

DOMINGO T. LAO, PETITIONER, VS. HON. JOSE MOYA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND LAO KANG SUY, RESPONDENTS.

G.R. No. L-24528. January 31, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This petition for certiorari with preliminary injunction has been instituted by the petitioner Domingo Lao in order to set aside the pre-trial order of the Court of First Instance of Manila issued on April 13, 1964 and its subsequent orders of January 25, 1965; April 2, 1965, and May 3, 1965, all of which authorized the sale of the Hacienda Mapaya, located in Occidental Mindoro and owned by petitioner, which had been the object of attachment.

The records disclose that on August 7, 1963, respondent Lao Kang Suy sued petitioner in the lower court demanding a total sum of P138,000, with a prayer for preliminary attachment. Upon the filing of a bond of P140,000, Hacienda Mapaya was attached.

Subsequently, petitioner filed his answer and at his instance, coupled with the filing of the necessary counter-bond, the attachment was ordered lifted.

On November 20, 1963, respondent amended his complaint by raising the total sum demanded to P419,670.81. The court then, by order dated December 18, 1963, directed petitioner to post an additional counter-bond of P330,000. A motion to reconsider was filed but denied. A second motion to reconsider followed. On December 24, 1963, petitioner filed his answer to the amended complaint with a counterclaim. Respondent filed his reply.

On April 13, 1964, a pre-trial was conducted with both parties, assisted by respective counsel, attending. The pre-trial order reported the result of the conference as follows:

"At the pre-trial today, the plaintiff assisted by its counsel, Atty. Roxas, and the defendant, assisted by its counsel, Atty. Alcaraz in collaboration with Atty. Reyes, agreed:

"1. That the defendant will sell the property in Mapaya, San Jose, Occidental Mindoro covered by TCT 517 in his name within four (4) months from today for not less than one million pesos.

"2. That out of the proceeds of the sale, the plaintiff will deposit in this court a sum equal to the amounts claimed in the amended complaint in addition to the other obligations for which the plaintiff is liable as surety of the defendant, namely, the defendant's indebtedness to the Philippine National Bank, Paramount Insurance, Commercial Insurance Company, and the Development Bank of the Philippines.

"3. That the amount to be deposited in court shall be applied to the payment of the obligations due the Philippine National Bank, Development Bank of the Philippines, Paramount Insurance, and Commercial Insurance Company, and the excess shall be paid to the plaintiff in discharge of what, after proper accounting may be found due him but nothing herein should be construed as an admission on his part that the contract between him and the defendant is one of partnership, the nature of which agreement shall be decided after the

presentation of evidence by both parties.

"4. That should the writ of preliminary attachment be reinstated the plaintiff will agree to its dissolution and the sale of the aforementioned property by the plaintiff provided that the sums mentioned in the preceding paragraph are first deposited in court.

"5. That should the defendant fail to sell the property within the period of four (4) months, the plaintiff may offer it for sale for at least one million pesos.

"6. That the trial be postponed to August 14, 1964, at 8:30 a.m.

"The parties are enjoined to abide by this order."

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At the stated hearing of August 14, 1964, the court, by order of even date, extended the period stated in the pre-trial order for petitioner to sell the Hacienda for another four (4) months upon agreement of respective parties' counsel. The court also reaffirmed the tenor of the pre-trial order.

Upon the lapse of the extension given, petitioner allegedly sought for another extension but respondent objected. In the course of the discussion, respondent learned of a supposed sale made by petitioner of the Hacienda to the Land Authority for P3,503,162.57 on August 2, 1963. The court then ordered the parties to go together to the Land Authority Office to check the status of the alleged sale.

The parties were never able to check the alleged sale together as directed by the court. On December 21, 1964, the first date set, petitioner failed to show up. His counsel explained that he was sick. On the following day set, December 28, 1964, respondent failed to appear due, it is claimed, to a misunderstanding. Both parties rendered their respective report/manifestations on these incidents to the lower court.

On January 5, 1965, respondent moved for authority to sell the Hacienda pursuant to the pre-trial order. Over petitioner's opposition, the lower court, on January 25, 1965, granted respondent's petition. On February 3, 1965, respondent followed up with a "Petition for Approval of Sale Proposition" wherein Independent Investment Co., Inc., was offered as prospective buyer of the Hacienda Mapaya.

Petitioner sought a reconsideration of the order of January 25, 1965 on February 4, 1965. Respondent countered with a "Petition for Permission to Enter, Inspect and Determine the Property Offered for Sale". On February 20, 1965, both motions were withdrawn by the parties respectively in view of the reattachment of Hacienda Mapaya on February 12, 1965 when respondent posted an additional bond of P330,000.

