

FIRST DIVISION

[G.R. No. 158917, March 01, 2004]

EVELYN T. PARADERO, PETITIONER, VS. HON. ALBERT B. ABRAGAN, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF LANA DEL NORTE, BRANCH 4, ILIGAN CITY AND VICTOR B. JARABA, RESPONDENTS.

DECISION

YNARES-SATIAGO, J.:

Assailed in this petition for certiorari under Rule 65 of the Rules of Court is the March 12, 2003 Order^[1] issued by respondent Judge of the Regional Trial Court of Iligan City, Branch 12, which granted the issuance of a writ of demolition against petitioner.

On February 20, 2001, respondent Victor B. Jaraba filed with the Municipal Trial Court in Cities (MTCC) of Iligan City, Branch I, an ejectment suit^[2] against petitioner Evelyn T. Paradero.^[3] He claimed that petitioner, without his consent and by means of strategy and stealth, occupied and built a house on a 140 square-meter lot registered in his name under Transfer Certificate of Title No. T-57,461 (a.f.) and located at Barangay Palao, Iligan City.^[4] Petitioner failed to file an answer, hence, respondent filed a Motion for Judgment pursuant to Rule 70, Section 7, of the 1997 Rules of Civil Procedure.^[5]

On May 20, 2002, the MTCC rendered a decision in favor of respondent, the dispositive portion of which, reads:

Wherefore, finding the allegations of the complaint of the plaintiff to be true, judgment is hereby rendered in favor of plaintiff and against the defendant:

(1) Ordering the defendant to vacate the parcel of land subject matter of the above-entitled case covered by Transfer Certificate of Title No. T-57,461 (a.f.) and restore physical possession thereof to plaintiff.

(2) Ordering defendant to pay the plaintiff P2,000.00 monthly rental or reasonable compensation for the use and occupation of the property from the date of the filing of the instant case until the restitution of the possession thereof to the plaintiff;

(3) Ordering the defendant to pay or reimburse the plaintiff P20,000.00 as attorney's fees and expenses of litigation.

(4) Ordering the defendant to pay the costs of suit.

SO ORDERED.^[6]

Petitioner appealed to the Regional Trial Court (RTC) of Iligan City, Branch 4, while respondent moved for the immediate execution of the judgment pending appeal. Since the records of the case were forwarded to the RTC, private respondent filed a motion for execution pending appeal with the latter court, which was granted on July 26, 2002.^[7]

Petitioner filed an Urgent Motion for Reconsideration and/or Lifting the Order dated July 26, 2002 and Fixing of the Supersedeas Bond.^[8] At the hearing of the said motion, petitioner was asked to produce Supreme Court ruling authorizing the RTC to fix and approve supersedeas bonds. Thus, on August 14, 2002, petitioner submitted a "Manifestation in Compliance with the Order of the Honorable Court and Urgent Motion to Order the Clerk of Court to Receive/Accept the Monthly Rental Deposit of P2,000.00."^[9]

On October 1, 2002, the trial court denied petitioner's motion for reconsideration and motion to fix the supersedeas bond. Pertinent portion thereof reads:

On the issue of whether or not the Regional Trial Court has jurisdiction to approve the supersedeas bond filed by herein defendant, the answer is in the affirmative. While the supersedeas bond must be filed in the lower court, the Court of First Instance (Regional Trial Court), in its discretion and upon good cause shown, may allow the defendant to file that bond in the latter court (Tagulimot vs. Makalintal, 85 Phil. 40).

Should the court allow the filing of the supersedeas bond by the herein defendant? The answer is in the negative. Defendant failed to show any good cause sufficient for this Court to exercise its discretion in her favor. Her mere allegation that she has a meritorious defense is not the good cause contemplated in the Tagulimot case. On the contrary, her failure to file a motion for fixing of the supersedes bond to stay execution pending appeal from the time her counsel Atty. Lolito Jadman, filed the notice of appeal on June 26, 2002 to August 5, 2002 when she filed the motion to fix supersedeas bond is not consistent with her desire to stay execution of the judgment. Her indifference, if not negligence, is indicative of lack of interest on her case.

Then again, even granting that the defendant is allowed to post supersedeas bond, there is still the issue of periodic deposit of future rentals to ensure payment of rentals accruing after the judgment of the inferior court and until final judgment on appeal. Defendant-appellant failed to comply with this mandatory requirement in order to stay execution. Defendant had all the time from receipt of the decision on June 17, 2002 up to the time she filed motion to fix supersedeas bond on August 5, 2002 to pay rentals but this she failed to do so.^[10]

After hearing, the RTC granted respondent's prayer for the issuance of a writ of demolition.^[11] Subsequently, on March 19, 2003, a decision was rendered denying petitioner's appeal and affirming in toto the decision of the MTCC.^[12] Petitioner filed

two motions for reconsideration of the March 12, 2003 Order and the March 19, 2003 decision of the RTC, however, both were denied.^[13] Petitioner's house was demolished on May 22, 2003.

Petitioner filed a petition for review dated June 6, 2003, with the Court of Appeals, ^[14] challenging the affirmance by the RTC of the MTCC decision as well as the propriety of the execution pending appeal. Petitioner likewise prayed for damages for the demolition of her house.

On July 7, 2003, petitioner filed the instant petition for certiorari on the ground that the trial court gravely abused its discretion in granting the execution pending appeal and in issuing the writ of demolition. Respondent, on the other hand, prayed that the instant petition be dismissed because petitioner is guilty of forum shopping.

The issue for resolution before us is whether or not petitioner violated the rule against forum shopping.

There is forum shopping when, in the two or more cases pending, there is identity of parties, rights or causes of action and relief sought. Forum shopping exists where the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other. For *litis pendentia* to exist, the following requisites must be present:

1. Identity of parties, or at least such parties as those representing the same interests in both actions;
2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts;
3. Identity with respect to the two preceding particulars in the two cases, is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.^[15]

In the case at bar, the parties to the instant petition and in the one filed with the Court of Appeals are identical. The rights asserted are the same, *i.e.*, to maintain peaceful possession of the disputed lot pending final adjudication of the case. Likewise, similar reliefs are prayed for — to nullify the order of execution pending appeal and the writ of demolition, such reliefs being founded on the same facts — the ejectment case filed with the trial court. A judgment in the present *certiorari* case on the validity of the order of execution pending appeal and the writ of demolition will pre-empt and amount to *res judicata* on the petition for review before the Court of Appeals, questioning, *inter alia*, the legality of the same order and writ with prayer for an award of damages. This is evident from the following issues raised by petitioner before the Court of Appeals, thus –

- I WHETHER OR NOT THE REGIONAL TRIAL COURT WAS CORRECT IN GRANTING THE MOTION FOR EXECUTION OF JUDGMENT PENDING APPEAL, PETITIONER ... NOT [HAVING BEEN] PROPERLY NOTIFIED OF SUCH MOTION WHEN IT WAS SCHEDULED FOR HEARING.