



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**SPOUSES SILVESTRE O. PLAZA
AND ELENA Y. PLAZA,**

Petitioners,

G.R. No. 172909

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

**GUILLERMO LUSTIVA, ELEODORA
VDA. DE MARTINEZ AND VICKY
SAYSON GOLOSENO,**

Respondents.

Promulgated:

MAR 05 2014 *W. Rabalag/Mycto*

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DECISION

BRION, J.:

Through a petition for review on *certiorari*,¹ filed under Rule 45 of the Rules of Court, the petitioners, spouses Silvestre O. Plaza and Elena Y. Plaza, seek the reversal of the decision² dated October 24, 2005 and the resolution³ dated April 6, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 59859.

THE FACTS

On August 28, 1997, the CA⁴ ruled that among the Plaza siblings, namely: Aureliano, Emiliana, Vidal, Marciano, and **Barbara**, Barbara was the owner of the subject agricultural land. The decision became final and executory and Barbara's successors, respondents Guillermo Lustiva,

¹ Rollo, pp. 3-28.

² Penned by Associate Justice Teresita Dy-Liacco Flores, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia; id. at 36-58.

³ Id. at 33.

⁴ CA-G.R. CV No. 37715. CA rollo, pp. 50-55.

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Eleodora Vda. de Martinez and Vicky Sayson Goloseno, have continued occupying the property.

On September 14, 1999, Vidal's son and daughter-in-law, the petitioners, filed a *Complaint for Injunction, Damages, Attorney's Fees with Prayer for the Issuance of the Writ of Preliminary Injunction and/or Temporary Restraining Order* against the respondents and the City Government of Butuan. They prayed that the respondents be enjoined from unlawfully and illegally threatening to take possession of the subject property. According to the petitioners, they acquired the land from Virginia Tuazon in 1997; Tuazon was the sole bidder and winner in a tax delinquency sale conducted by the City of Butuan on December 27, 1996.

In their answer, the respondents pointed out that they were never delinquent in paying the land taxes and were in fact not aware that their property had been offered for public auction. Moreover, Tuazon, being a government employee, was disqualified to bid in the public auction, as stated in Section 89 of the Local Government Code of 1991.⁵ As Tuazon's participation in the sale was void, she could have not transferred ownership to the petitioners. Equally important, the petitioners merely falsified the property tax declaration by inserting the name of the petitioners' father, making him appear as a co-owner of the auctioned land. Armed with the falsified tax declaration, the petitioners, as heirs of their father, fraudulently redeemed the land from Tuazon. Nonetheless, there was nothing to redeem as the land was not sold. For these irregularities, the petitioners had no right to the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for against them.

THE RTC'S RULING

In its December 14, 1999 order,⁶ the Regional Trial Court (RTC) of Butuan City, Branch 5, reconsidered its earlier order,⁷ **denied the prayer for a Writ of Preliminary Injunction, and ordered that the possession**

⁵ Section. 89. Prohibited Business and Pecuniary Interest. – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

- (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
- (2) Hold such interests in any cockpit or other games licensed by a local government unit;
- (3) Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit;
- (4) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and
- (5) Possess or use any public property of the local government unit for private purposes.

⁶ *Rollo*, pp. 119-123; penned by Judge Caldino B. Jardin, Jr.

⁷ The RTC granted the prayer for issuance of a preliminary injunction on October 28, 1999; *id.* at 106.

and occupation of the land be returned to the respondents. The RTC found that the auction sale was tainted with irregularity as the bidder was a government employee disqualified in accordance with Section 89 of the Local Government Code of 1991. The petitioners are not buyers in good faith either. On the contrary, they were in bad faith for having falsified the tax declaration they redeemed the property with.

THE CA'S RULING

Through a petition for review on *certiorari* under Rule 65, the petitioners challenged the RTC's order before the CA.

While the petition for review on *certiorari* was pending before the CA, the petitioners filed an action for specific performance⁸ against the City Government of Butuan. According to the petitioners, they acquired possession and ownership over the auctioned property when they redeemed it from Tuazon. The City Government of Butuan must therefore issue them a certificate of sale.⁹

In its October 24, 2005 decision,¹⁰ **the CA affirmed the RTC's ruling, found the petitioners guilty of forum shopping, dismissed the case, and referred** the case to the Court and to the Integrated Bar of the Philippines for **investigation and institution of the appropriate administrative action.**¹¹ The CA, after legal analysis, similarly concluded that for being disqualified to bid under Section 89 of the Local Government Code of 1991, Tuazon never obtained ownership over the property; much less transmit any proprietary rights to the petitioners. **Clearly, the petitioners failed to establish any clear and unmistakable right enforceable by the injunctive relief.**

On April 6, 2006, the CA rejected the petitioners' motion for reconsideration.

