

[**G.R. Nos. 135180-81; 135425-26, August 16, 2000**]

HEIRS OF THE LATE JUSTICE JOSE B. L. REYES REPRESENTED BY ADORACION D. REYES AND HEIRS OF EDMUNDO A. REYES, NAMELY, MA. TERESA P. REYES AND CARLOS P. REYES, PETITIONERS, VS. COURT OF APPEALS AND METRO MANILA BUILDERS, INC., RESPONDENTS.

D E C I S I O N

PARDO, J.:

The cases before the Court are consolidated petitions for review on certiorari to nullify: (1) the decision of the Court of Appeals^[1] setting aside that of the Metropolitan Trial Court, Pasay City, Branch 45^[2] and the orders of the Regional Trial Court, Pasay City branch 231^[3], and ordering petitioners to restore the subject property to the possession of respondent MMB, Inc. until the expiration of the lease contract, and (2) the resolution of the Court of Appeals^[4] allowing execution pending appeal^[5] of its aforesaid decision and issuing a writ of execution^[6] depriving petitioners of possession of the leased property and giving its possession to respondent MMB, Inc.^[7] which was a deforciant and worse, declaring petitioners guilty of indirect contempt of court and sentencing them to pay a fine of P30,000.00.

The factual background of the case dates back to November 30, 1976. Brothers Justice Jose Benedicto Luna Reyes (also known as Justice J. B. L. Reyes) and Dr. Edmundo A. Reyes were co-owners of a parcel of land located at Taft Avenue, Pasay City, near Buendia, with a land area of more than one hectare, covered by two Transfer Certificates of Title^[8]. On November 30, 1976, the brothers entered into a 25-year lease contract^[9] with Metro Manila Builders, Inc. (MMB, Inc.) at a very low rate of rental (P15,000.00 to P30,000.00 a month) in consideration of the fact that the lessee would cover all present and future improvements in the property with insurance against certain risks and maintain the premises in good, sanitary and tenable condition at all times.

However, in the course of the lease, petitioners found out that respondent MMB, Inc. had not properly maintained the premises or covered the same with an adequate insurance policy. Worse, respondent MMB, Inc. had sub-leased the property to third parties and was earning therefrom about P500,000.00 a month. On December 2, 1996, petitioners served on respondent MMB, Inc. a notice terminating the lease contract and demanding that they vacate and surrender the premises subject of the lease to petitioners.

Failing to do so, on February 3, 1997, petitioners filed with the Metropolitan Trial Court, Pasay City, Branch 45 a complaint for unlawful detainer^[10] based on breach of the contract of lease.

On March 5, 1997, respondent MMB, Inc. filed its answer to the complaint. MMB, Inc. did not deny the violations imputed to it but questioned the absence of a judicial rescission of the contract of lease.^[11]

On May 9, 1997, the trial court rendered a decision in favor of petitioners, thus:

"WHEREFORE, and considering the foregoing, judgment is hereby rendered in favor of the plaintiff heirs of J.B.L. Reyes, thru Adoracion D. Reyes, and heirs of Edmundo Reyes namely Ma. Teresa P. Reyes, and Carlos P. Reyes and against the defendant Metro Manila Builders, Inc. ordering the latter:

1. And all persons claiming right under it to vacate, surrender and cede possession of the leased premises to plaintiffs;
2. To pay plaintiffs, P300,000.00 for every month from notice to vacate until possession is finally turned over to plaintiffs, with legal interest;
3. To pay plaintiff the amount of P20,000.00 as for attorneys fees; and,
4. To pay the cost of suit"^[12]

On May 16, 1997, petitioners filed with the Metropolitan Trial Court, Pasay City, Branch 45 a motion for execution of the judgment of eviction.^[13] On the other hand, respondent appealed the decision to the Regional Trial Court, Pasay City, Branch 113.^[14] However, respondents failed to file their appeal memorandum on time and so the court dismissed their appeal. In its appeal to the RTC, respondent MMB, Inc. never raised the issue of jurisdiction. Hence, on November 5, 1997, respondent MMB, Inc. filed an appeal to the Court of Appeals.^[15]

On November 26, 1997, MTC Branch 45, Pasay City,^[16] granted the motion for execution that petitioners filed. Consequently, on December 1, 1997, the trial court issued the corresponding writ of execution.^[17] However, on December 8, 1997, the Court of Appeals issued a temporary restraining order^[18] against the execution of the ejectment judgment.

