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SECOND DIVISION

[G.R. No. L-31736. July 18, 1985]

ANTONIO FA. QUESADA, ROSARIO MILLAR-QUESADA, CONRADO DAYRIT, and MILAGROS MILLAR-DAYRIT, *petitioners-appellants, vs.* **THE HONORABLE COURT OF APPEALS, HONORABLE COURT OF FIRST INSTANCE OF QUEZON, and SPOUSES FRANCISCO VICUÑA and CATALINA VICUÑA,** *respondents-appellees.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WHEN MOOT AND ACADEMIC.— Under the circumstances, the herein petition for review on *certiorari* of an incident involving only the validity of the writ of preliminary mandatory injunction issued by the trial court, as the main case had already been decided on the merits against petitioners, should be dismissed. Wherefore, the herein case is hereby dismissed as moot and academic.

D E C I S I O N

MAKASIAR, *J.*:

This is a petition for review on *certiorari* of the order rendered by the Court of First Instance of Quezon, Branch I, Ninth Judicial District, on November 20, 1968 which was set aside in a decision dated July 3, 1969 but was later sustained in a resolution by the Court of Appeals on November 18, 1969, the dispositive portion of which is as follows:

"WHEREFORE, the motion of the respondents asking for the reconsideration of the decision rendered herein on July 3, 1969, is hereby granted; the said decision is hereby set aside and this petition for *certiorari* is hereby denied with cost against petitioners.

"The petitioner's motion for amendment is likewise hereby denied.

"SO ORDERED" (p. 27, rec.).

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Fabian R. Millar, the predecessor-in-interest of herein petitioners-appellants during his lifetime, subdivided a piece of land designated as Lot 8 which bordered a national road in Gulang-gulang, Lucena, Quezon. The subdivision plan divided Lot 8 into 14 smaller lots known as Lots 8-A to 8-N, with Lot 8-N substantially running perpendicular to the national road (p. 22, CA rec.).

Out of the 14 lots, only 2 lots, Lot 8-A and Lot 8-B were sold to one Jose Eleazar and Lot 8-M was sold to Dr. Nañagas. In 1956, the former, in turn, sold the same lots to the private respondents-appellees (p. 11, rec.; p. 57, CA rec.).

Lot 8-A and Lot 8-B were adjacent to each other and both abut Lot 8-N (p. 18, CA rec.). Lot 8-A faces the national highway for Lot 8-B, which is directly behind Lot 8-A, is an inside lot.

In 1949-1950, or about 6-7 years before Lot 8-A and Lot 8-B were sold to the private respondents-appellees, a barbed-wire fence was laid along Lot 8-N fronting the national road (p. 11, rec.).

Lot 8-N was planted to citrus, coconut trees, *etc.* and the greater portion was swampy (p. 72, CA rec.). Said lot was never used as a road lot or as a means of ingress and egress to and from the national highway as the Millars had their own frontage along the national road (p. 73, CA rec.).

In 1968, the private respondents-appellees, constructed residential apartments on Lot 8-A and Lot 8-B (p. 11, Brief for Respondents-Appellees; p. 83, rec.).

In the same year of 1968, the petitioners-appellants demolished the barbed-wire fence on the portion of Lot 8-N abutting the national highway and constructed in lieu thereof a concrete wall.

On September 4, 1968, the private respondents-appellees filed Civil Case No. 7226 before the Court of First Instance of Quezon, Branch I. They sought to enforce a right of way against the petitioner-appellants and, pending final judgment, prayed for the issuance of a writ of preliminary mandatory injunction

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to command petitioners-appellants to open Lot 8-N which the latter closed, thereby preventing the construction of the apartments then being built by the private respondents-appellees on their Lot 8-A and Lot 8-B (pp. 1-2, Brief for Respondents-Appellees; p. 83, rec.).

