



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HEIRS OF MELENCIO YU and
TALINANAP MATUALAGA
(namely: LEONORA,
EDUARDO, VIRGILIO, VILMA,
IMELDA, CYNTHIA, and
NANCY, all surnamed YU),
represented by LEONORA,
VIRGILIO and VILMA,
Petitioners,

G.R. No. 182371

Present:

VELASCO, JR., J., *Chairperson*,
BRION,*
PERALTA,
ABAD, and
MENDOZA, JJ.

Promulgated:

September 4, 2013

Macapin

- versus -

HONORABLE COURT OF
APPEALS, SPECIAL TWENTY-
FIRST DIVISION (TWENTY-
SECOND DIVISION);
ROSEMARIE D. ANACAN-
DIZON (in her capacity as
Division Clerk of Court);
MARION C. MIRABUENO (in
her capacity as OIC-Clerk of
Court of the Regional Trial
Court, General Santos City), and
HEIRS OF CONCEPCION NON
ANDRES (namely: SERGIO,
JR., SOFRONIO and
GRACELDA, all surnamed
ANDRES), represented by
GRACELDA N. ANDRES,
Respondents.

X-----X

* Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1534 dated August 29, 2013.

DECISION

PERALTA, J.:

This petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure seeks to set aside the Order¹ and Writ of Preliminary Mandatory Injunction,² both dated April 3, 2008, issued by the Court of Appeals (CA) in CA-G.R. SP No. 02084-MIN, which granted to private respondents the possession *pendente lite* of Lot No. 2, Psu-135740³-Amd, situated in Sogod, Barangay Apopong,⁴ General Santos City, South Cotabato.

The pertinent facts are as follows:

On May 24, 1972, the spouses Melencio Yu and Talinanap Matualaga filed Civil Case No. 1291 against John Z. Sycip (who died during the pendency of the case and was substituted by his heirs, namely: Natividad D. Sycip, Jose Sycip, John Sycip, Jr., Alfonso Sycip II, and Rose Marie Natividad D. Sycip) for the declaration of nullity of documents and recovery of possession of real property with a prayer for a writ of preliminary mandatory injunction (WPMI) and damages. The subject matter of the case was Lot No. 2, Psu-135740-Amd, the same lot being contested herein. The trial court initially dismissed the case on the ground of prescription, but the CA set aside the order of dismissal and remanded the case for further proceedings. After trial, wherein the court adopted the oral and documentary evidence presented in Civil Case No. 969,⁵ the Court of First Instance (CFI) of South Cotabato, Branch 1, rendered its Decision on April 22, 1981, the decretal portion of which states:

ACCORDINGLY, judgment is hereby rendered declaring plaintiff Melencio Yu, Filipino, of legal age, married to Talinanap Matualaga (Mora) and residing in Dadiangas, Buayan, Cotabato, now General Santos City, as the registered and absolute owner of the land in question, entitled to its possession; ordering the defendants to deliver to him the property in question, including the Owner's Copy of Original Certificate of Title No. (V-14496) (P-2331) P-523, and to pay to the plaintiffs the sum of One Thousand Five Hundred (₱1,500.00) Pesos as attorney's fees.

¹ Penned by Associate Justice Mario V. Lopez, with Associate Justices Rodrigo F. Lim, Jr. and Elihu A. Ybañez, concurring; *rollo*, pp. 23-25.

² *Rollo*, pp. 26-27.

³ Also referred to as Psu-134740 in some documents (See *rollo*, pp. 189-191).

⁴ Also referred to as Brgy. Makar, as per Original Certificate of Title No. (V-14496)(P-523) (See *rollo*, p. 243).

⁵ A complaint for the Declaration of Nullity of Document and Recovery of Possession of Real Property with a prayer for a Writ of Preliminary Mandatory Injunction and Damages, with Lot No. 4 Psu 135740-Amd as the subject matter, which was adjacent to Lot No. 2, Psu-135740-Amd. (See *Heirs of John Z. Sycip v. Court of Appeals*, G.R. No. 76487, November 9, 1990, 191 SCRA 262, 266).

With costs against the defendants.

SO ORDERED.⁶

Eventually, the case was elevated to the Supreme Court, which, in *Heirs of John Z. Sycip v. Court of Appeals*,⁷ sustained the CA decision affirming the trial court's judgment. The Court's ruling is now final and executory.

