

## SECOND DIVISION

[ G.R. NO. 159124, January 17, 2005 ]

**MARCELA GONZALES ALMEIDA, PETITIONER, VS. COURT OF APPEALS AND ROBERT P. SY, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 75020, finding grave abuse of discretion on the part of the Regional Trial Court (RTC) of Caloocan City, Branch 130,<sup>[2]</sup> when it granted the applications of the herein petitioner for the issuance of writs of preliminary prohibitory and mandatory injunction.

The antecedents, as culled from the records of the case, are as follows:

Marcelina Sarangaya was the registered owner of a parcel of land, identified as Lot 896, located in the then municipality of Caloocan, province of Rizal, covered by Transfer Certificate of Title (TCT) No. 87075,<sup>[3]</sup> with an area of 4,738 square meters. The property forms part of the Tala Estate (Friar Land) covered by Original Certificate of Title (OCT) No. 543 issued on December 27, 1910.<sup>[4]</sup>

Sometime in September 1993, respondent Robert P. Sy purchased the above parcel of land from Sarangaya. TCT No. 87075 was cancelled and, in lieu thereof, TCT No. 270862 was issued on September 16, 1993 under the name of Sy.<sup>[5]</sup>

Forthwith, the respondent caused the construction of a factory for kitchenware on the property.<sup>[6]</sup> A little over than five years later, or on January 20, 1998, petitioner Marcela Gonzales Almeida filed a complaint against the respondent and forty (40) others for quieting of title and the declaration, as void *ab initio*, of the assignment of sale certificates and damages, with a prayer for temporary restraining order and writ of preliminary injunction in the RTC of Caloocan City, Branch 124. The case was docketed as Civil Case No. C-537.<sup>[7]</sup>

In her complaint, the petitioner alleged, *inter alia*, that she was the only child of the Spouses Severino Gonzales and Juana Libertad. A certain Nicanor Jacinto was issued a Certificate of Sale dated July 11, 1910 over friar land, a parcel of land known as the Tala Estate, with an area of 25.375 hectares. Jacinto, thereafter, executed an Assignment of Sale Certificate dated November 4, 1926 in favor of the petitioner's father Severino Gonzales, which was duly approved by the Bureau of Lands. The petitioner further narrated that prior to the Second World War, her parents occupied the property continuously, openly and in the concept of owner. After the death of her father and mother in 1940 and 1942, respectively, she occupied the said property through her overseers, openly and in the concept of

owner being the sole heir thereof. However, she was not able to secure a *torrens* title over the property based on the said certificates because of limited instruction. The petitioner further alleged that Oscar L. Uy, in connivance with the other defendants, caused the falsification of the Deed of Assignment dated November 21, 1936 over the said parcel of land purportedly executed by Severino Gonzales in favor of Pedro and Aleja Gonzales; on the basis thereof, TCT No. 42126 was issued to the latter on January 9, 1941; this was later cancelled on June 7, 1947 when TCT No. 4477 was issued to and in the names of Paula Bernardo Vda. de Gonzales, *et al.*; and which, in turn, was cancelled by TCT No. 4495 issued in the name of Oscar Uy on June 7, 1947. TCT No. 10533(9498) was, thereafter, issued on July 1, 1948 in the names of Remedios Mercado, *et al.* The petitioner further alleged that a portion of the property identified as Lot 896 was sold to Marcelina Sarangaya on May 23, 1961,<sup>[8]</sup> who was issued TCT No. 87075 therefor. She claimed that the said deed of assignment executed in favor of Pedro and Aleja Gonzales, and the titles issued on the basis thereof were null and *void*. The petitioner also alleged in her complaint that she was already 73 years old.

To support her application for a writ of preliminary injunction, the petitioner alleged the following:

a. Plaintiff, as shown in the preceding paragraphs and indubitably by the Assignment of Sale Certificate No. 722 dated November 4, 1926 (Annex "A" hereof), is the absolute owner of the subject parcel of land, Lot 896 Tala Estate, and, as such, she has the right to be protected from further acts of land grabbing and acts of dispositions by the defendants-developers;

b. Defendants-developers having already subdivided and sold substantial portions are bent to continue to further subdivide and sell the other portions of the subject properties of the plaintiff if not ordered to desist by at least a temporary restraining order and, thereafter, by writ of preliminary injunction;

c. Plaintiff has already suffered and will inevitably continue to suffer grave and irreparable damages and injuries if defendants-developers and/or their privies or transferees-in-interest, the herein other defendants, are not prevented from further subdividing and selling subdivided lots of the subject parcel of land and from building structures and introducing other improvements thereon;

d. Plaintiff is ready to put up the bond in such amount reasonably fixed to answer for any damage in the event that plaintiff is finally adjudged as not to be entitled to relief of injunction.<sup>[9]</sup>

