

100 Phil. 970

[G. R. No. L-8331. February 28, 1957]

LOURDES A. BORBON, ET AL., PLAINTIFFS AND APPELLEES, VS. CRESENCIA MANARANG, DEFENDANT AND APPELLANT.

D E C I S I O N

REYES, A., J.:

On March 12, 1953, the spouses Lourdes A. Borbon and Placido Borbon brought an action in the Municipal Court of Manila to recover possession of certain booths situated along Quezon boulevard near the Central Market allegedly "owned by them and unlawfully detained by the defendant Cresencia Manarag. Judgment having been rendered in favor of the plaintiffs in said case, the defendant appealed to the Court of First Instance of Manila. After the case was docketed in that court, plaintiffs asked that they be placed in possession of the booths in question thru a writ of preliminary mandatory injunction under article 1674 in connection with article, 539 of the new Civil Code on the grounds that defendant's appeal was frivolous and interposed only for purposes of delay. The writ having been granted, defendant moved for its dissolution, but said motion was denied, and the second motion for the same purpose having been also denied, defendant, on August 23, 1953, petitioned the Court of Appeals for a writ of certiorari to annul the proceedings had in the Court of First Instance and to have a writ of preliminary mandatory injunction issued to restore her in the possession of the booths.

Pending consideration of the petition for certiorari in the Court of Appeals, the main case was called for hearing in the Court of First Instance on August 26, 1953. On that day, the plaintiffs appeared and presented their evidence; but when defendant's turn to present her evidence came, her counsel asked for a continuance, saying that he could not locate his client. The continuance was granted and hearing was set for September 8, but on this latter date defendant came to court with another lawyer and again asked for a continuance, alleging that her attorney of record was sick. With the warning that it was to be the last postponement, the court set the hearing for the next day, September 9. When that day

came, her counsel appeared and asked for the suspension of the hearing, alleging that the defendant had filed with the Court of Appeals a supplemental petition for the issuance of a writ of preliminary injunction to enjoin the trial judge from trying the case and that the said Court of Appeals had issued said writ, a copy of which was said to be forthcoming. But as no such preliminary writ of injunction could be shown, the court denied the motion and proceeded with the disposal of the case, rendering a decision confirmatory of that rendered by the municipal court. It is that decision that is now before us on appeal, and appellant says in her brief that she assigns "only one error," which is that "The lower court erred in proceeding with the trial of the case despite the injunction order of the Honorable Court of Appeals."

The appeal is clearly without merit. The contention that the decision appealed from is illegal and void because it was rendered despite the restraining order issued by the Court of Appeals is without basis, because what appears is that when the appealed decision was rendered no restraining order had yet been actually issued against the Court of First Instance because of defendant's failure to file the required bond on time, and in the circumstances there was no legal impediment to the trial court proceeding with the disposition of the case. It may be inferred from the decision of the Court of Appeals attached to appellees' brief as Appendix "A", that such restraining order was later issued on September 11, but such order cannot, of course, retroact to a prior date and render null and void the decision previously rendered by the lower court.

The other points raised by the appellant being foreign to her lone assignment of error need not occupy the attention of this Court.

In view of the foregoing, the appealed decision is affirmed with costs against the appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and *Felix, JJ.* concur.