During the pendency of Civil Case No. 1291, squatters entered the subject lot. Consequently, when a writ of execution and an order of demolition were issued by the trial court, a group of squatters known as Yard Urban Homeowners Association, Inc. (YUHAI) filed a complaint for injunction with damages and prayer for writ of preliminary injunction (WPI) or temporary restraining order (TRO). It was docketed as Civil Case No. 4647 and raffled before the General Santos City Regional Trial Court (RTC), Branch 22. In time, the trial court ruled in favor of petitioners. The CA affirmed the decision on August 28, 1998 in CA-G.R. CV No. 54003.⁸

Thereafter, the General Santos City RTC Br. 23, then hearing both Civil Case Nos. 1291 and 4647, granted petitioners' motion to implement the writ of demolition and, subsequently, denied the opposition/motion for reconsideration thereto.⁹ On August 22, 2001, a Special Order of Demolition was issued by Presiding Judge Jose S. Majaducon to enforce the judgment in both cases, directing the Provincial Sheriff of General Santos City or any of his deputies, thus:

NOW THEREFORE, we command you to demolish the improvements erected by the defendants HEIRS OF JOHN Z. SYCIP (namely: NATIVIDAD D. SYCIP, JOSE SYCIP, JOHN SYCIP, JR., ALFONSO SYCIP II, ROSE MARIE SYCIP, JAMES SYCIP & GRACE SYCIP), Represented by NATIVIDAD D. SYCIP, in Civil Case No. 1291, and the plaintiffs YARD URBAN HOMEOWNERS ASSOCIATION, INC., ET AL., in Civil Case No. 4647, on that portion of land belonging to plaintiffs in Civil Case No. [1291] and defendants in Civil Case No. 4647, MELENCIO YU and TALINANAP MATUALAGA covered by Original Certificate of Title No. (V-14496) (P-2331) P-523, located in Apopong, General Santos City.

This Special Order of Demolition shall be returned by you to this Court within ten (10) days from date of receipt hereof together with your proceedings indorsed hereon.¹⁰

⁶ *Rollo*, p. 286.

⁷ *Supra* note 5.

⁸ *Rollo*, pp. 8, 58.

⁹ *Id.* at 54.

¹⁰ *Id.*

By virtue of the aforesaid Order, a notice to vacate was issued by Sheriff Nasil S. Palati and noted by Clerk of Court Atty. Elmer D. Lastimosa addressed to the heirs of John Z. Sycip, members of YUHAI and all adverse claimants and actual occupants of the disputed lot.¹¹ As a result, private respondents filed a Special Appearance with Urgent *Ex-Parte* Manifestation, praying that the “Provincial Sheriff or any of his deputies be properly informed [of the pending protest between petitioners and private respondents before the Department of Environment and Natural Resources] and enjoined from [implementing] the Special Order of Demolition on the improvements made by Concepcion Non Andres, her heirs and assigns.”¹² As their demands went unheeded, private respondents filed a complaint for quieting of title, specific performance, reconveyance and damages with prayer for the issuance of TRO, WPI and WPML. Docketed as Civil Case No. 7066 and raffled before RTC Br. 22, among those impleaded as defendants were petitioners, Sheriff Palati, Atty. Lastimosa, Retired Presiding Judge Majaducon, and the officers/directors of YUHAI. The trial court denied the issuance of a TRO and the case is still pending trial at this time.¹³

Likewise, YUHAI once more filed a complaint on October 10, 2001 against the spouses Melencio Yu and Talinanap Matualaga.¹⁴ This time, the case was for quieting of title, damages and attorney’s fees with application for TRO and WPI. It was docketed as Special Civil Case No. 562 and raffled before RTC Br. 22. The trial court declined to issue a TRO on October 19, 2001; denied YUHAI’s urgent motion for clarification on November 5, 2001; and rejected for the second time YUHAI’s prayer for issuance of TRO or WPI on February 4, 2002.¹⁵

Meantime, on January 3, 2002, RTC Br. 23 directed the Sheriff to proceed with his duties of implementing the Special Order of Demolition.

The above prompted YUHAI to file a petition for *certiorari* before the CA. The petition, which was docketed as CA-G.R. SP No. 69176, sought to annul the Special Order of Demolition dated August 22, 2001 and Order dated January 3, 2002, both issued by RTC Br. 23, as well as all the adverse resolutions of RTC Br. 22. On March 5, 2002, the CA issued a TRO. However, on July 27, 2004, the appellate court revoked the TRO, denied due course to the petition and dismissed the same for lack of merit.¹⁶ YUHAI’s motion for reconsideration was denied on November 29, 2006.¹⁷ The CA essentially ruled that the issue of ownership over the subject lot was already passed upon in CA-G.R. CV No. 54003 and binds YUHAI under the

¹¹ *Id.* at 294.