Even before the appellate court could rule on the injunctive relief, respondent MMB, Inc. withdrew its appeal.^[19] In a resolution dated February 17, 1998, the Court of Appeals allowed the withdrawal.^[20]

Simultaneously with the withdrawal of the first CA case,^[21] on February 17, 1998, private respondent also filed a petition for annulment of the ejectment decision before the Regional Trial Court, Pasay City, Branch 231 (RTC 231)^[22] on the ground that the MTC had no jurisdiction over the ejectment case. MMB, Inc. prayed for a temporary restraining order and/or preliminary injunction against the execution of the ejectment decision. The court, however, did not issue a temporary restraining order (TRO) against MTC Branch 45, Pasay City.

On March 5, 1998, petitioners filed with the Regional Trial Court their memorandum in support of their opposition against the injunctive relief sought by MMB, Inc.^[23] On March 20, 1998, petitioners filed with the same court a motion to dismiss.^[24]

In an attempt to dramatize its plea, on March 23, 1998, respondent MMB, Inc. filed another petition with the Court of Appeals^[25], for certiorari and mandamus complaining about what it termed as the **sub-silencio** denial by the lower court of their application for injunctive relief.^[26]

On March 23, 1998, the Court of Appeals issued a resolution giving petitioners, as respondents therein, ten ((10) days from notice within which to file their comment on the petition, not a motion to dismiss, and in the meantime, restrained them from enforcing the writ of execution in Civil Case No. 113-97, MTC-Pasay City, Branch 45.^[27]

Incidentally, the resolution was signed by only two members of the Court of Appeals, Special Fourth Division, namely, Justice Demetrio G. Demetria, ponente, and Justice Ramon A. Barcelona, member, concurring. Justice Omar U. Amin, member, did not sign. Hence, the resolution is void, which the division clerk of court should not have received for filing, much less served on the parties. By law, the attendance of three members of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of three members of a division shall be necessary for the pronouncement of a decision, or final resolution which shall be reached in consultation before the writing of the opinion by any member of the division.^[28] This rule applies to interlocutory resolutions.^[29] True, any member of the Court of Appeals may issue preliminary injunction or temporary restraining order.^[30] However, this power is exercised only in case of extreme urgency, and in the tradition of the Supreme Court, the Court en banc or division ratifies or confirms the act of the single justice at the very next session of the Court.

On April 14, 1998, upon motion of petitioners, RTC-Pasay 231 issued an order dismissing the petition on the ground that respondent's remedy is appeal in due time which, when withdrawn, was effectively abandoned. The Regional Trial Court, Pasay City, Branch 231, thus ruled:

"If jurisdiction was indeed a valid concern of the petitioner, it should have been raised at the first opportunity i.e. At the inception of the ejectment case before the Metropolitan Trial Court. Although, the question of jurisdiction may be raised at any stage of the proceedings, it should not be used as a scheme to delay the proceedings and petitioner cannot feign ignorance or inadvertence in a manner aptly illustrated by the respondents, to wit:

6.1 What gave petitioner away is its silence on why it failed, nay refused to raise the issue of jurisdiction in its petition before the appellate court. Jurisdiction it is elementary may be raised anytime even before the first time on appeal. (Govt. vs. American Surety Company 11 PHIL 203; Vda De Roxas vs. Rafferty, 37 PHIL 957; People vs. Que Po Lay, 94 PHIL 6400).

Furthermore, this Court reiterates that "the remedy under Rule 47 is unavailable to the petitioner." It can be availed of only "as the last remedy and cannot be resorted to if the ordinary remedies of a new trial, appeal, petition for relief or other appropriate remedies are available." In this case, appeal is the ordinary remedy which was available to and had in fact been availed of by the petitioner. Lamentably, it caused the withdrawal of its appeal expressing preference and venturing to obtain

instead relief under Rule 47 which appears inappropriate under the circumstances."^[31]

With the imminent expiration of the temporary restraining order,^[32] respondent MMB, Inc. filed with the Court of Appeals a series of petitions and motions urging the Court of Appeals to issue injunctive relief.^[33] Thus, on May 14, 1998, respondent MMB, Inc. filed with the Court of Appeals a motion for leave of court to admit a supplemental petition.^[34]

On May 18, 1998, respondent MMB, Inc. filed with the Court of Appeals an urgent motion for the issuance of another temporary restraining order in the second CA case.^[35] Respondent sought a TRO to enjoin the MTC-Branch 45, Pasay City from enforcing the writ of execution of the decision in Civil Case No. 113-97 and the Regional Trial Court from proceeding with Civil Case No. 98-0366 pending the resolution of the supplemental petition.

