

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**HEIRS OF JOAQUIN ASUNCION  
represented by DEMETRIA DUROLFO  
ASUNCION,**

*Petitioners,*

*-versus-*

**G.R. No. 115741  
March 9, 1999**

**HON. MARGARITO GERVACIO, JR., in  
his capacity as Presiding Judge of  
Branch 29, RTC, Cabanatuan City,  
JESUS SANTIAGO, and MAXIMINO  
DELA CRUZ,**

*Respondents.*

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**DECISION**

**MENDOZA, J.:**

This is a Petition filed by the heirs of Joaquin Asuncion against respondent Judge Margarito Gervacio, Jr. of the Regional Trial Court of Cabanatuan City, Branch 29, seeking the issuance of (a) a writ of certiorari to set aside the writ of preliminary injunction, dated May 18, 1994, issued by respondent judge in Civil Case No. 1806; (b) a writ of prohibition to enjoin respondent judge from enforcing the writ of preliminary injunction; and (c) a writ of mandamus to compel him to

inhibit himself from taking cognizance of the aforesaid Civil Case No. 1806. Petitioners allege that the order granting private respondents' application for a writ of preliminary injunction and the writ of preliminary injunction were issued with grave abuse of discretion by respondent judge.

The facts are as follows:

On January 11, 1994, private respondent Maximino dela Cruz brought an action before the Department of Agrarian Reform Adjudication Board (DARAB), Region III, Cabanatuan City for the recovery of possession of a parcel of land in Barangay Gen. Luna, Zaragoza, Nueva Ecija<sup>[1]</sup> against petitioners. The case was docketed as DARAB Case No. 2792NE194. Private respondent dela Cruz moved for the issuance of a temporary restraining order to enjoin petitioners from entering and cultivating the land. However, his motion was denied by the DARAB in its Order, dated February 24, 1994, whereupon private respondents dela Cruz and Jesus Santiago filed on March 11, 1994 a complaint before the Regional Trial Court of Nueva Ecija for the re-opening/review of the judicial decree of registration and annulment of title with a prayer for the issuance of a writ of preliminary injunction and damages.<sup>[2]</sup> The case was docketed as Civil Case No. 1806.

In their complaint, private respondents alleged that Agapito dela Cruz was the original possessor of the land in question; that private respondent Maximino dela Cruz inherited the land from Agapito dela Cruz; that on August 16, 1971, private respondent dela Cruz sold it to private respondent Jesus Santiago; that since then, private respondent Santiago had been in cultivation and possession of the land; that he had caused the preparation of tax declarations over said property in his name; that private respondent Santiago temporarily relinquished possession of said land in favor of Joaquin Asuncion; that Demetria Vda. de Asuncion, widow of Joaquin Asuncion, subsequently returned possession of the land to private respondent Santiago; that private respondent Santiago waived his rights over said land in favor of private respondent Maximino dela Cruz; that afterwards, petitioner Demetria Vda.

de Asuncion tried to take possession of said land from private respondents; and that petitioner Demetria Vda. de Asuncion, through fraud, deceit, and misrepresentations, succeeded in obtaining title over said land in petitioners' name who were thus issued Original Certificate of Title No. P-15922 by the Register of Deeds of Nueva Ecija.

In paragraphs 23 to 27 of their complaint, private respondents made allegations in support of an application for a writ of preliminary injunction.<sup>[3]</sup>

On April 8, 1994, petitioners filed their answer with counterclaim. They alleged that they are the absolute owners of the land in dispute, their ownership thereto being evidenced by Original Certificate of Title No. P-15922, Tax Declaration No. 11895, as well as official receipts of tax payments; that they are in actual and material possession of the same; that petitioner Demetria Vda. de Asuncion had never relinquished petitioners' rights and interests in the land in favor of private respondents; and that after private respondent dela Cruz had taken possession of the land through stealth and strategy, petitioners were able to regain possession of the same and continue to be in possession of the land. Petitioners, moreover, denied knowledge of the truth of the allegations in paragraphs 13 to 21 of the complaint.