THE PARTIES' ARGUMENTS

The petitioners filed the present petition for review on *certiorari* with this Court to challenge the CA rulings. The petitioners maintain that they did not falsify the tax declaration in acquiring the auctioned property. Moreover, assuming that Tuazon, the sole bidder, was indeed disqualified from participating in the public auction, Section 181¹² of the Local

⁸ Filed before Branch 3 of the RTC of Butuan City, docketed as Civil Case No. 5071.

⁹ *Rollo*, p. 51.

¹⁰ *Supra* note 2.

¹¹ There is a pending administrative case before the Court, entitled *Court of Appeals v. Atty. Agustin C. Tarroza, Administrative Case No. 7037*. Atty. Tarroza's Answer to the complaint is annexed in the present appeal. *Rollo*, pp. 143-159.

¹² Erroneously cited by the petitioners as Article 269. Section 181. Purchase of Property By the Local Government Units for Want of Bidder. - In case there is no bidder for the real property advertised for

Government Code of 1991 finds application. Applying the law, it is as if there was no bidder, for which the City Government of Butuan was to be considered the purchaser of the land in auction. **Therefore, when the petitioners bought the land, they bought it directly from the purchaser - City Government of Butuan - and not from Tuazon, as redeemers.**

Also, the respondents may not question the validity of the public auction for failing to deposit with the court the amount required by Section 267¹³ of the Local Government Code of 1991.

Finally, the petitioners argue that they did not commit forum shopping, as the reliefs prayed for in the present case and in the specific performance case are not the same. In the present case, they merely impleaded the City Government of Butuan as a nominal party to pay for the value of the land only if possession of the land was awarded to the respondents. On the other hand, the complaint for specific performance prayed that the City Government of Butuan execute the necessary certificate of sale and other relevant documents pertaining to the auction.

The respondents, for their part, reiterate the lower courts' findings that there could have been no legal redemption in favor of the petitioners as the highest bidder was disqualified from bidding. Moreover, the CA correctly applied the law in finding the petitioners guilty of forum shopping. Most importantly, the grant of preliminary injunction lies in the sound discretion of the court and the petitioners failed to show proof that they are entitled to it.

sale as provided herein, or if the highest bid is for an amount insufficient to pay the taxes, fees, or charges, related surcharges, interests, penalties and costs, the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.

Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the taxes, fees, charges, and related surcharges, interests, or penalties, and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be fully vested on the local government unit concerned.

¹³ Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

Meanwhile, on August 8, 2013, the RTC **dismissed the main action** and ordered the petitioners to pay the respondents attorney's fees and litigation expenses.¹⁴

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

**The petitioners may not
raise factual issues**

The petitioners maintain that they did not falsify the tax declaration they reimbursed the property with. According to them, the document already existed in 1987, way before they acquired the land in 1997. Contrary likewise to the lower courts' finding, they did not purchase the land from Tuazon as redemptioners; they directly bought the property from the City Government of Butuan.

These factual contests are not appropriate for a petition for review on *certiorari* under Rule 45. The Court is not a trier of facts.¹⁵ The Court will not revisit, re-examine, and re-evaluate the evidence and the factual conclusions arrived at by the lower courts.¹⁶ In the absence of compelling reasons, the Court will not disturb the rule that factual findings of the lower tribunals are final and binding on this Court.¹⁷

**Sections 181 and 267 of the Local
Government Code of 1991 are inapplicable;
these provisions do not apply to the present case**

The petitioners may not invoke Section 181¹⁸ of the Local Government Code of 1991 to validate their alleged title. The law authorizes the local government unit to purchase the auctioned property only in instances where "*there is no bidder*" or "*the highest bid is xxx insufficient.*" A disqualified bidder is not among the authorized grounds. The local government also never undertook steps to purchase the property under Section 181 of the Local Government Code of 1991, presumably because it knew the invoked provision does not apply.

Neither can the Court agree with the petitioners' stance that the respondents' defense — the petitioners' defective title — must fail for want

¹⁴ RTC rollo, pp. 470-481.

¹⁵ *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 458, citing *Aliño v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, June 27, 2008, 556 SCRA 139; and *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. Nos. 154885 and 154937, March 24, 2008, 549 SCRA 12.

¹⁶ *Ibid.*, citing *Alicer v. Compas*, G.R. No. 187720, May 30, 2011, 649 SCRA 473.

¹⁷ *Cerila J. Calanasan, etc. v. Spouses Virgilio Dolorito and Evelyn C. Dolorito*, G.R. No. 171937, November 25, 2013, citations omitted.

¹⁸ See note 12.

of deposit to the court the amount required by Section 267 of the Local Government Code. The provision states:

Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired. [underscores ours; italics supplied]

A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms “entertain” and “institution” to mean that the deposit requirement applies only to initiatory actions assailing the validity of tax sales. The intent of the provision to limit the deposit requirement to actions for annulment of tax sales led to the Court’s ruling in *National Housing Authority v. Iloilo City, et al.*¹⁹ that the deposit requirement is jurisdictional — a condition necessary for the court to entertain the action:

As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a “prerequisite,” to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. xxx. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.