¹² *Id.*

¹³ *Id.* at 17, 165-166, 265.

¹⁴ *Id.* at 50-51.

¹⁵ *Id.* at 51.

¹⁶ *Id.* at 60.

¹⁷ *Id.* at 63.

principle of *res judicata*. Subsequently, YUHAI filed a petition before this Court, but it was denied on September 16, 2009.¹⁸

On December 27, 2006, petitioners filed a Motion to Resume and Complete Demolition¹⁹ pursuant to the Special Order of Demolition dated August 22, 2001. The trial court, now RTC Br. 36, granted the motion on October 9, 2007, instructing the Provincial Sheriff of General Santos City or any of his deputies to resume and complete the demolition in Civil Case Nos. 1291 and 4647 as directed in the Special Order of Demolition issued by then Judge Majaducon.²⁰

Responding to the Notice to Vacate that was served in accordance with the October 9, 2007 Order, private respondents wrote the Sheriff on November 26, 2007, contending that they should not be included in the implementation of the Order since they are not parties in Civil Case Nos. 1291 and 4647.²¹ Three days after, private respondents filed a Special Appearance with *Ex-Parte* Manifestation and Motion before RTC Branch 36, again arguing that they should not be included in the demolition as they are not parties to both cases and that Civil Case Nos. 7066 and 7364²² are still pending before RTC Branches 22 and 23, respectively. The pleading was, however, denied on December 7, 2007.²³ Hence, a petition for *certiorari* with prayer for TRO and/or WPI seeking to set aside the October 9, 2007 Order was filed before the CA and docketed as CA-G.R. SP No. 02084-MIN.²⁴

On December 14, 2007, the CA issued a TRO,²⁵ but, on February 13, 2008, the restraining order was vacated for being moot and academic after the appellate court noted the December 20, 2007 Order of the Presiding Judge of RTC Br. 36 manifesting that the writ of demolition was already executed and completed on December 13, 2007.²⁶

Arguing in main that there was no complete demolition and no proper turn-over of the contested lot on December 13, 2007, private respondents filed a motion for reconsideration with very urgent prayer for immediate issuance of WPI and WPMI.²⁷ On April 3, 2008, the CA resolved to grant

¹⁸ *Yard Urban Homeowners Association, Inc. v. The Heirs of Melencio Yu, Represented by Virgilio Yu, et al.*, G.R. No. 176096, September 16, 2009, Third Division Minute Resolution.

¹⁹ *Rollo*, pp. 62-66.

²⁰ *Id.* at 67-69.

²¹ *Id.* at 165.

²² Allegedly a case for reversion filed by the Office of the Solicitor General against the Heirs of Melencio Yu (*Id.* at 162, 176)

²³ *Rollo*, p. 87.

²⁴ *Id.* at 166, 235.

²⁵ *Id.* at 232-238.

²⁶ *Id.* at 79-81.

²⁷ *Id.* at 201-216.

the prayer for preliminary mandatory injunction.²⁸ On the same day, the writ was issued by respondent Rosemarie D. Anacan-Dizon.²⁹

Aggrieved, petitioners filed an Urgent Motion for Reconsideration³⁰ and, later, an Urgent Motion for Dissolution of the Writ of Preliminary Mandatory Injunction³¹ on April 9, 2008 and April 14, 2008, respectively. Without waiting for the CA resolution on the two motions, petitioner filed the present case before Us on April 21, 2008.³²

The petition is granted.

The rule is well settled that a motion for reconsideration before the respondent court is an indispensable condition to the filing of a special civil action for *certiorari* before the Supreme Court. Nonetheless, this rule admits of exceptions. In *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*,³³ We have painstakingly cited a number of jurisprudence on the matter and held:

x x x As early as *Director of Lands v. Santamaria*, this Court held that there are notable exceptions to the general rule that a motion for reconsideration must first be filed before resort to *certiorari* can be availed of. This rule has been applied by this Court in a plethora of cases. A motion for reconsideration is no longer necessary when other special circumstances warrant immediate and more direct action.

x x x x

Although a motion for reconsideration has often been considered a condition precedent for granting the writ of *certiorari*, this rule finds exception in this case where execution has been ordered and the need for relief is urgent. Otherwise, a motion for reconsideration of the contested order would have served no purpose. The rule on exhaustion of remedies does not call for an exercise in futility. In *Gonzales, Jr. v. Intermediate Appellate Court*, this Court said:

As a general rule, *certiorari* will not lie, unless an inferior court has, through a motion for reconsideration, a chance to correct the errors imputed to him. This, however, admits of exceptions, namely: (1) when the issue raised is one purely of law; (2) where public interest is involved; and (3) in case of urgency.³⁴

²⁸ *Id.* at 23-25.