On November 20, 1968, the trial court issued its second order granting respondents' petition for a writ of preliminary mandatory injunction. The reason was:

"x x x that passage through Lot A is an unjustified burden on said lot and the occupants of the apartment building on Lot B should have a better means of access through Lot N to the national road. In any event, a writ will not unduly prejudice the present rights of defendants while the continued closure of Lot N constitutes a continuing prejudice to the occupants of the apartment buildings which cannot be adequately compensated" (p. 49, CA rec.).

On November 23, 1968, petitioners-appellants filed a motion for reconsideration which was denied by the trial court (p. 2, Brief for Petitioners-Appellants; p. 60, rec.).

On November 25, 1968, petitioners-appellants filed a petition for *certiorari* with preliminary injunction with the respondent Court of Appeals claiming that respondent Judge acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing said order and hence the order should be annulled (p. 31, rec.).

On December 9, 1968, the Court of Appeals in a resolution denied the issuance of a writ of preliminary injunction (pp. 66 & 155, CA rec.).

On January 1, 1969, petitioners-appellants moved for a reconsideration (p. 67, CA rec.) of the resolution dated December 9, 1968 and said motion was denied on January 13, 1969 (p. 77, CA rec.).

On January 31, 1969, a second motion for reconsideration was filed by petitioners-appellants (p. 78, rec.).

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On July 3, 1969, the Court of Appeals issued a decision setting aside the order of respondent Judge dated November 20, 1968 which allowed the issuance of a writ of preliminary mandatory injunction (p. 88, CA rec.; p. 34, rec.) on the following grounds:

"x x x (N)o recent act of the petitioners which resulted in the arbitrary interruption of the pre-existing continuing relation of the parties for the reason that that portion of Lot 8-N which abuts the national highway, sought to be reopened by the private respondents, had been closed with a barbed-wire fence since 1949 or 1950 or some eighteen (18) years ago even before the private respondents acquired Lot 8-B and this barbed-wire fence had already been replaced with a cemented fence x x x Hence, the pre-existing continuing relation or *status quo* of the parties for the last eighteen (18) years was that the portion of Lot 8-N abutting the national highway was closed.

x x x x x x x x x

"x x x (T)he right of the private respondents is not clear and unmistakable on the law and facts because the closure of Lot 8-N had been existing for some 18 years and hence there was no recent act of the petitioners which resulted in the breach of the *status quo* of the parties. As further proof that the right of the private respondents to use Lot 8-N as a road is not clear is that the certificates of title of the private respondents covering Lots 8-A and 8-B do not show that there is any road that constitutes as a boundary of their said lots.

"There is no urgent and paramount necessity for the issuance of the writ of preliminary mandatory injunction in order to prevent extreme or other serious damage to the private respondents for the reason that the latter being the owners of the adjoining Lot 8-A which abuts the national highway, the said private respondents have access to the said highway through their said Lot 8-B" (pp. 32-34, rec.).

On August 29, 1969, respondents appellees filed a motion for reconsideration which was granted by the Court of Appeals in a resolution dated November 18, 1969 where the Court of Appeals set aside its decision of July 3, 1969 for the following reasons:

"x x x We, however, find merit in the private respondents' allegation in their motion for reconsideration that the cement hollow block fence, which they seek to remove with respondent Judge's order of

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preliminary mandatory injunction, was only recently constructed by the petitioners and this is admitted by the petitioners themselves in their answer filed in the main x x x which states in paragraph 6 thereof that 'the original barrier at the national road junction of the alleged road lot was a barbed-wire fence of several strands since 1949 or 1950 until it was *replaced by a concrete wall recently built by the defendants*; x x x Since the concrete wall was only recently constructed, the *status quo* of the parties was therefore that no such concrete wall existed and the construction of this concrete wall was the act which breached the *status quo* of the parties or their last actual, feasible and uncontested status. The writ of preliminary mandatory injunction which would direct for the removal of this concrete wall would hence re-establish and maintain the pre-existing continuing relation of the parties, that is, that there was no such concrete wall.

