

## FIFTEENTH DIVISION

[ CA-G.R. SP NO. 93646, August 07, 2006 ]

**ARTURO MANDOCDOC, PETITIONER, VS. HON. LEONCIO M. JANOLO, JR., AS PRESIDING JUDGE, RTC, BRANCH 264, PASIG, CITY, SHERIFF IV RENATO BARON OF BRANCH 264 AND SPOUSES SILVERIO AND FELICIDAD CUARESMA, RESPONDENTS.**

### D E C I S I O N

**REYES, J.:**

This is an original action for certiorari seeking the nullification and setting aside of the order of public respondent Leoncio Janolo, Jr., Presiding Judge of the Regional Trial Court of Pasig City (Branch 264) dated August 30, 2004 granting the private respondents' prayer for a preliminary mandatory injunction (*Rollo, pp. 123-124*).

Similarly assailed is the order of the same respondent judge dated May 30, 2005 denying the petitioner's motion for reconsideration (*Ibid., p. 76*).

First, a factual précis.

On August 28, 2000, private respondents Spouses Silverio and Felicidad Cuaresma lodged a complaint for "Declaration of Nullity, Specific Performance with Damages" against their daughter Elvira Cuaresma-Dumangas and her husband Petronillo Dumangas, as well as against Renato Dumangas, Eugenio Cadiao and herein petitioner Arturo Mandocdoc. The case was docketed as Civil Case No. 68055 and was eventually raffled to the sala of herein respondent judge (*Ibid, p. 21*).

The then plaintiffs Silverio and Felicidad Cuaresma alleged, among others, that they are the owners of a right over an idle property of the Manila Railroad situated in Barangay Tanyag, Taguig, Metro Manila containing an area of about 300 square meters. When the respondent spouses left for the United States to visit their other children and to seek medical treatment, they designated their daughter defendant Elvira Cuaresma-Dumangas as manager of the subject property and collector of rentals thereon. While the latter was instructed to deal with the tenants, she was proscribed from selling or encumbering the said property, as may be gleaned from the penultimate paragraph of their written agreement (*Id., pp. 22*).

Upon the respondents spouses' return from the United States in 1999, they asked their daughter, defendant Elvira Cuaresma-Dumangas to account for and deliver the rentals she collected so that they could evenly distribute it among the other children. Said Elvira, however, just kept on promising and promising but eventually failed to comply with her parents' request (id).

Suspicious of their daughter's failure to remit the rentals, the respondent spouses later discovered that: (a) the subject property was already sold to one Eugenio

Cadiao, without the conformity of the other spouse, respondent Silverio Cuaresma; (b) three months after the sale, Cadiao sold the same property to herein petitioner Arturo Mandocdoc for a lesser amount; (c) the consideration for the sale was not delivered to respondent Felicidad Cuaresma but was instead deposited by Elvira under a joint account and later withdrawn to enable the latter to acquire other properties titled exclusively under her name and her husband; (d) it was Elvira who duped her mother to sign the deed of sale under the pretext that the P300,000.00 was payment to the government for the improvements introduced on the property; (e) up to the present, Eugenio Cadiao, petitioner Arturo Mandocdoc and Elvira are still in the subject premises, calling the shots, with the first two as dummies (***Id.*, pp. 22-23**).

Herein petitioner Arturo Mandocdoc, one of the defendants below, staunchly avers that the respondent spouses have already lost their right over the contested property by virtue of the voluntary transfer of the same to Eugenio Cadiao who, in turn, transferred it to him for a consideration. The petitioner further claims that the signatory to the contract, Felicidad Cuaresma, is presumed to know what she was doing when she signed the Deed of Transfer in favor of Eugenio Cadiao. As for respondent Silverio Cuaresma, his failure to affix his signature and bestow marital consent to the transfer does not invalidate the said sale because his knowledge and consent, allegedly, could also be presumed (***Id.*, pp. 119-120**).