²⁹ *Id.* at 26-27.

³⁰ *Id.* at 28-43.

³¹ *Id.* at 44-49.

³² *Id.* at 3.

³³ G.R. No. 174136, December 23, 2008, 575 SCRA 291.

³⁴ *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*, *supra*, at 303-306. (Citations omitted)

In the case at bar, the different issues raised by petitioners and countered by private respondents ultimately boil down to the propriety of the issuance of the writ of preliminary mandatory injunction, which, aside from the need to urgently resolve in view of the peculiar facts involved, is an issue that is purely a question of law.

From the procedural standpoint, petitioners correctly argued that respondent Anacan-Dizon hastily issued and released for service the Order and the Writ of Preliminary Mandatory Injunction simultaneously on the same day, April 3, 2008, without first waiting for private respondents to post the required bond in the amount of Php300,000.00 as mandated by the Order. Private respondents candidly admitted in paragraph 36, page 16 of their Comment that it was only on April 14, 2008 that they posted the required bond.³⁵ This is obviously contrary to the provision of the Rules of Court (“Rules”), Section 4, Rule 58 of which states in no uncertain terms:

SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order.* – A preliminary injunction or temporary restraining order may be granted only when:

x x x x

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. **Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.**³⁶

To be sure, an Order granting a preliminary injunction, whether mandatory or prohibitory, does not automatically entitle the applicant-movant to an immediate enforcement. Posting of a bond is a condition *sine qua non* for the issuance of a corresponding writ.³⁷ In fact, under the Rules, the party filing a bond is mandated to serve a copy thereof to the other party, who may oppose the sufficiency of the bond or the qualifications of its surety or sureties. This is clearly expressed in Section 7, Rule 58 of the Rules:

SEC. 7. *Service of copies of bonds; effect of disapproval of same.*

– The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may

³⁵ Rollo, p. 172.

³⁶ Emphasis supplied.

³⁷ See *Garcia v. Adeva*, 550 Phil. 663, 677-678 (2007), citing *San Miguel v. Hon. Elbinias, etc.*, 212 Phil. 291, 297 (1984).

except to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be granted or restored, as the case may be.

Yet more than the undue haste by which the writ was issued, the Court believes and so holds that respondent CA acted with grave abuse of discretion when it granted private respondents' prayer for a preliminary mandatory injunction.

We explain.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.³⁸ To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage.³⁹ An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.⁴⁰ As this Court opined in *Dela Rosa v. Heirs of Juan Valdez*:⁴¹

A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right

³⁸ Rules of Court, Rule 58, Sec. 1.

³⁹ *Pelejo v. Court of Appeals*, 203 Phil. 29, 33 (1982), as cited in *Semirara Coal Corporation v. HGL Development Corporation*, 539 Phil. 532, 545 (2006); *Pablo-Gualberto v. Gualberto*, 500 Phil. 226, 253 (2005); *De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region*, 464 Phil. 1033, 1052 (2004); and *Gateway Electronics Corporation v. Land Bank of the Philippines*, 455 Phil. 196, 210 (2003).

⁴⁰ See *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 424 and *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*, G.R. No. 167057, April 11, 2012, 669 SCRA 173, 187.

⁴¹ G.R. No. 159101, July 27, 2011, 654 SCRA 467.

claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.⁴²

Thus, a preliminary mandatory injunction should only be granted “in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation.”⁴³