Subsequently, respondent filed a manifestation asking for the resolution of his motion dated February 3, 1965. Petitioner in turn moved for the striking out of said manifestation and for the dismissal of the case for failure to prosecute. The court, on April 2, 1965, issued an order authorizing respondent to offer Hacienda Mapaya for sale to Independent Investment Co., Inc., for at least P1,000,000.00.

Respondent then submitted a copy of the document of absolute sale of Hacienda Mapaya to Independent Investment Co., Inc., with a request for its approval. On April 20, 1965, petitioner moved to set aside the negotiations and order for the sale of the Hacienda.

Resolving the motion, the lower court issued an order dated May 3, 1965, denying the same; requiring petitioner and his counsel to show cause why they should not be punished for contempt; ordering petitioner to execute a deed of sale of the Hacienda Mapaya to Independent Investment Co., Inc., for P1,000,000.00, and providing that if petitioner fails to do so within 10 days, the Clerk of Court should execute the same.

Petitioner immediately took this recourse. The petition was given due course, respondent required to answer and preliminary injunction was issued.

Petitioner submits, in support of the petition, that the pre-trial order is invalid and does not bind him because it did not faithfully and truthfully reflect what actually transpired in the pre-trial conference. According to petitioner, contrary to all that is stated in the pre-trial order, what he actually did was to disclose to Judge Moya, the trial judge, in the strictest confidence, that he had already sold Hacienda Mapaya to the Land Authority for P3,503,162.57 on August 2, 1963 and was just awaiting payment of said amount.

If this were true, We cannot understand why petitioner did not complain or question the lack of veracity of the pre-trial order in the proceedings immediately subsequent thereto. He could not have failed to understand the import of the order. The terms thereof were very clear. But Instead of complaining, particularly when the four months' period stated in the order expired, petitioner even asked for an extension. Implicit herein is acquiescence to the order. And in at least two subsequent instances, petitioner even expressly manifested his conformity to said order.[1] This belated attack, therefore, leveled against the pre-trial order of April 13, 1964, can no longer be entertained.

Moreover, petitioner's factual premise upon which he would have Us set aside the pre-trial order which contains no patent defect is, at the very most, disputed. Respondent insists that the pre-trial order merely reflected the working amicable settlement agreed upon by the parties. We are more inclined to accept this stand for petitioner certainly would not have acted the way he did in the proceedings immediately subsequent to the issuance of the order unless there was really an understanding between the parties. The trial Judge also denied that petitioner ever told him of a completed sale already.[2] Under this setting, We cannot see our way clear to granting petitioner the relief he seeks especially considering that the questioned pre-trial order has the presumption of veracity in its favor[3] whereas petitioner has nothing but his bare allegations to support his claim.

Finally, petitioner cannot complain of injustice nor of undue deprivation of his property. The subsequent orders authorizing the sale of the Hacienda were only pursuant to the terms of the pre-trial order which was the result of a conference wherein he and his counsel were present and participated. Petitioner has only himself to blame for the resulting prejudice - if any - to him. And contrary to his assertion, there is no final adjudication yet. The pre-trial order has not, with finality, determined just how much, if any, petitioner actually owes respondent. Precisely, paragraph 3 of the pre-trial order provides for an accounting first of respondent's claim. And during the trial petitioner could still substantiate his counterclaims against respondent and possibly defeat the latter's right to collect.

WHEREFORE, the petition, for lack of merit, is hereby dismissed and the preliminary injunction heretofore issued is revoked and set aside. Costs against petitioner Domingo Lao.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Dizon, J., did not take part.

[1] First, in the "Opposition to Petition for Authority to Sell" dated Jan. 14, 1965 wherein petitioner admitted having "x x x acceded to the terms of the Order dated April 13, 1964 on the sale of the property and the deposit of the amount sufficient to cover the loans with the DBP, the PNB, and others in an effort to demonstrate to this Honorable Court his good faith and to quiet the unfounded fear of the plaintiff that during the pendency of this case, he may dispose of his property. x x x" (Rollo, p. 139) and second, in the "Motion for Reconsideration" of

Feb. 7, 1965 wherein petitioner stated "that the arrangement for the sale of Hacienda Mapaya was entered into between the parties in the pre-trial conference last April 13, 1964 to allay the fears of the plaintiff that defendant may dispose of his property during the pendency of the above-entitled case." (Rollo, p. 147).

[2] Order of May 3, 1965, Rollo, p. 177.

[3] Since Sec. 4 of Rule 20 of the Rules of Court requires the trial court, after the pre-trial, to "make an order which recites the action taken at the conference, x x x and the agreements made by the parties as to any of the matters considered", it is presumed, pursuant to Sec. 5(m) of Rule 131, that this duty was regularly and faithfully discharged in the absence of competent proof to the contrary.

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