Petitioner Arturo Mandocdoc also alleged that he has a better right over the property subject of the litigation because he acquired his right thereto for value and in good faith whereas the respondent spouses are merely "squatters" (***Id.*, p. 12**).

On August 3, 2004, respondent spouses filed a motion for issuance of a temporary restraining order and/or writ of preliminary injunction. Said motion was countered by defendant Elvira Dumangas and herein petitioner Arturo Mandocdoc by way of separate oppositions (***Id.*, p.5**).

In an order dated August 30, 2004, the court below granted the respondent spouses' motion for the issuance of an injunction order. The decretal text of the foregoing order reads as follows:

"WHEREFORE, finding merit in the instant application for preliminary mandatory injunction, the same is hereby GRANTED. Upon the posting by the plaintiffs of a bond in the amount of Three Hundred Thousand Pesos (P300,000.00) to the effect that the plaintiffs will pay the defendants all damages which the latter may sustain by reason of the injunction if it be ultimately decided that the injunction was unwarranted, let a writ of preliminary mandatory injunction issue enjoining the defendants and all persons acting for and in their behalf to:

1. Desist and refrain from selling or encumbering subject property;
2. Deposit in court starting this month of September, 2004 until this case shall have been finally resolved, all rentals being collected by defendants from the lessees of the subject premises;
3. Stop building additional structures inside the subject premises which are open and vacant;

4. Desist and stop tearing down the former houses of Francisco Cuaresma and Manolo Cuaresma, and if the same have already been torn down, to deposit their corresponding market value of P210,000.00 in court;
5. Allow plaintiffs and all persons acting in their behalf, their seven (7) children and heirs to enter subject premises without threat or bodily harm against them.

SO ORDERED." (*Id.*, pp. 123 to 124)

The foregoing order was received by petitioner Arturo Mandocdoc on October 20, 2004. On October 29, 2004, his counsel moved to have said order reconsidered. This motion for reconsideration was denied by the trial court in its order dated May 30, 2005. However, counsel for the petitioner was allegedly not served a copy of the said order and was belatedly given a copy only on February 15, 2006 (*Id.*, p. 6).

Meanwhile, on June 27, 2005, the respondent spouses filed a clarificatory motion or motion to require the defendants to comply with the order of the trial court dated August 30, 2004 (*Id.*, p. 141).

On October 25, 2005, the respondent judge issued an order dated October 25, 2005 granting the said clarificatory motion and ordered the respondent Sheriff Reanto Baron to collect the amount of Seven Hundred Ten Thousand Pesos (P710,000.00) and Two Hundred Ten Thousand Pesos (P210,000) from the defendants, including petitioner Arturo Mandocdoc (*Id.*, p. 7).

Pursuant to the abovepertained order, the respondent Sheriff served upon the defendants in Civil Case No. 68055 a formal demand letter dated December 20, 2005 (*Id.*, p. 7).

On January 10, 2006, petitioner Arturo Mandocdoc filed an urgent motion to revoke the order dated October 25, 2005 and the demand made by the respondent sheriff on the ground that they were allegedly issued in violation of his right to due process (*Id.*).

On February 15, 2006, the date set for the hearing of the motion to set aside or revoke the order dated October 25, 2005, the trial court was informed that counsel for petitioner Arturo Mandocdoc was yet to be served the order dated May 30, 2005 denying his motion for reconsideration. Thus, in open court, the Clerk of Court was directed to furnish the petitioner's counsel of the said order (*Id.*).

According to the law, a petition for certiorari should be filed within sixty (60) days from receipt of the motion for reconsideration. Convinced that the said prescriptive period should be reckoned from his belated receipt on February 15, 2006 of the May 30, 2005 order of denial, petitioner Arturo Mandocdoc, by counsel, filed the present petition.

In support of his prayer to reverse the challenged issuances of the trial court, the petitioner argued on the following issues:

I.