

VIVENCIO LASALA, ET AL., PETITIONERS VS. HON. JOSE P. FERNANDEZ, ET AL., RESPONDENTS. VIVENCIO LASALA, ET AL., PETITIONERS VS. HON. JOSE P. FERNANDEZ, ET AL., RESPONDENTS.

G. R. No. L-16628. May 23, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari. The petitioners seek the annulment of an order entered on 17 March 1959 (Appendix K) by the Court of First Instance of Negros Occidental in civil case No. 2458 where the petitioners are the plaintiffs and the respondents except the court are the defendants. Said order set aside a previous order entered on 6 December 1958 requiring the respondents, defendants therein, to file a bond in the sum of P500 to answer for the value of the palay to be harvested in 1958 (Appendix H). The defendants in said case, respondents herein, filed a motion to dismiss the complaint. As the motion was denied, the defendants therein, respondents herein, filed a petition for a writ of certiorari which was denied by this Court (Remigio Pillado et al, vs. E. Francisco de Lasala 95 Phil., 490). In the last mentioned case this Court found that:

The land subject of said Civil Case No. 2458 was purchased on April 9, 1952, by the plaintiffs from the Bacolod branch of the Philippine National Bank. As a result Transfer Certificate of Title No. T-9455 was issued by the Register of Deeds in the name of the plaintiffs. The land was mortgaged on March 20, 1940, to the Philippine National Bank by Luis Pillado, father of Remigio Pillado, to secure the payment of a loan of P500. Upon failure of the mortgagor to pay the indebtedness the land was sold on September 13, 1952, pursuant to the provisions of Act No. 3135 and the purchaser at the sale was the Philippine National Bank, Bacolod branch. Upon purchase of the said property by Estela Francisco de Lasala and Vivencio Lasaia, three different actions were instituted:

* * * * *

Third. On August 29, 1952, Civil Case No. 2458 (the case where the present order complained of was issued), for the recovery of possession of the land from the defendants, the collection of damages for the illegal occupation of said land, and for the issuance of a writ of preliminary injunction during the pendency of the action.

* * * * *

It appears that in Civil Case No. 2458, the Court of First Instance of Negros Occidental ordered on 30 October 1952 that a writ of preliminary injunction be issued to enjoin the defendants Remigio Pillado and Pedro Sarnate from committing further acts of dispossession against the plaintiffs spouses Vivencio Lasaia and Estela Francisco upon the filing of the requisite bond (Appendix A). On 22 September 1954 the plaintiffs prayed that the bond of P1,000 they had filed be approved and that a writ of preliminary injunction be issued (Appendix B). On 30 September 1954 the court issued the writ commanding the defendants and/or their agents, servants or others acting in their behalf to "immediately desist from further committing acts of dispossession against the plaintiffs

over lot No. 283 of La Carlota Cadastre, Negros Occidental, during the pendency of this action" (Appendix C). On 28 July 1956 the plaintiffs moved for the appointment of a receiver of lot No. 283 which was in the defendants' possession; but instead of the appointment of a receiver, on 31 July 1956 the defendants filed a bond in the sum of P500 to continue in possession of the lot and to answer for the value of the palay to be harvested in 1956 (Appendix E). Upon the plaintiffs' motion, on 3 September 1957 the court ordered the defendants to file another bond in the sum of P500 to answer for the value of the palay to be harvested in 1957, with a warning that in case of failure to file the bond the writ of injunction issued on 30 September 1954 would be enforced (Appendix E). On 16 September 1957 the bond was filed. On 10 January 1958 the court approved the two bonds in the sum of P500 each filed by the defendants on 1 August 1956 (31 July 1956) and 16 September 1957 (Appendix F). On 28 October 1958 the plaintiffs moved that the defendants be required to file another bond in the same sum to answer for the value of the 1958 palay crop (Appendix G). On 6 December 1958 the court ordered the defendants to file the bond prayed for (Appendix H). Instead of filing the bond, on 13 March 1959 the defendants replied to the plaintiffs' motion dated 28 October 1958 and prayed that the motion be denied (Appendix I). On 17 March 1959 the plaintiffs filed a rejoinder to the reply (Appendix J).

By an order entered on the last mentioned date, the respondent court declared that the writ of preliminary injunction had been improvidently issued, for the reason that the defendants, not the plaintiffs, were in possession of the lot in litigation, and accordingly denied the plaintiffs' motion to require the defendants to file a bond for the 1958 palay crop (Appendix K).

On 24 March 1959 the plaintiffs filed a motion for reconsideration (Appendix L), to which the defendants replied on 6 May 1959 (Appendix M). On 13 January 1960 the motion was denied.

It is not true that the legality or validity of the writ of preliminary injunction in question was passed upon by this Court in the certiorari proceedings 95 Phil., 425, decided on 30 July 1954. This Court said.

The alleged invalidity of the issuance of the writ of preliminary injunction has not been insisted upon in the argument, and it is not necessary for us to pass upon the same.

The purpose of a writ of preliminary injunction is to maintain or preserve the status quo of the parties in relation to the subject matter litigated by them during the pendency of the action or case.[1]

The respondent Remigio Pillado against whom the writ is issued has been in possession of the litigated lot. Before him his parents had been in possession of the same. The petitioners have never been in possession thereof. Such being the case, the respondents' possession of the lot pending judicial determination of the ownership thereof must not be disturbed.[2]

Whether a court has power to recall or modify a writ of preliminary injunction previously issued by it is squarely answered by section 7 of Rule 60 of the Rules of Court which expressly provides that—

After hearing the court may grant or refuse, continue, modify or dissolve the injunction as justice may require, and as held by this Court in *Aquino vs. Alvendia*, G.R. No. L-13861, 8 August 1958:

* * * After all, the issuance or recall of a preliminary writ of injunction is, as we have said, an interlocutorily matter that remains *Casenas vs. Jandayan* at all times within the control of the Court. * * * (Italics supplied.)

The petition for a writ of certiorari is denied, with costs against the petitioners.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

[1] *Calo vs. Roldan*, 76 Phil. 445 and *De los Reyes vs. Elepano*, 93 Phil., 239; 49 Off. Gaz. [6] 2285.

[2]Wagan vs. Sideco, 60 Phil. 685.

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