

[ G. R. No. L-9519. April 15, 1957 ]

**EUTIQUIO TOKRE, TRANQUILINO TORRE, AND BENITO TORRE, PETITIONERS,  
VS. HON. JOSE R. QUERUBIN, JUDGE OF THE COURT OF FIRST INSTANCE,  
BRANCH II, OF CAPIZ, AND SATURNINA UY BIEN PIAO, RESPONDENTS.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

This is a petition for a writ of certiorari to declare: null and void the order of respondent Judge Jose R. Querubin, dated March 21, 1955, in Civil Case No. K-576 of the Court of First Instance of Capiz, Branch II, issuing a writ of preliminary injunction against Eutiquio, Tranquilino, and Eenito, all surnamed Torre, defendants' in said civil case and petitioners herein.

In her complaint in said case (Annex A), Saturnina alleged that she was the owner of a parcel of land designated as Lot No. 1574 of the Cadastral Survey of Kalibo,. Capiz, with an area of about two and a half hectares, she and her predecessor in interest having possessed and exercised dominion over the same since the year 1888;: that the lot was adjudicated to her in Civil Case No. K-331, entitled Pablo Menez vs. Crisanta Torre and Roque Morales, wherein she, Saturnina, took part as in-tervenor; that after the decision in said case had become final and executory, by virtue of a writ of execution, the provincial sheriff placed her in actual and material possession of the land; that on or about August, 1954, after she had been placed in possession, the defendants in Civil Case No. K-576, without any legal right of title and by means of force and intimidation, entered the land and deprived her of the possession thereof and enjoyment of the products, and had been continuously disturbing and interfering with her possession" and usufruct; and" that despite repeated demands trade by her and her caretaker,. defendants, the Torres, refused to vacate the property. In her complaint, she asked for the issuance of a writ of preliminary mandatory injunction to restore, her in her possession, and to restrain the defendants and their attorneys and agents, and she offered to file a bond.

Due apparently to the opposition of Eutiquio Torre, one of the defendants (Annex B), as well as the claim of ownership of the land made by defendants in their answer, and their denial that Saturnina was ever placed in possession of the land by the sheriff, respondent Judge Querubin, by order of February 5, 1955, denied the petition for the issuance of a writ of preliminary injunction. However, on motion for reconsideration by Saturnina (Annex F), and despite the opposition filed by defendant Tranquilino Torre (Annex G) respondent Judge Querubin, by order of March 21, 1955, set aside his previous order denying the petition for the issuance of the writ of injunction and granted the petition, ordering that a writ of preliminary injunction issue "restraining the defendants and their agents from the possession of the land in question, upon filing a bond in the sum of One Thousand Pesos (P1,000)". In said order granting the petition, respondent Judge found and stated that Saturnina had really been placed in possession by the sheriff, as evidenced not only by the Sheriff's Return of Service and the Minutes of the Delivery of Possession, but by the declaration of the sheriff himself to the effect that he actually delivered possession of the land to Saturnina on February 26, 1954; that on the occasion of the delivery of possession to her, defendants, the Torres, in Civil Case No. K-576 were not present; that when he, the sheriff, returned to the land on July 3, 1954 to execute the order for the demolition of the house on it, Eutiquio Torre and his brother, Tranquilino Torre, were present and opposed the demolition, claiming that the house belonged to them and that they were the exclusive owners of the land. The respondent Judge found that the occupation of the land by the defendants began only after Saturnina had been placed in possession. A motion for reconsideration of said order of March 21, 1955 having been denied, the present petition for a writ of certiorari was filed, as already stated, to annul the order just mentioned.

The question involved in the present case is whether or not the trial court, or rather, respondent Judge Querubin was authorized to issue the writ of preliminary mandatory injunction during the pendency of Civil Case. No. K-576.

Prior to the promulgation of the New Civil Code of 1950, during the pendency of an action for the recovery of possession of real property, it was improper to issue a preliminary writ of injunction where the party to be enjoined had already taken complete material possession of the property involved, this under the theory that the effect of the writ would be to deprive the actual possessor of his material and actual possession and place the plaintiff in possession, all without due process of law; that a writ of injunction should not be used to take away property from one and give it to another; and that the writ of preliminary injunction operates only upon unperformed and unexecuted acts to prevent a threatened but nonexistent injury, or to prevent the defendant from committing further acts of

dispossession against the plaintiff.

However, the law has now been changed, and under Article 539 of the New Civil Code, a writ of preliminary mandatory injunction is now available to the plaintiff during the pendency of his action to recover possession. We reproduce said Article 539:

“Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court; in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.”

The reason for this change in the law is found in the report of the Code Commission which says the following:

“The writ of preliminary injunction is called for by the fact that there are at present prolonged litigations between the owner and usurper, and the former is frequently deprived of his possession even when he has an immediate right thereto.” (Report of the Code Commission, p. 98).

In the present case, according to the findings of the trial court, plaintiff Saturnina was actually placed in possession on the land in question by the sheriff, in execution of a final judgment in her favor. The defendant-petitioners herein were apprised of said action of the sheriff, knew that Saturnina was placed in material possession of the property, and yet they apparently entered the land by force and intimidation and deprived Saturnina of the possession given to her by the sheriff. It will also be remembered that Saturnina, in her complaint against the defendants-petitioners herein, asked for the issuance of the writ of injunction, at the same time offering to file a bond. It is therefore clear that the case comes under the provisions of Article 539 of the New Civil Code, authorizing the issuance of a writ of preliminary mandatory injunction, as was done by respondent Judge Querubin.

In view of the foregoing, the petition for a writ of certiorari is hereby denied, with costs.

*Bengzon, Padilla., Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.*

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