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[G.R. No. L-7214. July 23, 1958]

HON. PATRICIO CENIZA, JUDGE OF COURT OF FIRST INSTANCE OF MISAMIS OCC., BENITO BEDAD, ET AL., PETITIONER, VS. MAGDALENO ATAD, RESPONDENT

D E C I S I O N

MONTEMAYOR, J.:

In certiorari proceedings (CA-G.R. No. 11091-R), the Court of Appeals in its decision declared null and void the order of Judge Ceniza in Civil Case No. 1484 of the Court of First Instance of Misamis Occidental, dated February 17, 1953, appointing a receiver in the said case. Respondents in said certiorari proceedings filed with us an appeal by certiorari to review said decision of the Court of Appeals. The appeal was given due course and the parties filed their corresponding briefs, including a memorandum for the appellee. The facts of the case are rather complicated but we find it necessary to state them even in detail, not only those found by the Court of Appeals but also those we gather from the pleadings of the parties, so as to better understand the circumstances under which the order appointing a receiver, was issued.

Before the year 1935 appellee Magdaleno atad filed an application for a homestead with the Bureau of Lands for a portion of the public domain in guinabot, baliagao, Misamis Occidental (H. A. No. 114004 – E106070), which application included a large percel with an area of about 17 hectares, later subdivided into 12 lots, occupied by the appellants Benito Bedad et al. Said occupants filed a protest against atad's application, claiming that the 17 hectares above reffered to was not actually occupied by atad but by themselves and they asked that that portion be segregated from his application. The Director of lands overruled their protest and in an order dated November 10, 1935, he denied their motion for reconsideration. On December 26, 1939, the Director of Lands issued an order of execution directing the Provincial Land Officer in Misamis to enforce his previous order, have the oppositors vacate the entire homestead, and place Atad in possession thereof. When the

Land Officer went to the place to execute the order the oppositors-appellants Bedad et al refused to vacate their holdings and renewed and continued their protest again Atad's homestead application, even with the Chief Executive . As a result of this persistent protest the Secretary of Agriculture in an order dated September 2, 1941, directed that the application of Atad should be given due course only for the portion actually occupied by him, and that the remainder occupied by various persons (presumably the protestant-oppositors) mentioned in the report of the ocular inspection submitted by Public Lands Inspector Atilano Villa-ceran and Surveyor Delfin Deligero, submitted on July 23, 1941, be adjudicated in favor of said occupants to be applied for by them under the homestead provision of the Public Land Law. It would seem that Atad was far from satisfied with this order of the Secretary of Agriculture segregating from his homestead application the 17 hectares, because he claimed that the oppositors and protestant were mere croppers working for him; that their protest had been duly overruled and denied by the Director of Lands and they did not appeal from said order to the Secretary of Agriculture, and consequently, said order be came final. So, he apparently still claimed the whole area including the 17 hectares. And on November 11, 1946, Atad filed in the Court of First Instance of Misamis Occidental civil case no. 911 entitled UNLAWFUL DETAINER AND DAMAGES against oppositors-appellants. He also filed a criminal action against them in the Justice of the Peace Court of Baliangao for violation of Section 2723 of the Revised Administrative Code relating to interference with the execution of decisions, resolutions or decrees of the Bureau of Lands, presumably referring to the refusal of the appellants to vacate the 17 hectares occupied and claimed by them, as ordered by the Director of Lands.

In the Justice of the Peace Court, these occupants-appellants were found guilty and sentenced each to pay P10.00, but on appeal to the Court of First Instance in Criminal Case No. 2503 the information was quashed and the case dismissed. Civil Case No. 911 was also dismissed. There is reason to believed that the dismissal of both the civil and the criminal case was based on the belief of the trial judge that the order of the Director of Lands overruling the protest and opposition of Benito Bedad et al., and ordering them to leave the land, was vacated and set aside by the later order of the Secretary of Agriculture dated September 2, 1941, excluding the 17 hectares in question from Atad's homestead application, and awarding the said 17 hectares to the occupants-appellants and dircting them to apply for it under the homestead provisions of the Public Land Law.