In this case, there is doubt on private respondents' entitlement to a preliminary mandatory injunction since the evidence presented before the respondent CA in support thereof appears to be weak and inconclusive, and the alleged right sought to be protected is vehemently disputed. The documentary evidence presented by private respondents does not suffice to prove their ownership and possession of the contested lot. Notably, both the Quitclaim Deed⁴⁴ allegedly executed on April 16, 1957 by the spouses Melencio Yu and Talinanap Matualaga in favor of Alfonso Aguinaldo Non and the Transfer of Free Patent Rights⁴⁵ allegedly executed on May 28, 1957 by Melencio Yu in favor of Concepcion Non Andres were among those documents already declared null and void by the trial court in Civil Case No. 1291 on the grounds that: (a) the spouses never received any consideration for said conveyances; (b) the documents were falsified; (c) the instruments were not approved by the Provincial Governor or his duly-authorized representative pursuant to Sections 145 and 146 of the Revised Administrative Code of Mindanao and Sulu; (d) all transactions were restricted by the law governing free patent; and (e) Lot No. 2, Psu-135740-Amd is a paraphernal property of Talinanap Matualaga and was sold without her consent.⁴⁶ The trial court's decision was affirmed in *Heirs of John Z. Sycip v. Court of Appeals*,⁴⁷ wherein this Court ratiocinated:

It is not disputed that the private respondents are Muslims who belong to the cultural minority or non-Christian Filipinos as members of the Maguindanao Tribe. Any transaction, involving real property with them is governed by the provisions of Sections 145 and 146 of the Revised Administrative Code of Mindanao and Sulu, Section 120 of the Public Land Act (Commonwealth Act No. 141), as amended, and Republic Act No. 3872, further amending the Public Land Act.

⁴² *Dela Rosa v. Heirs of Juan Valdez*, *supra*, at 479-480. (Citation omitted)

⁴³ *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation)*, G.R. No. 163406, November 24, 2009, 605 SCRA 196, 208-209. (Citation omitted) and *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*, G.R. No. 145742, July 14, 2005, 463 SCRA 358, 374.

⁴⁴ *Rollo*, p. 187.

⁴⁵ *Id.* at 189.

⁴⁶ *Id.* at 282-286.

⁴⁷ *Supra* note 5.

Section 145 of the Revised Administrative Code of Mindanao and Sulu provides that any transaction involving real property with said non-Christian tribes shall bear the approval of the provincial governor wherein the same was executed or of his representative duly authorized in writing for such purpose, indorsed upon it. *Section 146 of the same code considers every contract or agreement made in violation of Section 145 as null and void.* (Italics supplied)

Section 120 of the Public Land Act (Commonwealth Act No. 141) provides that conveyances and encumbrances made by persons belonging to the so-called "non-Christian tribe" shall be valid if the person making the conveyance or encumbrance is able to read and can understand the language in which the instrument of conveyance or encumbrance is written. Conveyances and encumbrances made by illiterate non-Christians shall not be valid unless duly approved by the Commissioner of Mindanao and Sulu.

Republic Act No. 3872 provides that conveyances and encumbrances made by illiterate non-Christian or literate non-Christians where the instrument of conveyance or encumbrance is in a language not understood by said literate non-Christians shall not be valid unless duly approved by the Chairman of the Commission on National Integration.

All the documents declared null and void or inexistent by the trial court and affirmed by the Court of Appeals were found to have been falsified in Civil Case No. 969; without consideration and more importantly without approval by any of the following officials: the Provincial Governor of Cotabato, Commissioner of Mindanao and Sulu, or the Chairman of the Commission on National Integration and therefore null and void.⁴⁸

The above ruling already binds private respondents, considering that Alfonso Aguinaldo Non and Concepcion Non Andres were both their predecessors-in-interest because they are their grandfather and mother, respectively.⁴⁹ As a matter of fact, in *Andres v. Majaducon*,⁵⁰ which is an administrative case filed by Sergio and Gracelda Andres, who are private respondents herein, against Clerk of Court and *Ex-Officio* Provincial Sheriff Lastimosa and Sheriff Palati for alleged abuse of authority when they enforced the order of demolition against them (private respondents) even though they were not impleaded as parties in Civil Case Nos. 1291 and 4647, We dismissed the charge and instead ruled:

Worth quoting here is the decision of the CA in CA-G.R. CV No. 54003, which decided the appeal of the decision in Civil Case No. 4647, viz.:

Finally, the appellants' assertion that they are not bound by the decision in Civil Case No. 1291 because they

⁴⁸ *Heirs of John Z. Sycip v. Court of Appeals*, *supra* note 5, at 267. (Emphasis ours)

⁴⁹ *Rollo*, pp. 160-161.