On April 20, 1994, respondent judge granted private respondents' application for a writ of preliminary injunction.<sup>[4]</sup> Petitioners moved for reconsideration, but their motion was denied by respondent judge in his Order, dated April 29, 1994, on the ground that the motion did not contain a prayer, a suggested date of hearing, and a notice of hearing to the adverse party as required by Rule 15, § 4 of the Rules of Court.<sup>[5]</sup>

On May 10, 1994, petitioners filed a second Motion for Reconsideration,<sup>[6]</sup> which was also denied by respondent judge in his Order, dated May 12, 1994.<sup>[7]</sup> A third motion for reconsideration, dated May 19, 1994, was ordered expunged from the record by respondent judge.<sup>[8]</sup>

On May 27, 1994, petitioners filed a motion for dissolution of preliminary injunction,<sup>[9]</sup> but their motion was ordered stricken off the record by respondent judge on May 30, 1994. Hence, this petition.

On June 20, 1994, petitioners had moved for the inhibition of respondent judge. The motion was granted and respondent inhibited himself from the case on the same day.<sup>[10]</sup> Consequently, insofar as the petition in this case seeks the inhibition of respondent judge, it is now *functus officio*.

Petitioners allege that public respondent acted with grave abuse of discretion in granting the writ of preliminary injunction on the ground that petitioners failed to deny specifically the allegations in paragraphs 23 to 27 of the complaint. They contend that such failure was due merely to a typographical error; that they are the true and absolute owners of the land in dispute, and that they have in fact a decree of registration in their favor. Petitioners allege that they are in actual and material possession of the land and that private respondents have not shown that they have a clear right to the land so as to justify the issuance of the injunctive writ.

On the other hand, respondents justify the issuance of the writ of preliminary injunction on the basis of Rule 9, §1 of the Rules of Court, which provides that material averments in a complaint are deemed admitted if not specifically denied. They likewise contend that the petition should be dismissed for failure of the petitioners to attach a certification of non-forum shopping and to implead Jesus Santiago and Maximino dela Cruz as private respondents in the present petition and that petitioners should have filed the petition in the Court of Appeals which also has original jurisdiction to issue writs of certiorari, prohibition, and mandamus.

The petition is well taken.

First. Although the Court of Appeals has concurrent jurisdiction to entertain the present petition, referring the case to the appellate court will serve no useful purpose. It is more in consonance with the speedy

disposition of justice for us to resolve this petition since no factual issues are involved.

Second. In their comment on the petition, respondents claimed that petitioners failed to attach to their petition a certificate of non-forum shopping as then required by Supreme Court Circular No. 28-91 (now Rule 65 of the 1997 Revised Rules on Civil Procedure in relation to Rule 46, §3) on certifications of non-forum shopping. But in their reply, petitioners maintained that they had attached such certificate to their petition and, indeed, the records show on page 54 that petitioners filed one. It is noteworthy that the petition in this case was dismissed on July 20, 1994 on the ground that it was not accompanied by an affidavit showing proof of service and a verified statement of material dates but not on the ground that it was also not accompanied by a certificate of non-forum shopping. The petition was subsequently reinstated upon compliance by petitioners with the requirements of proof of service and verified statement of material dates.

As for their failure to implead Jesus Santiago and Maximino dela Cruz as private respondents in accordance with Rule 65, § 5, such is not fatal to their cause. Rule 3, § 11 provides that the misjoinder/nonjoinder of parties is not a ground for dismissal of an action and that parties may simply be dropped or added by order of the court, either, on motion of the parties or on its own initiative. In the present case, Jesus Santiago and Maximino Dela Cruz have for all intents and purposes been joined as respondents. Indeed, on December 23, 1994, they filed a Motion with Leave to File Comment and/or Intervention.<sup>[11]</sup> In that motion, they prayed that they be made parties and be allowed to file comment. In a Resolution, dated February 1, 1995,<sup>[12]</sup> we granted their motion. Moreover, in their comment/intervention, they presented arguments in support of the questioned orders and specifically referred to themselves as “private respondents.”

Third. As already stated, the trial court granted injunction solely on the ground that petitioners failed to deny specifically the allegations contained in paragraphs 23 to 27 of the complaint. In support of its order, the trial court cited Rule 9, § 1, which provides as follows:

SECTION 1. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied. Allegations of usury are deemed admitted if not denied specifically and under oath.