According to appellants, on December 10, 1951, Atad with his wife and children and several hired men entered five of the twelve lots occupied by them (appellants) and harvested coconuts. This invasion of the five lots and reaping of fruits was repeated on july 22, 1952

and so the next day on july 23rd appellants filed Civil Case No. 1484 against Atad for the recovery of the value of the coconuts taken by him, and for damages. Acting on the prayer in their complaint for the issuance of a writ of preliminary injunction, respondent Judge Ceniza granted the same ex-parte upon the filling of a bond of P1, 000.00. this writ of preliminary injunction was later lifted upon Atad's filling a counterbond in the sum of P2,000.00. According to appellants, five days after the lifting of the writ of injunction, Atad and his men on September 10, 1952 again invaded not only the five lots already mentioned but the remaining seven lots, that is to say, the whole 17 hectares occupied by and adjudicated to them by the Secretary of Agriculture; not only this, but instead of picking coconuts every two or three months as was the practice in coconut plantations, they did it every month, picking even young, immature coconuts, which act disturbed the fruiting of the trees and rendered them less fruitful. Atad and his companions are said to have also carried away other fruits like jackfruit, bananas, coffee, avodados, etc. Because of all this, appellants filed an amended complaint alleging the estimated value of the coconuts and other fruits harvested by Atad and damages, and on February 17, 1953, they filed an ex-parte petition for the for the apointment of a receiver in order to take charge of the whole area involved. Judge Ceniza in his order dated February 17, 1953, granted said petition thus:

> " It appearing from the ex-parte urgent motion of the herein plaintiffs supported by affidavit that the herein plaintiffs supported by affidavit that the herein defendants, after the writ of preliminary injunction had been lifted thru the filing of the counterbond, have been and are want only harvesting the nuts from the coconut trees on the land in question such that the plantation would be greatly damage unless a receiver is appointed to preserve that litigate property in good condition;
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> "Finding the said urgent motion just and reasonable, Vicente Roa, the Clerk of Court is hereby appointed appointed receiver to take care of the property and the administer the same during the pendency of this litigation upon filing a bond in the amount of P5, 000.00 with solvent sureties.
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> "The receiver shall render an account of his receivership from time to time or not less than once in every six months. He is further ordered to deposit the proceeds of the products from the land in question after all incidental expenses have been paid with the Philippine National Bank Agency of this province."

This is the order which was the subject of the certiorari proceedings brought by Atad before the Court of Appeals and which order was declared null and void by said Court. In annuling the said order the Court of Appeals says that there was a counterbond of P2, 000.00 filed by Atad which could respond for any damages that may have been caused by him, and that there was no proof that this bond was not sufficient for the protection of appellants. The Court of Appeals added that the respondent Judge should not have hestily granted the ex-parte petition for the appointment of a receiver, evidently relying upon his previous knowledge and information about the matter in litigation, presumably referring to the dismissal of Civil Case No. 911 and his quashing of the information in Criminal Case No. 2503.

After a careful study of the case, we regret our inability to agree with the Court of Appeals in its decision annuling the order of the trial court of February 17, 1953, appointing a receiver. Appellants have explained satisfactorily the reasons and circumstances under which they filed their petition for the appointment of a receiver. They say that Atad filed a petition in the trial court too siamiss the original complaint in Civil Case No. 1484 and when his motion was denied be filed a notice to appeal to the Supreme Court from the order denying his motion to dismiss and he duly perfected his appeal. Believing that his appeal was going to take its regular course in the Supreme Court which would take some time to decide, and that in the meantime Atad and his companions would be reaping the fruits of the whole area in question, to say nothing of damaging the coconut trees, appellants decided to file on February 17, 1953, an urgent motion for the appointment of a receiver in the belief that it was the most cenvenient or feasible means by which further destruction of the plantation and removal of its fruits could be avoided while the case remained pending in court. According to appellants, Atad withdrew his appeal only on March 7, 1953, that is, after the issuance of the order appointing a receiver.