⁵⁰ A.M. No. RTJ-03-1762 (Formerly OCA I.P.I. No. 02-1422-RTJ), December 17, 2008, 574 SCRA 169.

are not parties therein and that the appellees should first institute an action for ejectment in order to acquire possession of the property is without merit. The appellants' failure to establish a vested and better right, either derivative or personal, to the land in question as against the appellees, forecloses any posturing of exemption from the legal force and effect of the writ of execution issued by the trial court to enforce a final judgment under the guise of denial of due process. **A judgment pertaining to ownership and/or possession of real property is binding upon the defendants and all persons claiming right of possession or ownership from the said defendant and the prevailing party need not file a separate action for ejectment to evict the said privies from the premises.**

Evidently, the decision in Civil Case Nos. 1291 and 4647, which had long become final and executory, can be enforced against herein complainants although they were not parties thereto. There is no question that complainants merely relied on the title of their predecessor-in-interest who was privy to John Sycip, the defendant in Civil Case No. 1291. As such, complainants and their predecessor-in-interest can be reached by the order of demolition.⁵¹

In issuing the subject writ, respondent CA certainly ignored the fundamental rule in Our jurisdiction that a writ of preliminary mandatory injunction cannot be used to oust a party from his possession of a property and to put in his place another party whose right has not been clearly established.⁵² Respondent CA should have exercised more prudence, considering that the arguments raised by petitioners in their Comment in CA-G.R. SP No. 02084-MIN deserve more credit than private respondents' bare allegations. Other than the Quitclaim Deed and the Transfer of Free Patent Rights, which were long ago nullified in *Heirs of John Z. Sycip v. Court of Appeals*,⁵³ the other public documents "left untouched by the Supreme Court and the other lower courts for that matter x x x such as the Free Patent Application of Concepcion Non Andres, which were never nullified or declared void by any judicial or quasi-judicial body"⁵⁴ being claimed by private respondents are still inconclusive as to their existence and due execution and are highly disputed by petitioners; hence, these cannot be a source of a clear or unmistakable right. At the very least, respondent CA should have accorded respect to the presumed indefeasibility of Original Certificate of Title No. (V-14496) (P-2331) P-523 issued on August 23, 1961 in favor of Melencio Yu, which has not been cancelled to date.

As well, the issue of prior possession by private respondents are very much contested by petitioners. Private respondents argued that they are the actual possessors – open, continuous, and adverse possession in the concept

⁵¹ *Andres v. Majaducon*, *supra*, at 184-185. (Emphasis in the original; citations omitted)

⁵² *Alvaro v. Zapata*, 204 Phil. 356, 363 (1982). (Citation omitted)

⁵³ *Supra* note 5.

⁵⁴ *Rollo*, p. 176.

of an owner – and not squatters, of the subject lot for over 50 years and that petitioners and their predecessors-in-interest have never been in possession of the contested lot.⁵⁵ Yet such allegation is factual in nature. Therefore, prior to the issuance of the challenged Order and writ, respondent CA should have fully ascertained whether there is truth to private respondents' representation that they have improvements or structures on the subject lot which would suffer from the intended demolition.

Finally, granting that there is strong evidence to prove private respondents' ownership and possession of the disputed lot, still, they are not entitled to the grant of preliminary mandatory injunction. As the damages alleged by them can be quantified, it cannot be considered as "grave and irreparable injury" as understood in law:

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*:

Damages are irreparable within the meaning of the rule relative to the issuance of injunction where **there is no standard by which their amount can be measured with reasonable accuracy.** "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which **produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement.**" An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that **its pecuniary value will not fairly recompense the owner of the loss thereof.** (Emphasis supplied)

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction –

should *never* issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the


⁵⁵*Id.*

multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.⁵⁶

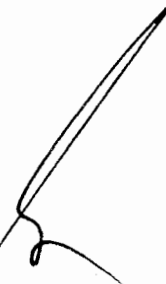
Thus, in case of doubt, respondent CA should have denied private respondents' prayer as it appeared that although they *may* be entitled to the injunction, they could still be fully compensated for the damages they *may* suffer by simply requiring petitioners to file a bond to answer for all damages that *may* be suffered by such denial.⁵⁷

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The Order and Writ of Preliminary Mandatory Injunction, both dated April 3, 2008, issued by the Court of Appeals in CA-G.R. SP No. 02084-MIN, are **REVERSED AND SET ASIDE**. Petitioners are entitled to possess *pendente lite* Lot No. 2, Psu-135740-Amd, situated in Sogod, Barangay Apopong, General Santos City, South Cotabato.


SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


ROBERTO A. ABAD
Associate Justice

⁵⁶ *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation)*, *supra* note 43, at 210-211.


⁵⁷ See Rules of Court, Rule 58, Sec. 6.



JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice