas in possession of the said property since an earlier Order signed by the Hon. Judge Romeo Perez which states that the decision of this Court will not bind Spouses Daniel and Suprema Dumo since they are not impleaded as party defendants in said case. Thus the Writ of Possession is hereby returned unsatisfied.

It appears that relying on the writ of execution issued by respondent, Espinas and her agents forcibly took physical possession of the land on October 30, 1996. Complainants filed a complaint for forcible entry against Espinas in the court presided by respondent who inhibited himself from hearing the case. Aside from this forcible entry case, eight other criminal cases were filed in the court of respondent involving the complainants, on the one hand, and the group of Espinas, on the other. The complainants were charged with two counts of grave oral defamation, malicious mischief, occupation of real property or usurpation of real rights in property, trespassing, and maltreatment by Espinas and his group. Espinas and her group, on the other hand, were charged with trespassing and malicious mischief by the complainants.

In this administrative complaint, complainants allege that respondent showed ignorance of the law and partiality in issuing the writ of possession despite the fact that he knew as early as March 12, 1996 from the sheriff's return and their manifestation and motion to quash the writ of execution, that the land over which the writ of execution was being enforced is their property, and that they were not bound by the decision in the Civil Case No. 857 because they were not parties in the case. They charge that in issuing the said writ, respondent gravely abused his discretion and unduly favored Espinas.

Respondent denies the charges against him, claiming that his decision in Civil Case No. 857 was based on the law and evidence presented by Espinas after Saldaña spouses were declared in default for failure to file their answer. He claims that he issued the writ of execution and the writ of possession in order to enforce the decision which had already attained finality. His answer states in relevant parts:

That spouses Daniel and Suprema Dumo charged me for ignorance of the law, grave abuse of discretion and patent partiality because of my decision in Civil Case No. 857 entitled "Severa J. Espinas vs. Sandy and Presnida Saldaña" for Quieting of Title and/or Ownership and Possession;

That I vehemently deny of being ignorant of the law, gravely abusive in my discretion and patently partial in my decision as well as its enforcement on the aforementioned civil case because I decided it based on the law tried in ex parte proceeding, since the defendants Sandy and Presnida Saldaña were declared in default for failure to file their answer;

That in order to enforce the judgment by default which become final and executory when there was no appeal, I issued the Writ of Execution and subsequently the Alias Writ of Execution against defendants Sandy and Presnida Saldaña on motions of the plaintiff and both were served by the Sheriff but he returned them unsatisfied;

That the last time I issued the Alias Writ of Execution defendants Sandy and Presnida Saldaña which was on September 30, 1996 on motion of plaintiff Severa Espinas, the Sheriff returned it again unsatisfied;

That because of my decision in Civil Case No. 857 complainant spouses Daniel and Suprema Dumo filed a Civil Case against Severa Espinas, et. al. for Forcible Entry docketed as Civil Case No. 881 in which I inhibited;

That again seven (7) criminal cases were filed in my sala involving the spouses Daniel and Suprema Dumo and Severa Espinas, et. al. in which I have also inhibited to hear all these cases, copies of the criminal complaints are hereto attached as Annexes A, B, C, D, E, F, and G;

That on March 18, 1997, a criminal complaint for maltreatment was filed by Severa Espinas against spouses Daniel and Suprema Dumo docketed as Criminal Case No. 7191 and this time I did not inhibit myself, copy of the criminal case is hereto attached;

That because I did not inhibit myself from hearing Criminal Case No. 7191 against spouses Daniel and Surpema Dumo, they also filed this