The Court of Appeals does not approve of the action of the respondent Judge in relying upon his personal knowledge of the case in granting the petition for the appointment of a receiver. Frankly, we do not see any impropriety in respondent Judge making use of his knowledge of the facts and circumstances surrounding the case, assuming that he did so, in considering the merits of the petition for the appointment of a receiver. We must remember that as a Judge of the Court of First Instance, he was authorized by law to grant meritorious petitions for the appointment of a receiver, even even ex-parte (Rule 61, Sec. 3). Respondent Judge Ceniza must have been quite aware of the facts and circumstances obtaining in the case before him, namely, that the case involved about 17 hectares claimed by Atad on the one hand as included in his homestead application as decided by the Director of Lands in his

orders of November 10, 1935 and December 26, 1939, but equally claimed by pretestant-appellants, and actually occupied by them and which they had planted to fruit trees, especially coconut trees, actually hearing fruit, which 17 hectares had been adjudicated to them correctly or wrongly, by the Secretary of Agriculture in his order of September 2, 1941; that the criminal case filed in court by Atad against appellant for refusing t comply with the order of the Director of Lands for them to vacate the 17 hectares occupied by them was dismissed; so was Civil Case No. 911 also filed by Atad against them for unlawful detainer and damages for supposedly illegally withholding said 17 hectares from him. Both dismissals were ordered by his court. Then, according to the complaint against Atad in Civil Case No. 1484, he and companions, illegally invaded these 17 hectares being held by appellants, collected the fruits not only from fruit trees like coffee, banana, avocado, but from the more valuable coconut trees, even collecting young coconuts thereby damaging the trees, and the only security put up by Atad was his counterbond in the amount of P2, 000.00. Not only this, but Atad threatened to take the case on appeal to this Court and actually perfected his appeal, thereby leading appellants to believe that they were due for a long wait, considering not only the time required for the determination of his appeal but also of the case itself in the Court of First Instance, and this was what promted appellants to file the petition for the appointment of a receiver. Respondent Judge Ceniza must have known these facts and circumstances, because they took place and wew presented in his own court, Why could he not properly make use of this knowledge in deciding upon the advisibility and propriety of appointing a receiver, not exactly for favor appellants who asked for said appointment but to preserve the property in litigation, including its fruits during the whole period that the case was pending not only in his court but also in the Supreme Court?

The Court of Appeals also said that there was no evidence that the counterbond of P2,000.00 filed by Atad for the lifting of the writ of preliminary injunction was not sufficient to protect herein appellants. The partial report of the receiver quoted in the very memorandum of counsel for appellee Atad, in our opinion sufficiently shows the inadequancy of the P2.000.00 counterbond for the proper protection of herein appellants. According to said partial report (page 9 of appellee's memorandum) from May 11, 1953 to April 7, 1954, – a period of less than one year, from the copra made from the coconuts harvested from the parcel under his custody, there was a gross sale of P3,309.78. This does not include the value of other products such as coffee, bananas, avocados, bamboos, etc. Neither does it include the alleged damage to the coconut trees themselves because of the alleged picking of young and immature coconuts. Even assuming that a receiver had not

been appointed and that this case had not gone to the Court of Appeals and to this Court, There is no telling how long a time Civil Case No. 1484 would have taken for a final decision, because the losing party in the trial court might have taken the case to appellate/ courts, specially since the case involved a legal question, namely, the conclusiveness and effect of an order of the Director of Lands dated November 19, 1935, finally overruling the opposition and protest of herein appellants and apparently adjudicating the entire area covered by the Homestead application and entry, including the 17 hectares in question, to Atad, which order apparently was not duly appealed to the Secretary of Agriculture, and considering the order of the Secretary of Agriculture, and considering the order of the Secretary of Agriculture himself, issued several years later (Sept. 2, 1941), excluding the 17 hectares from the Homestead application of atad, and adjudicating them to appellants, which 1941 order was issued, presumably before any Homestead patent was given to Atad for the entire area, including the 17 hectares actually occupied by herein appellants. We repeat that the P2,000.00 counterbond would have been clearly inadequate for the protection of the appellants.

In view of the foregoing, the decision of the Court of Appeals in hereby reversed, and the order of the trial court of February 17, 1953, appointing a receiver is affirmed, with costs.

Bengzon, Actg. C.J., Padilla, Reyes, A, Jugo, Bautista Angelo, Labrador, Concepcion, and *Reyes, J.B.L., JJ.,* concur.

Date created: September 22, 2014