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Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale.²⁰

The Court would later reiterate the jurisdictional nature of the deposit in *Wong v. City of Iloilo*,²¹ and pronounce:

¹⁹ 584 Phil. 604 (2008).

²⁰ Id. at 610-611.

²¹ G.R. No. 161748, July 3, 2009, 591 SCRA 523.

In this regard, *National Housing Authority v. Iloilo City* holds that the deposit required under Section 267 of the Local Government Code is a **jurisdictional requirement**, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.²²

These rulings clearly render inapplicable the petitioners' insistence that the respondents should have made a deposit to the court. The suit filed by the petitioners was an action for injunction and damages; the issue of nullity of the auction was raised by the respondents themselves merely as a defense and in no way converted the action to an action for annulment of a tax sale.

The petitioners failed to show clear and unmistakable rights to be protected by the writ; the present action has been rendered moot and academic by the dismissal of the main action

As the lower courts correctly found, Tuazon had no ownership to confer to the petitioners despite the latter's reimbursement of Tuazon's purchase expenses. Because they were never owners of the property, the petitioners failed to establish entitlement to the writ of preliminary injunction. "[T]o be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper."²³

Likewise, upon the dismissal of the main case by the RTC on August 8, 2013, the question of issuance of the writ of preliminary injunction has become moot and academic. In *Arevalo v. Planters Development Bank*,²⁴ the Court ruled that a case becomes moot and academic when there is no more issue between the parties or object that can be served in deciding the merits of the case. Upon the dismissal of the main action, the question of the non-issuance of a writ of preliminary injunction automatically died with it. A writ of preliminary injunction is a provisional remedy; it is auxiliary, an adjunct of, and subject to the determination of the main action. It is deemed lifted upon the dismissal of the main case, any appeal therefrom notwithstanding.²⁵

²² Id. at 529-530; citation omitted.

²³ *The Incorporators of Mindanao Institute Inc. v. The United Church of Christ in the Philippines*, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 649; citations omitted.

²⁴ G.R. No. 193415, April 18, 2012, 670 SCRA 252.

²⁵ Id. at 260.

The petitioners are guilty of forum shopping

We agree with the CA that the petitioners committed forum shopping when they filed the specific performance case despite the pendency of the present case before the CA. In the recent case of *Heirs of Marcelo Sotto, etc., et al. v. Matilde S. Palicte*,²⁶ the Court laid down the **three ways forum shopping may be committed**: 1) through *litis pendentia* — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata* — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*. “The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.”²⁷

Noticeable among these three types of forum shopping is **the identity of the cause of action** in the different cases filed. Cause of action is “the act or omission by which a party violates the right of another.”²⁸

The cause of action in the present case (and the main case) is the petitioners’ claim of ownership of the land when they bought it, either from the City Government of Butuan or from Tuazon. This ownership is the petitioners’ basis in enjoining the respondents from dispossessing them of the property. On the other hand, the specific performance case prayed that the City Government of Butuan be ordered to issue the petitioners the certificate of sale grounded on the petitioners’ ownership of the land when they had bought it, either from the City Government of Butuan or from Tuazon. While it may appear that the main relief prayed for in the present injunction case is different from what was prayed for in the specific performance case, the cause of action which serves as the basis for the reliefs remains the same — the petitioners’ alleged ownership of the property after its purchase in a public auction.

²⁶ G.R. No. 159691, June 13, 2013.

²⁷ *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 429; citation omitted, italics supplied.

²⁸ *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215; citation omitted.

Thus, the petitioners' subsequent filing of the specific performance action is forum shopping of the third kind-splitting causes of action or filing multiple cases based on the same cause of action, but with different prayers. As the Court has held in the past, "there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues."²⁹


Similarly, the CA correctly found that the petitioners and their counsel were guilty of forum shopping based on *litis pendentia*. Not only were the parties in both cases the same insofar as the City Government of Butuan is concerned, there was also identity of rights asserted and identity of facts alleged. The cause of action in the specific performance case had already been ruled upon in the present case, although it was still pending appeal before the CA. Likewise, the prayer sought in the specific performance case — for the City Government of Butuan to execute a deed of sale in favor of the petitioners — had been indirectly ruled upon in the present case when the RTC declared that no certificate of sale could be issued because there had been no valid sale.

WHEREFORE, premises considered, the Court **DENIES** the petition for review on *certiorari*. The decision dated October 24, 2005 and the resolution dated April 6, 2006 of the Court of Appeals in CA-G.R. SP No. 59859 are hereby **AFFIRMED**.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

²⁹

Id. at 216. See also *Prubankers Association v. Prudential Bank & Trust Co.*, 361 Phil. 744, 756 (1999).



MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

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.


ANTONIO T. CARPIO
Acting Chief Justice