Also on the same date, respondent filed with the Court of Appeals a manifestation alleging that it filed with the Regional Trial Court, Quezon City, Branch 88 an action for annulment of the unilateral termination of lease contract and damages.^[36] On the ground that such case was still pending, respondents prayed for a temporary restraining order and a writ of preliminary injunction to prevent the execution of the judgment in Civil Case No. 113-97.^[37]

On May 20, 1998, respondent MMB, Inc. filed with the Court of Appeals^[38] another case seeking to set aside the order of the RTC Pasay, Branch 231, dismissing the action and praying that a temporary restraining order be issued against the MTC-45 Pasay City enjoining the writ of execution issued in Civil Case No. 113-97, to desist from proceeding with CA-G. R. SP No. 47158, to declare the order of respondent judge in Civil Case No. 98-0366 as null and void for being issued in grave abuse of discretion, without or in excess of its jurisdiction, and to declare the TRO/injunction permanent.

On May 22, 1998, the Court of Appeals consolidated the second^[39] and third^[40] CA cases.

In the meantime, on June 29, 1998, the Court of Appeals issued a resolution in the third CA case,^[41] as follows:

"We hereby resolve:

- a. to require the respondent in CA GR SP. No. 47720 to file the petition, not a motion to dismiss, which may be considered as their answer should we decide to give it due course;
- b. Considering that respondent's comment and petitioner's reply in C.A. G.R. SP. No. 47158, to set for hearing the application for preliminary injunction on July 15, 1998, at 2:00 A.M. at Paras Hall, Court of Appeals, Ma. Orosa St., Ermita Manila; and
- c. For a comprehensive appreciation of the consolidated cases before us, to require the RTC Branch 231 of Pasay City to Elevate the Original

Records of Civil Case No. 98-0366 and other pertinent pleadings and papers related thereto within five (5) days from notice.”^[42]

On July 2, 1998, respondents filed with the Regional Trial Court, Branch 110, Pasay City a petition seeking a temporary restraining order to enjoin MTC Branch 45, Pasay City,^[43] and the sheriff ^[44] from enforcing the writ of execution issued on December 1, 1997.

In compliance with the said resolution, on July 15, 1998, petitioners filed their comment/opposition, alleging that:

- a. The petition of private respondent is moot and academic as the entire premises has already been turned over by the sheriff of MTC-45 Albert Zaragoza except 14 lessees which were allowed by the petitioners to remove their improvements within fifteen days;
- b. Assuming the dismissal of the petition for annulment was erroneous, the remedy is appeal not certiorari;
- c. Private respondent is guilty of forum shopping as the issue pending in the Second CA Case, which in RTC-Q.C. is docketed as Civil Case No. Q-98-34382 (for annulment of unilateral termination of lease contract) and the third CA Case are one and the same;
- d. Judge Ylagan committed no abuse of discretion. Petitioners are not guilty of contempt since there is no order violated;
- e. The dismissal order (April 14, 1998) did not pre-empt the Second CA case;
- f. Private respondent failed to allege, much less prove, irreparable injury to it.

On August 21, 1998, the Court of Appeals promulgated its decision, the dispositive portion of which reads as follows:

"WHEREFORE, the decision of the Metropolitan Trial Court, Branch 45, Pasay City in Civil Case No. 113-97 dated May 9, 1997 is SET ASIDE and the orders dated March 23, 1998 and April 14, 1998, issued in Civil Case No. 98-0366 are likewise SET ASIDE. Private respondent is hereby ordered to restore the subject property in the possession of petitioner and are hereby permanently enjoined from further committing acts disturbing physical possession of the subject property by petitioner until after the expiration of the Contract of Lease.”^[45]

On the same date the decision of the Court of Appeals was promulgated, respondent MMB, Inc. filed with that court a very urgent ex-parte motion for execution pending appeal.^[46] On August 26, 1998, the Court of Appeals required petitioners to comment on such motion for execution pending appeal within ten (10) days from notice.^[47]

On August 25, 1998, respondent filed with the Court of Appeals another motion ex-parte for execution pending appeal, motion to cite in contempt and motion to stop demolition.^[48]