

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04628-MIN, August 11, 2014]

**VALERIANO SISON II, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT – BRANCH 29, SURIGAO CITY, SURIGAO DEL NORTE AND
EVERDINA COL, RESPONDENTS,**

D E C I S I O N

INTING, J.:

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure with Urgent Prayer for the Issuance of Preliminary Mandatory Injunction praying that the Orders^[1] dated September 30, 2011 and November 11, 2011 of the Regional Trial Court of Surigao City, Surigao del Norte, Branch 29, rendered in Criminal Case No. 9356 for qualified theft, be reversed and set aside.

The facts^[2] of the case are as follows:

On May 6, 2011, private respondent Everdina Col filed a complaint^[3] for qualified theft against petitioner Valeriano Sison II before the Office of the Prosecutor of Surigao del Norte. Col alleges that petitioner ordered Daniel Lariba, Lito Labrador, Dondon Rafallo, Junie Aro and Rochel Denoy, to harvest the coconuts located in Kilometer 1, Barangay Pedro, Sison, Surigao del Norte which she allegedly owns. They allegedly harvested approximately 150 coconuts.

In his answer^[4] to the complaint filed on May 25, 2011, petitioner denied the allegations imputed against him. He essentially claims that the land to which he harvested the coconuts belongs to his father, Sigismundo F. Sison, and not to private respondent. To substantiate his claim, he presented the following documents:

- I. Original Certificate of Title (OCT) No. 4 (428) LRC Record No. 1366, Degree No. 5592 allegedly belonging to his grandfather to Lot No. 3213 Cad 234 along the old and new highways, Barangay San Pedro, Poblacion, Sison, Surigao del Norte;
- II. Transfer Certificate of Title 19850 allegedly belonging to his father to Lot 3213, Cad 234 along the old and new highways in Barangay San Pedro, Poblacion, Sison, Surigao del Norte;
- III. Land sketch of Lot No. 3213, Cad 234 Surigao Cadastre, in Barangay San Pedro, Poblacion, Sison, Surigao del Norte;
- IV. OR No. 7877446 for payment of land taxes for Lot No. 3213, Cad 234 located in Barangay San Pedro, Poblacion, Sison, Surigao del Norte;

V. Tax Declaration No. 017 for Lot 3213, Cad 234, Surigao Cadastre, located in Poblacion Sison, Surigao del Norte; and

VI. Comprehensive land sketch plan of the Municipality of Sison, Surigao del Norte from the Provincial Assessor's Office at the Capitol Compound, Surigao City; x x^[5]

On July 4, 2011, Sigismundo filed a complaint^[6] for qualified theft against Everdina R. Col and her workers, namely: Ronnie Robantes, Narciso Marabolas, Ritchel Delarmante and Remegio Nabas, before the Office of the Provincial Prosecutor of Surigao del Norte. He alleges that Col and her workers illegally harvested approximately 550 coconuts from the same coconut plantation which he claims to own.

On July 26, 2011, the Office of the Provincial Prosecutor of Surigao del Norte, through Prosecutor Vito T. Gotostos, issued a Consolidated Resolution^[7] finding probable cause for the crime of qualified theft against the petitioner and for anti-fencing law against Roel Tandog, who allegedly purchased the stolen coconuts from petitioner.

On August 5, 2011, the investigating prosecutor dismissed the complaint filed by Sigismundo against Col for lack of cause of action ratiocinating that the disputed landholding is covered by a valid and existing title in the name of the latter. ^[8]

On August 8, 2011, Sison and Tandog jointly sought the reconsideration^[9] of the July 26, 2011 resolution. However, the motion for reconsideration was denied by the Office of the Provincial Prosecutor in a Consolidated Resolution^[10] dated August 18, 2011.

On September 2, 2011, Sigismundo filed an ex parte motion for inhibition^[11] against the investigating prosecutor for alleged misappreciation of facts and evidence. On the same day, it also filed a motion for reconsideration^[12] over the August 5, 2011 Resolution.

On September 7, 2011, Spouses Sigismundo and Charita Sison filed a complaint^[13] for Quieting of Title with Preliminary Injunction and Damages against Col involving the same subject property before the court a *quo*.

