

## JOSE ALVAREZ ET AL., PETITIONERS, VS. FIDEL IBAÑEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA AND COLEGIO DE SAN JOSE, RESPONDENTS.

*G.R. No. L-2120. March 09, 1949*

Ponente: PERFECTO, J.

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### PERFECTO, J.:

Petitioners pray that the Court of First Instance of Laguna be declared without jurisdiction to take cognizance of civil case No. 9039, entitled "Colegio de San Jose versus Jose H. Guevara, et al.," and that the orders issued in said case on December 10, 1947, January 22, 1948 and February 13, 1948, be set aside.

The complaint in said case was filed on December 10, 1947, and on said date the lower court appointed Segundo C. Mastrili as receiver.

According to petitioners, said receiver, with the assistance of MP soldiers, compelled petitioners to deliver to him their crops of palay, and that petitioners filed on December 22, 1947, an urgent petition asking for the reconsideration of the appointment of the receiver, but that said motion has never been acted upon. On January 21, 1948, petitioners filed a petition seeking resolution of their motion, but the lower court failed to resolve said motion.

It is also alleged that on December 31, 1947, petitioners moved for the dismissal of the complaint but their motion was denied on January 22, 1948. Then they moved for the reconsideration of this order of denial, but their motion for reconsideration was also denied on February 13, 1948;

Petitioners contend that the order of December 10, 1947, appointing Segundo C. Mastrili as receiver, and the orders of denial of January 22 and February 13, 1948 are illegal and null and void for the following reasons:

(a) Because the order appointing the receiver was issued without complying with the requirements of the law, and in a complaint where no specific land, improvements, or crops of palay are litigated, much less concerning the crops of palay in the lands occupied by petitioners as owners, and that said complaint has the effect of depriving petitioners of the possession of said lands.

(b) The lower court has no jurisdiction over the subject matter because the money claimed in the complaint is covered by the law on moratorium; the judgment in civil case No. 6663 intended to be revived, has prescribed; there is no jurisdictional or positive allegation in the complaint to the effect that petitioners are responsible for the payment of said judgment; the whole judgment in said case was transferred by the Colegio de San Jose to the Commonwealth of the Philippines on September 27, 1939; the Colegio de San Jose who appears as plaintiff is non-existing having been abolished by the decree of expulsion of Jesuits in 1767; and petitioners were not parties in the civil case No. 6663.

Petitioners further allege that the receiver has deprived petitioners of their properties to the extent of reducing them to complete destitution and misery.

Respondents answered that the lower court has jurisdiction over the subject matter controverted in civil case No. 9039; that petitioners are either parties, privies or successors in interest, agents or representatives, tenants or aparceros of the parties-plaintiff in civil case No. 6663 whose judgment is intended to be revived; and that the petition for receivership falls under the cases enumerated in Sectional, of Rule 61, Rules of Court, because petitioners are insolvent and have refused for several years to have the produce of the land in question applied to the satisfaction of the judgment sought to be revived, and that the appointment of the receiver is authorized by Section 3 of said Rule 61.

Respondents allege also that the ownership of the Colegio de San Jose over the property in question is recognized by contracts, ratified by law and confirmed by courts of justice; that the rights and choses of action over the judgment sought to be enforced were never sold or transferred to the Government; that the right to enforce said judgment is not covered by the moratorium and has not prescribed; that the lower court did not act with grave abuse of discretion in not resolving petitioners petition for reconsideration of the order appointing a receiver because a petition for prohibition with preliminary injunction, involving the same issues raised in the petition, was presented before the Supreme Court on December 24, 1947, on behalf of the other defendants in civil case No. 9039, and the respondent judge had no other alternative than to issue the order dated January 9, 1948, suspending any action on the aforesaid petition for reconsideration until the Supreme Court shall have decided said petition for prohibition.

The issues in the present case are substantially the same as those in the case of *Ramirez vs. Ibañez*, (83 Phil., 97), wherein it was decided by majority decision to dismiss the case on the ground that the lower court should first be given the chance of deciding the issues pending therein, before petitioners could be allowed to seek remedy from the Supreme Court.

In the present case, the lower court did not act upon petitioners' motion for reconsideration of the order appointing Segundo C. Mastrili as receiver because of the filing of the petition for prohibition in said case (*Ramirez vs. Ibañez*, supra). The lower court should be given the chance of deciding said question before petitioners can appear before us to raise the same question.

As regards the orders of the lower court of January 22 and February 13, 1948, because of which petitioners failed to secure the dismissal of the complaint in civil case No. 9039, the proper remedy for petitioners is by ordinary appeal in due time.

Petition dismissed. With the dismissal of the petition it is not necessary to make any pronouncement on the incidental matters raised by petitioners.

The foregoing is the decision of the majority, from which the writer dissents.

The writer, consistent with his dissent in L-1878,[2] is of opinion that, pending the decision on the merits of civil case No. 9039, the status quo should be maintained to the effect that petitioners' possession of the lands they hold be respected and that they be not deprived of their crops of palay because receivership does not have the purpose of disturbing a legal status quo, but rather to preserve it.

Moran, C. J., Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Paras, J., concurs in the result.

**FERIA, J.:**

I concur in the dismissal of the petition.

[2] 83 Phil., 97.

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