

## FIRST DIVISION

[ G.R. No. 123788, March 05, 2001 ]

### **DOMINADOR DE GUZMAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND THE SPOUSES ROLANDO G. PEREZ AND MILAGROS V. PEREZ, RESPONDENTS.**

#### **D E C I S I O N**

##### **KAPUNAN, J.:**

Petitioner assails the Resolution of the Court of Appeals in CA-G.R. SP No. 35941, dated 24 August 1995, modifying its earlier Decision dated 8 February 1995, for going beyond the issues presented before it.

Claiming to be the registered owners of a parcel of land in Bataan,<sup>[1]</sup> herein private respondents, spouses Rolando and Milagros Perez, filed on 23 January 1991 a complaint against petitioner Dominador de Guzman for unlawful detainer before the Municipal Circuit Trial Court (MCTC) of Orani-Samal, Bataan. The Perez spouses claimed, among others, that they were the vendees of the subject property, that De Guzman was a lessee of the former owners, that said lease had expired without being renewed or extended, and that De Guzman had refused to vacate the premises despite demands to that effect.<sup>[2]</sup> The Perez spouses prayed that the court, after hearing, render judgment ordering De Guzman to vacate the property in question and to pay the Perez spouses P300,000.00 as compensatory damages, P30,000.00 as exemplary damages, as well as attorney's fees and the costs of suit.<sup>[3]</sup>

On 24 January 1991, the MCTC, then presided by Judge Eliseo A. Peñaflor, issued an Order stating that the Rules on Summary Procedure shall apply in the adjudication of the case.<sup>[4]</sup> In his Answer dated 31 January 1991, de Guzman alleged, among others, that the "case cannot be tried under the Rule on Summary Procedure, not only because the question of ownership is involved but because the damages or unpaid rentals sought to be recovered by the plaintiffs exceed twenty thousand pesos (P20,000.00) at the time of the filing of the complaint (Sec. 1, A par. 1, Rule on Summary Procedure)."<sup>[5]</sup>

After the pre-trial conference held on 6 March 1991, the MCTC issued an Order setting aside its 24 January 1991 Order, and directing that the case be tried under ordinary procedure instead:

The counsel for the defendant manifested that under the complaint of the plaintiff, this case will not fall under summary procedure.

The counsel for the plaintiff manifested that to avoid any technicality, he is amenable that this case be tried under ordinary procedure. The Court reconsiders and set aside its Order, dated January 24, 1991.<sup>[6]</sup>

After trial and submission by the parties of their respective memoranda, the MCTC, on 30 June 1994, rendered a decision in favor of the spouses Perez. The court ordered De Guzman to vacate the property and to pay damages to the spouses Perez.

De Guzman moved for a reconsideration of the decision. Thereafter, the spouses Perez filed an Opposition to the Motion for Reconsideration as well as a Motion for Execution, both dated 27 July 1994.

In an Order dated 28 October 1994, the MCTC, now presided by Judge Reynaldo B. Bellosillo, granted the Perez spouses' motion for execution and denied De Guzman's motion for reconsideration. The court held that the case fell under the Rule on Summary Procedure, which prohibits a motion for reconsideration, and De Guzman's failure to avail of the remedy of appeal within the reglementary period rendered the case final, unappealable and executory.

On November 11, 1994, De Guzman filed a Notice of Appeal<sup>[7]</sup> from the decision of the MCTC as well as from its 28 October 1994 Order denying his motion for reconsideration. The MCTC, however, did not give due course to the Notice of Appeal, reiterating that the judgment was already final and executory.<sup>[8]</sup>

De Guzman thus filed on 11 November 1994 a petition for "*certiorari*, prohibition and *mandamus* with damages and temporary restraining order and/or writ of preliminary injunction," before the Regional Trial Court (RTC) of Bataan, praying that the court-

x x x upon the filing of (the petition) -

1. Issue a temporary restraining order and/or writ of preliminary injunction commanding respondents to desist from implementing and enforcing the questioned order of October 28, 1994 and the writ of execution of the judgment respondent judge issued.
2. And should said order and writ of execution be nevertheless enforced and implemented by the time this Honorable Court issues the restraining order or writ of preliminary injunction, to issue a writ of preliminary mandatory injunction commanding the respondents to restore petitioner into the possession of subject fishpond and desist from continuing with the levy and execution of any real or personal property of petitioner.