Paragraphs 23 to 97 of the complaint provide as follows:

PRAYER FOR THE ISSUANCE OF WRIT  
OF PRELIMINARY INJUNCTION

23. That plaintiffs are in possession of the land with constant threats of dispossession from defendant Durolfo;
24. That the plaintiffs are entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
25. That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiffs; or
26. That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.
27. That physical confrontation if not there will be bloodshed if the defendant is not restrained to occupy the property because defendant has resorted to the destruction of the palay crops planted thereon.

Petitioners' answer to the complaint first made specific references to paragraphs 1 to 21. Then, in three and a half pages (pp. 2-5), the answer details their claim of possession and ownership of the land. Clearly, although the answer makes no express reference to paragraphs 23-27, petitioners directly controvert private respondents' allegations in these paragraphs. To say that for their failure to make a

paragraph-by-paragraph refutation of this portion of the complaint petitioners are deemed to have admitted the allegations thereof is to ignore three and a half pages of actual refutation contained in their answer.

By insisting on a rigid paragraph-by-paragraph refutation of the prayer for preliminary injunction, respondent judge lost sight of the purpose of a writ of preliminary injunction and the circumstances under which the same may be issued. Injunction is a preservative remedy aimed at protecting substantive rights and interests. The writ of preliminary injunction is issued by the court to prevent threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated. Its sole objective is to preserve the status quo until the merits of the case can be heard fully. The writ is issued upon the satisfaction of two requisites, namely, the existence of a right to be protected and acts which are violative of said right.<sup>[13]</sup> In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.<sup>[14]</sup>

Hence, injunctions, as a rule, will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law.<sup>[15]</sup> In *Angela Estate, Inc. vs. Court of First Instance of Negros Occidental*, we held:

It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought — in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or

disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary.<sup>[16]</sup>

In the case at bar, petitioners appear to have not only actual and material possession of the disputed land but also ownership thereof evidenced by Original Certificate of Title No. P-15922 issued by the Register of Deeds of Nueva Ecija. On the other hand, private respondents have not shown any substantial proof of ownership over the land from which they seek petitioners' ouster. Clearly, public respondent acted with grave abuse of discretion in issuing the assailed writ. The rule that a court should not, by means of a preliminary injunction, transfer possession of property in litigation from one party to another, is more particularly applicable where as in this case, the legal title is in dispute and the party having possession asserts ownership by virtue of such title.<sup>[17]</sup>

**WHEREFORE**, the petition is **GRANTED** and the order, dated April 8, 1994, and the writ of preliminary injunction, dated May 18, 1994, issued by the Regional Trial Court are hereby **ANNULLED** and **SET ASIDE**.

**SO ORDERED.**

**Bellosillo, Puno, Quisumbing and Buena, JJ., concur.**

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[1] The land is more particularly described as Pms. No. 038, Lot No. 775, with an area of 1,480 hectares, more or less, situated in Barangay Gen. Luna, Zaragoza, Nueva Ecija.

[2] Rollo, pp. 19-26; Petition, pp. 1-8, Annex "E."

[3] Rollo, pp. 24-25; Petition, pp. 6-7, Annex "E."

[4] Id., pp. 33-34; Id., pp. 1-2, Annex "G."

[5] Id., pp. 35-36; Id., pp. 1-2, Annex "H."

[6] Id., p. 39; Id., p. 1, Annex "I."

[7] Id., p. 40; Id., p. 1, Annex "I-1."

[8] Rollo, p. 45; Petition, Annex "K."

[9] Rollo, pp. 46-47; Petition, pp. 1-2, Annex "L."

[10] Rollo, p. 75; Comment and Explanation, Annex "A."

[11] Rollo, pp. 65-66.

- [12] *Id.*, p. 69.
- [13] *Republic vs. Silerio*, 272 SCRA 280 (1997).
- [14] *Arcega vs. Court of Appeals*, 275 SCRA 176 (1997).
- [15] *Devesa vs. Arbes*, 13 Phil. 273 (1909); *Gilchrist vs. Cuddy*, 29 Phil. 543 (1915); *Rodulfa vs. Alfonso*, 76 Phil. 225 (1946); *S & A Gaisano Incorporated vs. Hidalgo*, 192 SCRA 224 (1990).
- [16] 24 SCRA 500, 509-510 (1968).
- [17] See *Gordillo and Martinez vs. Del Rosario*, 39 Phil. 829 (1919); *Rodulfa vs. Alfonso*, 76 Phil. 225 (1946); *GSIS vs. Florendo*, 178 SCRA 76 (1989).