In his answer<sup>[10]</sup> to the complaint, the respondent asserted, among others, that he bought Lot 896 in good faith and for valuable consideration. Contrary to the petitioner's claim that the property was in her possession,<sup>[11]</sup> it was he who had been in continuous possession thereof. Moreover, as against the Deed of Assignment of Sale Certificate No. 722, the title issued under his name, TCT No. 270862, should prevail.<sup>[12]</sup>

Upon motion of the petitioner, the trial court ordered the consolidation of Civil Case No. C-537 with another case relating to Lot 896, Civil Case No. C-17659, earlier filed and pending with the RTC, Branch 130,<sup>[13]</sup> presided by Judge Jaime T. Hamoy.<sup>[14]</sup>

During the August 20, 1999 hearing of the petitioner's plea for a writ of preliminary injunction, Santos Alberca was presented as witness. Alberca testified that he was somehow related to the petitioner<sup>[15]</sup> and had been the overseer of the latter's property, Lots 896, 897 and 899, since 1994.<sup>[16]</sup> He narrated that when squatters occupied a portion of the property, he confronted them and demanded proof of their title; the latter failed to do so. Alberca admitted, however, that the petitioner had no proof that the subject properties were in her name,<sup>[17]</sup> and that he was not aware whether there was a proceeding, testate or intestate, concerning the estate of the late Severino Gonzales, the petitioner's alleged father. The respondent did not adduce any evidence.

On June 4, 2002, the trial court issued an Order<sup>[18]</sup> granting the application for a writ of preliminary prohibitory injunction, enjoining the defendants therein from further subdividing the disputed parcel of land known as Lot 896 of the Tala Estate located in Camarin, Caloocan City, and from selling or encumbering, or otherwise, negotiating any portion thereof and from building or constructing any structures or improvements thereon, as well as from bulldozing, leveling or scrapping or excavating any portion thereof or from the entry of any illegal occupants or any portion thereof and from committing further acts of dispossession thereon, upon posting, by the petitioner as the plaintiff therein, of an injunctive bond in the amount of One Million Pesos (P1,000,000.00). The trial court ruled that, based on the Assignment of Sale Certificate dated November 4, 1926 and being the lone heir of the Spouses Gonzales, the petitioner became the owner of Lots 896, 897 and 899. Thus, the trial court concluded that the title over Lot 896 issued to the respondent was spurious and falsified.<sup>[19]</sup>

After the petitioner posted a bond of P1,000,000.00, the trial court issued a writ of preliminary prohibitory injunction<sup>[20]</sup> on July 1, 2002, enjoining the respondent and the other defendants and all their attorneys, representatives, agents and other persons assisting them, or acting in their behalf or who derived their rights and occupancy from them, from developing, moving, leveling or hauling earth; from further subdividing any portion of Lot 896 of the Tala Estate, situated in Caloocan City; from constructing/building any structure thereon of any kind or enclosing any portion thereof with fence; from selling or offering to sell, leasing or, otherwise, occupying any portion thereof; and from further introducing or allowing any entry of other persons in any portion of the said lot.<sup>[21]</sup>

The Sheriff's Partial Report<sup>[22]</sup> dated August 19, 2002 stated that the defendants refused to comply with the said writ of injunction issued by the court. Thus, on August 23, 2002, the petitioner filed a motion for the issuance of a writ of preliminary mandatory injunction, serving a copy thereof on the respondent on August 22, 2002.<sup>[23]</sup>

For his part, the respondent filed a motion for the dissolution<sup>[24]</sup> of the writ of preliminary injunction which the trial court issued on July 1, 2002, alleging that the petitioner had no *torrens* title over Lot 896. He further alleged that as it appears

from the face of TCT No. 87075 issued in the name of Angelina Sarangaya and TCT No. 270862, the title issued in his name, the subject property was free from any liens, claims or encumbrances of whatever nature. He, likewise, alleged that the petitioner could amply protect whatever right she had over the property via an annotation of a notice of *lis pendens*. Finally, the respondent claimed that he was never notified of the hearing for the issuance of a writ of preliminary injunction nor furnished with a copy of the trial court's June 4, 2002 Order.