And after due hearing to render a judgment

- a) Making the temporary restraining order or writ of preliminary injunction or preliminary mandatory injunctive relief permanent.
- b) Nullifying the questioned order of October 28, 1994 and the writ of execution issued thereby.
- c) Directing the respondent judge to give due course to the appeal of the petitioner and to fix the supersedeas bond in accordance with Section 8, Rule 700 of the Rules of Court and to stay the execution of the judgment

pending appeal.

d) Order private respondents to pay petitioner P150,000.00 actual damages, P1 million moral damages, P100,000.00 attorney's fees and P50,000.00 other expenses of litigation, and the costs; and further prays for such other relief and remedy just and equitable in the premises.<sup>[9]</sup>

On 4 November 1994, the RTC granted De Guzman's prayer for a temporary restraining order. On 5 December 1994, the Court issued an Order granting the writ of preliminary mandatory injunction, thus:

At the hearing for the issuance of preliminary mandatory injunction, petitioner, thru counsel manifested that the Provincial Sheriff thru her deputy had already ejected the petitioner as early as November 10, 1994 and in his lieu, placed the private respondents in the possession of the subject fishpond. Also, real property of the petitioner was levied and bank deposits were garnished to satisfy the money judgment.

x x x [T]he court is inclined to grant the writ.

It will be noted that the court a quo adopted the ordinary procedure, not the summary procedure. In fact, its decision clearly emphasized that the said case was tried under the ordinary procedure. x x x

If ordinary procedure was adapted, motion for reconsideration is availing. So then, the period within which to appeal was stopped from the moment the motion was filed unless, the same was pro forma. It appeared that it was not.

When the motion for reconsideration was denied, the court a quo should have not on the same order of denial declared that the decision became final, unappealable and executory because the defendant-petitioner had still nine (9) days from receipt of the order of denial within which to file appeal and post a supersedeas bond to stay the execution.

At this juncture, the petitioner was able to show that his right is clear and unmistakable and there is an urgent necessity to prevent serious damage. According to his counsel, he had invested fish products in the fishpond worth P150,000.00.

Moreover, the supplemental report submitted by deputy sheriff shows that the real property he levied by voluntary offer and delivery of the petitioner to him of the certificate of title in the name of Sofia de Guzman, the wife of the petitioner who was not a party litigant in the case.

WHEREFORE, let a writ of preliminary mandatory injunction issue after the petitioner has posted a bond in the sum of P300,000.00 by ordering the Provincial Sheriff to:

1. Restore the petitioner in possession of the fishpond;

2. Return the certificate of title delivered to the private respondents thru deputy sheriff Dominador Masangkay; and
3. Lift the garnishment on the petitioner's bank account.

SO ORDERED.<sup>[10]</sup>

The spouses Perez sought to annul the above order and enjoin its enforcement by filing before the Court of Appeals (CA) a petition for *certiorari* and prohibition with a prayer for temporary restraining order and/or writ of preliminary injunction. On 8 February 1995, the CA rendered its decision upholding the order of the RTC.

xxx It was the agreement of the parties that while the case was still with the MCTC, the case should be tried in accordance with the rules on Ordinary Procedure, and not under the Revised Rules on Summary Procedure. As a matter of fact, herein petitioners participated in the trial (Exhs. C, SPA No. 6324). To recall, the private respondent, in his answer before the MCTC, asserted not only the element of ownership but also that rentals and damages being sought exceeded P20,000.00. Even during the preliminary conference (March 6, 1994), non applicability of summary procedure was reiterated by the private respondent. There was on the other hand, conformity by counsel of the petitioners that the case instead should be tried under ordinary procedure. Precisely, the January 24, 1991 Order was set aside and the case was set in the calendar for trial on March 25 and April 17, 1991. Trial on the merits was then conducted in accordance with ordinary procedure. No affidavits were submitted, as a matter of fact. Even after the trial, the Court directed the issuance of their respective memoranda, an indication that it was a trial under ordinary procedure, since submission of memoranda is a prohibited pleading.

