

100 Phil. 1078

[G. R. No. L-11885. March 29, 1957]

AQUILINO BAUTISTA AND MONICA MAGBUHAT, PETITIONERS VS. HON. MANUEL P. BARCELONA, ETC., ET AL., RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside a writ of preliminary mandatory injunction issued by respondent Judge on January 5, 1957 requiring petitioners and those working under them to remove a stone wall, three meters wide, erected on a portion of Lot No. 133 of the Cadastral Survey of Batangas within forty-eight (48) hours from service and to maintain the *status quo* of said lot existing before the erection of said wall until the case on the merits is terminated, as well as the order issued on January 7, 1957 denying the motion to set aside the writ.

On January 3, 1957, Moises Antenor and others, hereinafter referred to as respondents, filed a complaint in the Court of First Instance of Batangas against petitioners praying that they be declared entitled to the use and possession of certain passage-way, 3 meters wide and 34.4 meters long, existing on a lot adjacent to D. Silang Street, which is a portion of lot No, 133 of the Batangas Cadastral Survey and that, pending the determination of the case, a writ of preliminary mandatory injunction be issued ordering petitioners to remove the stone wall and fence erected thereon by petitioners and the *status quo* of the lot be maintained, so that in the meantime respondents may continue the use and enjoyment of said passage-way.

Respondents claim that lot No. 133 of the Batangas Cadastre, which is covered by a certificate of title, originally belonged to one, Eugenia Zuniga who later subdivided it into 11 portions, 10 of which were sold to respondents and 1 portion to Ubaldo Magbuhat, the prede-cessor-in-interest of petitioners, and that for more than 50 years respondents had been using the northern portion of the lot allotted to said Ubaldo Magbuhat as a passage-way which connects their lots with D. Silang Street leading to the high school, public market,

churches and other business establishments. And on December 27, 1956, petitioners, by means of strategy and stealth, closed said passage-way by building a stone wall and fence at the entrance and exit thereof thus depriving respondents of its enjoyment and possession.

Petitioners, answering the complaint, alleged that they are the owners of the portion occupied by the alleged passage-way, which is part of their lot covered by Transfer Certificate of Title No. 11293, and because of the inconvenience and annoyance caused to them by respondents and by the public, they decided to close it on December 27, 1956 by erecting a stone wall on the west and a fence on the east. Petitioners claimed that with this closing they have not caused any prejudice to respondents because the lots belonging to them about since the year 1940 on a small street three meters wide which was expressly provided for them by their previous owner, which street in turn abuts on *calle* M. H. del Pilar and from this street they can easily go to any other place of the locality. They denied that respondents had enjoyed the alleged passageway for 50 years contending that they had only begun making use thereof seven years ago when the lot occupied by the high school of Batangas adjacent to the lots of respondents was closed to the public.

Because the complaint of respondents is verified and contains an averment that the closing of the passage-way by petitioners would cause respondents' not only great inconvenience but irreparable injury, the court granted *ex parte* the prayer for the issuance of a writ of preliminary mandatory injunction and, accordingly, issued the corresponding writ after requiring respondents to file a bond in the amount of P600. In due time, petitioners filed a motion for the setting aside of the writ, and when this was denied, they interposed the present petition for certiorari.

It should be noted that our Rules of Court (Rule 60, section 1) only provide for preventive injunction, or one which seeks merely to restrain the doing of, or & threat to do, a particular act, which may be either preliminary or final in nature. A mandatory injunction, or one which commands the performance of some positive act, is not there expressly provided; but, this notwithstanding, in this jurisdiction, such mandatory injunction has been upheld in some previous cases. However, considering that a mandatory injunction tends to do more than to maintain the *status quo*, it has been generally held that it should not issue prior to *final hearing* except only in cases of extreme urgency.

In *Manila Electric Railroad & Light Co. vs. Del Rosario and Jose*, 22 Phil., 433, 437, this Court laid down the rule on the issuance of a mandatory injunction as follows:

“It may be admitted that since an injunction mandatory in its nature usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing: but on the other hand, 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 preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation, we hold that the jurisdiction to grant such injunctions undoubtedly exists; and while caution must be exercised in their issuance, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute.”

Considering that the claim of respondents that they have been enjoying the use and possession of the passageway in question for more than 50 years is disputed,—petitioners claiming that they began to use it only 7 years ago,—that the lot on which the alleged passage-way is situated is covered by a torrens title, and that the lots belonging to respondents abut a small street expressly provided for by the original owner for their use, which leads to a public highway, and apparently the easement of right of way claimed by respondents does not appear to be indubitable as to entitle them to the immediate demolition of the stone wall and fence erected by petitioners on their land, it is our considered opinion that the respondent Judge committed an abuse of discretion in granting the writ without even giving petitioners the right to be heard before issuing it. It would have been proper for his Honor to lift the writ, it appearing that petitioners had offered to file a counterbond double the amount put up by respondents as a condition thereof.

Wherefore, petition is granted. The orders subject of the present petition are hereby set aside. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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