On December 12, 2002, the trial court issued an Order<sup>[25]</sup> denying the motion to dissolve the writ of preliminary injunction. On even date, the trial court issued another order<sup>[26]</sup> granting the petitioner's application for a writ of preliminary mandatory injunction on a bond of P2,000,000.00.<sup>[27]</sup> On January 16, 2003, the trial court issued a writ of preliminary mandatory injunction<sup>[28]</sup> ordering Sheriff Perseverando C. Pangan to place the petitioner in the possession of Lot 896 of the Tala Estate.

The respondent received a copy of the writ of preliminary mandatory injunction on December 26, 2002, with an accompanying notice from the sheriff ordering him to vacate the property. On January 21, 2003, the respondent filed a petition for certiorari<sup>[29]</sup> under Rule 65 of the Revised Rules of Court with the Court of Appeals (CA) for the nullification of the June 4, 2002 and December 12, 2002 Orders of the trial court. The case was docketed as CA-G.R. SP No. 75020.

Based on the Sheriff's Partial Report<sup>[30]</sup> dated January 24, 2003, stating that there were structures erected in the subject property, the petitioner forthwith filed a motion in the trial court for their removal therefrom on February 4, 2003.<sup>[31]</sup>

In his petition before the CA, the respondent alleged that aside from the Deed of Assignment of Sale Certificate No. 722, the petitioner had no other documentary or testimonial evidence to prove her ownership over the property. He averred that the petitioner failed to secure a *torrens* title over the property over a span of 70 years. The respondent, likewise, pointed out that even if Assignment of Sale Certificate No. 722 was, indeed, forged, the petitioner nevertheless failed to adduce evidence of his participation therein. He also alleged that the assailed orders and writs of the trial court, in effect, disposed of the main case, and maintained that he could not be deprived of his possession of the property via a writ of preliminary mandatory injunction. He reiterated that he purchased the subject property in good faith and for valuable consideration.

On April 30, 2003, the CA rendered judgment giving due course and granting the petition. The appellate court held that in issuing the assailed orders and writs against the respondent, the trial court committed a grave abuse of its discretion. The petitioner filed a motion for reconsideration of the decision, which was denied by the appellate court. She then filed the instant petition for review on certiorari, alleging that the CA erred in not dismissing the respondent's petition for certiorari for having been filed out of time, and that the appellate court, likewise, erred in nullifying the assailed orders and writs issued by the trial court.

The petitioner avers that the respondent filed his petition for certiorari with the CA only on January 21, 2003, well beyond the sixty (60)-day period therefor, counted

from his receipt of the trial court's June 4, 2002 Order, granting her plea for a writ of preliminary prohibitory injunction. She asserts that the CA should have dismissed the same on such ground.

In his comment on the petition, the respondent avers that he was never officially served with a copy of the June 4, 2002 Order of the trial court.

We have meticulously reviewed the records and find that, indeed, the respondent was not served with a copy of the trial court's June 4, 2002 Order. The records show that while the respondent was represented by the Kapunan Imperial Panaguition & Bongolan Law Firm, such counsel was not among those who were furnished copies of the said order by registered mail.<sup>[32]</sup> Even in the Sheriff's Partial Return dated August 19, 2002, there is no showing that a copy of the writ of preliminary injunction issued by the trial court on July 1, 2002 was served on the respondent and/or through his counsel.

The Court also notes that the respondent's counsel was not even served with a copy of the petitioner's application for a writ of preliminary mandatory injunction filed on August 23, 2002. The respondent was personally served with a copy thereof on August 22, 2002, in which it was merely alleged that the trial court issued an Order on June 4, 2002, granting the petitioner's plea for a writ of preliminary injunction, and that a writ of preliminary prohibitory injunction was, likewise, issued on July 1, 2002. The respondent then filed his motion for the dissolution of the July 1, 2002 Writ of Preliminary Injunction on August 29, 2002 and filed his Opposition dated September 5, 2002 to the petitioner's application for a writ of preliminary mandatory injunction. Upon his receipt on December 26, 2002 of the trial court's December 12, 2002 Order granting the petitioner's application for a writ of preliminary mandatory injunction and denying his motion for the dissolution of the July 1, 2002 Writ of Preliminary Injunction, the respondent filed his petition for certiorari with the CA on January 21, 2003. Under Section 4, Rule 65 of the Rules of Court, the sixty (60)-day period shall be counted from receipt of the notice of the resolution denying the motion for reconsideration of the assailed order of the tribunal:

*Sec. 4. When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.