Precisely because it was a proceeding under ordinary procedure, the respondent filed the Motion for Reconsideration. The point is, when the October 28 Order was issued, a new presiding judge of the MCTC took over, then ruled on the basis of the Rules on Summary Procedure.

To repeat, a Notice of Appeal was filed on November 11, 1994. Also on the same day, the private respondent filed a Petition for Certiorari xxx with the RTC Bataan, precisely because of the October 28 Order which treated the case as already final and executory. The respondent asked the RTC the issuance of a TRO or a writ of preliminary injunction but if the writ had already been executed, then the issuance of a writ of preliminary mandatory injunction, for the purpose of restoring his possession of the fishpond. Finally, the certiorari proceeding with the RTC asserted he was deprived of his right to appeal and to due process. The irony is, the petitioner in opposing herein respondent's Motion for Reconsideration, did not ask that he be denied the right to appeal, or that the decision be treated as final and executory. All that herein petitioner asked was that, the judgment be executed pending appeal pursuant to Rule 70.

We do not agree that the writ of execution was already fait accompli, as

asserted by herein petitioner. Even assuming that the caretaker of the respondent was forcibly ejected from the fishpond, still there was fish produce of the petitioner worth about P150,000.00 and the possibility that they will be appropriated by herein petitioner, unless enjoined. Aside from that, only a levy of the Antipolo property of the respondent was made, or of the property not yet advertised for public auction, therefore execution according to herein respondent, was not yet complete. Besides, the Notice of Garnishment on the respondent's deposit, while already served at the Makati Bank, was not followed by any withdrawal of the deposit, therefore a release of the funds could still be enjoined. Also, the writ of preliminary injunction was still a proper remedy if only to stop the petitioner from appropriating the fish produce, to enjoin auction of the property, and to stop release of the deposit.

Likewise, the Antipolo property was still conjugal although listed in the name of Sofia de Guzman, wife of herein respondent, supposed to satisfy the money judgment that was decreed by the Court. The point is, compensatory damage is not allowed in forcible entry cases. As a matter of fact, the only recoverable item is the rental value or the reasonable compensation for the use of the property.

Right to appeal, should instead have been respected, the case having been tried through an ordinary procedure and not by virtue of the Rules on Summary Procedure. We agree with the respondent that the cases of Rosario vs. Court of Appeals, and Allure vs. Court of Appeals being cited by the herein petitioner do not apply in this case, considering that the possession of the property was with the private respondent when the case was initiated before the MCTC.

Another point. A Motion for Reconsideration is not a prohibitory pleading under the Rules on Ordinary Procedure.<sup>[11]</sup>

Aggrieved, the spouses Perez moved for the reconsideration of the above decision. On 28 April 1995, they also filed a Manifestation stating, among others, that:

3. In his petition before the Regional Trial Court presided by respondent Judge, and his comment to the petition before this Honorable Court, private respondent argued that the subject fishpond when it was turned over to herein petitioner was then planted to bangus allegedly worth P150,000.00 which he feared that petitioner might harvest;
4. On February 20, 1995, private respondent was reinstated to possession of the subject fishpond by virtue of the mandatory injunction;
5. On April 17, 1995, private respondent already harvested the bangus, and on this score petitioners submit that the basis for the injunction has become functus officio;
6. Incidentally, the subject fishpond is now dried, as shown in the attached photographs;