On September 12, 2011, Sigismundo also filed a petition to suspend institution of criminal action^[14] before the Office of the Provincial Prosecutor with regard to NPS No. XIII-06-INV-11E-110 for qualified theft against him. The next day, investigating prosecutor Gotostos issued a consolidated resolution^[15] inhibiting himself in the resolution of the motion for reconsideration 'to avoid suspicion of bias and any other speculations of partiality considering that the issues in both cases are all the same'. Gotostos also held in abeyance the motion for reconsideration seeking the reversal of the resolution dismissing the case docketed as NPS-XIII-06-INV-06-INV-11G-164 for qualified theft against Col since the complaining witness (the Spouses Sison) filed a civil case for quieting of title with preliminary injunction and damages.

Gotostos also granted the petition to suspend the institution of criminal action with the regard to the qualified theft filed against petitioner.

On September 15, 2011, an information^[16] dated September 5, 2011 was filed by prosecutor Gotostos before the Clerk of Court which was later on raffled to RTC – Branch 29, Surigao City, Surigao del Norte. The information reads as follows:

"The undersigned Asst. Provincial Prosecutor II hereby accuses VALELRIANO (*sic*) E. SISON II, of the crime of QUALIFIED THEFT, committed as follows:

That on or about the 16th day of April 2011 at Brgy. San Pedro, Sison, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, said accused, with intent to gain, did, then and there willfully, unlawfully and feloniously enter in the coconut plantation owned by EVERDINA R. COL without knowledge and consent of the aforesaid owner and thereafter take and gather 150 coconuts amounting to P3,900.00, to the damage and prejudice of the owner in the amount aforestated.

SO ORDERED."

Thereafter, an 'Urgent Motion to Suspend Proceedings and to Hold in Abeyance Issuance of Warrants of Arrest'^[17] was filed by the petitioner on September 23, 2011 but it was denied by the court a *quo* in its Order^[18] dated September 30, 2011.

Petitioner sought the reconsideration^[19] of the September 30, 2011 Order. However, the court a *quo* also denied it for lack of merit.^[20]

Undeterred, petitioner filed this special civil action for certiorari claiming that the public respondent acted with grave abuse of discretion in his Orders dated September 30, 2011 and November 11, 2011. The petitioner propounds this sole assignment of error:

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With due respect, the Honorable Court committed grave abuse of discretion amounting to lack or in excess of jurisdiction in denying the urgent motion for suspension of criminal proceedings and to hold in abeyance the issuance of warrant of arrest and motion for reconsideration without any factual and legal basis to support its decision that prejudicial question did not exist in the civil case for quieting of title with preliminary injunction and damages despite clear basis in fact and law that prejudicial question exists.^[21]

On November 28, 2012, We issued a Resolution^[22] denying the petitioner's application for the issuance of a writ of preliminary injunction. We ruled that

petitioner failed to convince this Court that there is an urgent and paramount necessity for the issuance of the writ to prevent irreparable damage.

Our Ruling

The petition has merit.

Under Section 6, Rule 111 of the Revised Rules of Criminal Procedure, a petition for suspension of a criminal action may be filed in the office of the prosecutor or the court conducting the preliminary investigation based upon the pendency of a prejudicial question in a civil action.

A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case.^[23] *The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.*^[24]

The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.^[25]

In the case at bar, Spouses Sigismundo F. Sison and Charlita E. Sison, petitioner's parents, filed a complaint for quieting of title with preliminary injunction and damages against private respondent Everdina R. Col on September 5, 2011.

On September 15, 2011 an information for the crime of qualified theft was filed against petitioner before the court *a quo*.

In the civil action, the Spouses Sison propound the following contentions:

- "9. The area or land where coconuts were taken, which is the subject matter in criminal complaint NPS No. XIII-06-INV-11E-110 and NPS No. XIII-06-INV-11G-164, is owned by the plaintiffs as clearly shown in the photographs previously attached and thru those pictures taken during the actual taking, it is very clear that it would match to the terrain of plaintiffs land designated as LOT NO. 3214 as shown in the sketch plan issued by the Municipal Assessor of Municipality of Sison and Comprehensive Land Sketch Plan by the Provincial Assessor because the north side of the land involved, which is the provincial road, is straight at a certain distance, different from the land of defendant covered under Certificate of Title No. 365 and designated as LOT NO. 3351 wherein the side of it, in line with north side of plaintiffs land/lot, is in a curved shape or found at the curve side of the road going to Bad-as, Placer;
- 10 The continued claim by the defendant that she is the owner of the coconuts taken within Lot No. 3214 on her contentions