"The requirement of extreme urgency for the issuance of the writ exists because the private respondents are making an apartment building on Lot 8-B and the trucks hauling the materials to be used in such construction have no feasiable way of reaching Lot 8-B, which for the purposes of this proceeding, appears clearly to be a road lot of the subdivision of which Lots 8-A, 8-B and Lot 8-N form parts as can be clearly seen from the subdivision Pcs-2261 attached to the petition.

x x x x x x x x x

"x x x We now realize that this statement is erroneous because the private respondents' certificate of title No. T-30565 covering Lots 8-A and 8-B, which is Annex B of the complaint in the main case, which, in turn, is Annex '1' of this petition, states that the boundary of Lot 8-B on the SW is Lot 8-N of subdivision plan Pcs-2261 and said subdivision plan Pcs-2261, which is Annex 'a' of the complaint in the main case (Civil Case No. 7226), which complaint, in turn, is Annex '1' of this petition, shows that said Lot 8-N is clearly a road lot" (pp. 25-26, rec.).

On December 20, 1969, petitioners-appellants filed a motion for reconsideration (p. 186, CA rec.) which was opposed by the respondents-appellees on January 15, 1970 (p. 195, CA rec.).

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On February 11, 1970, the Court of Appeals, in a resolution denied the said motion for reconsideration (p. 3, Brief for Petitioners-Appellants; p. 60, rec.).

On March 23, 1970, petitioners-appellants filed a petition for review on *certiorari* (p. 7, rec.) which was given due course by the Supreme Court in a resolution dated April 6, 1970 (p. 49, rec.).

On June 5, 1970, petitioners-appellants filed their brief (p. 60, rec.).

On August 26, 1970, respondents-appellees filed their brief (p. 83, rec.).

On September 10, 1970, respondents-appellees filed a manifestation stating that inasmuch as a decision dated August 20, 1970, has already been rendered in the original case (Civil Case No. 7226), said decision renders the present petition for *certiorari* moot and academic (p. 86, rec.).

On September 23, 1970, the Supreme Court, in a resolution, required the petitioners-appellants to comment on the said manifestation (p. 87, rec.).

On October 22, 1970, petitioners-appellants filed their comment on the respondents-appellees' manifestation (p. 98, rec.).

On November 5, 1970, the Supreme Court, in a resolution, considered the herein case submitted for decision without petitioners' reply brief (p. 125, rec.).

During the pendency of this petition, Judge Ameurfina Melencio-Herrera (now Justice of the Supreme Court) was replaced by Judge Delia P. Medina who then rendered a decision dated August 20, 1970, to wit:

"FOREGOING CONSIDERED, 1) the Court hereby declares Lot 8-N of subdivision plan of Lot 8, Psd-27061 a road lot for the use of the public and thereby makes permanent the preliminary mandatory injunction previous issued; 2) defendants are hereby ordered to pay the plaintiffs jointly and severally the amount of ₱500.00 by way of reimbursement of expenses incurred in the demolition of the

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obstruction walls; actual damages in the amount of ₱5,500.00; attorney's fee of ₱4,000.00, and the costs" (p. 539, CFI rec.).

This decision was appealed to the Court of Appeals. On February 28, 1980, the Court of Appeals affirmed the lower court's decision.

Again, the Court of Appeals' decision was brought to the Supreme Court by way of petition for review on *certiorari* filed by the defendants. On October 15, 1980, the Supreme Court, in a resolution, denied said petition for lack of merit. On December 13, 1980. The motion for reconsideration filed by defendants was likewise denied.

Such being the case, under the circumstances, the herein petition for review on *certiorari* of an incident involving only the validity of the writ of preliminary mandatory injunction issued by the trial court, as the main case had already been decided on the merits against petitioners, should be dismissed.

WHEREFORE, THE HEREIN CASE IS HEREBY DISMISSED AS MOOT AND ACADEMIC. NO COSTS.

SO ORDERED.

Escolin, J., I concur with Justice Cuevas' view that the case should be dismissed for being moot and academic, not for lack of merit.

Cuevas, J., I concur to dismiss the instant case law on the ground that it has become moot and academic.

Concepcion Jr., and *Abad Santos, JJ.*, in the result.

Aquino, J., took no part.