

LEOPOLDO M. SY-QUIA, MARIA PAZ SY-QUIA, HECTOR MORENO, ETC. ET AL., PETITIONERS, VS. FELIX ANTONIO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MARY A. MARSMAN, MARSMAN & CO...

G.R. No. L-18262. March 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This petition for prohibition and certiorari presents the issue of whether the Court of First Instance of Manila, Judge Felix Antonio presiding, acted in grave abuse of discretion amounting to an absence of jurisdiction, in denying herein petitioners' motion to dismiss the complaint filed against them in Civil Case No. 45935, on the stated , grounds of pendency of another action between the same parties and for the same cause, and of failure to state a cause of action for injunctive relief.

Insofar as pertinent here, the following are the antecedent facts:

On December 28, 1960, petitioners Leopoldo M. Sy-quia. et al. and other members of Marsman Investments, Ltd. similarly situated" (hereinafter denominated as the Syquia group) filed a complaint in the Court of First Instance of Kizal (Pasig branch) docketed as Civil Case No. 6427. against Mary A. Marsman, Apolonio V. Santiago, Amando L. Velilla, Zoilo Alberto and Henry Dornbosch, praying for a writ of preliminary and permanent injunction against the respondents who were chairman and members, respectively, of the Board of Directors of Marsman Investments, Ltd., to restrain them from presiding over and participating in the annual meeting of the stockholders of said Marsman Investments, Ltd. scheduled to be held in the afternoon of that same day, December 28, at which meeting the respondents were ready to approve and/or adopt a resolution confirming an alleged sale and transfer to respondent Mary A. Marsman of 76% stockholding of said entity in another corporation, Marsman & Co., Inc. The grounds relied upon for the petition are that, Marsman Investments, Ltd., being a British company, respondent Mary A. Marsman, who is already over 70 years of age, is disqualified, under the English law, to act as a director, much less as chairman of the Board, and that her presence TM in the meeting for the purpose of considering a sale in ^ her favor is illegal, and in particular, she can not be counted for the purpose of determining a quorum. Claiming that unless enjoined from presiding over the meeting and ruling on questions affecting the transaction aforestated, petitioners Sy-quia group will suffer great and irreparable injury, they prayed for a writ of preliminary injunction which the court, Judge Eulogio Mencias presiding, granted ex-parte upon the Sy-quias filing a bond for P10,000.00.

On the same day, December 28, 1960, the Sy-quia Group instituted a second injunction suit, docketed as Civil Case No. 6426 in another branch of the same court, presided over by Judge Andres Reyes, for the sole purpose of restraining the same defendants Mary A. Marsman, Apolonio V. Santiago, Amando L. Velilla, Zoilo Alberto, and Henry Doornbosch from enforcing and carrying out a Resolution said to have been, illegally passed by the Board of Directors of the Marsman Investments, Ltd. on Defcember 14, 1960, suspending the voting rights of the

proxies allegedly registered in favor of plaintiffs. Again, the court granted the petition ex-parte and issued a writ of preliminary injunction.

The respective writs of preliminary injunction issued in these two cases (Civil Cases Nos. 6426 and 6427, Court of First Instance of Rizal), were served on defendants while the latter were attending the annual general meeting and the extraordinary general meeting called for that day, December 28, 1960. As a consequence thereof, respondents were prevented from presiding over the meeting, and by the votes of plaintiffs and the proxies in their favor, respondents were out-voted and removed from their respective positions in the corporation, and Alejandro de Santos, Hector Moreno, Hans Inhelder, Leopoldo Sy-quia and Pedro Aguirre were elected in their stead.

On December 31, 1960, Mary A. Marsman, Marsman Investments, Ltd. and Marsman & Co., Inc., filed the complaint herein involved, in the Court of First Instance of Manila against Leopoldo Sy-quia and his group (Civil Case No. 45935), alleging, under the first cause of action, *that plaintiff Mary A. Marsman is the owner of 2,500,000 ;i shares of stock of Marsman & Co., Inc., as evidenced by stock certificates Nos. V-405 and V-4¹ and by a deed of confirmation of sale executed by Marsman Investments, Ltd. in her favor on December 14, 1960;x that on December 29, 1960, on the second day of the 24th annual general meeting of stockholders of the Marsman Investments, Ltd., defendants Sy-quia Group illegally, arbitrarily, and without authority in law and the articles of association of the corporation, attempted by means of a resolution to disauthorize and repudiate the sale of the aforementioned 2,500,000 shares to plaintiff Mary A. Marsman;, that defendants Sy-quia, et al. are threatening to call a stockholders' meeting, in the name of plaintiff Marsman & Co., Inc., at which the said 2,500,000 .shares of stock would be voted by defendants Sy-quia, et al. or some of them for the purpose of removing plaintiff Mary A. Marsman as Chairman of the Board and President of the Company. Under the second cause of action, plaintiffs questioned the authority and right of Alejandro de Santos, Hector Moreno, Hans Inhelder, Leopoldo Sy-quia, and Pedro Aguirre, to act as directors of plaintiff Marsman Investments, Ltd., on the ground that the annual general meeting, as well as ,, the extraordinary general meeting held on December 29, r 1960 during which they were elected, were not lawfully ,t convened, and that at least defendant De Santos is not \$ qualified to be elected' to the post of director, for not having the requisite number of shares required to be one. v For the third cause of action, plaintiffs assailed the validity of a resolution passed by said Board, directing de] fendant Jaime R. Nuevas and one Benjamin Tabios to ; This deed confirmed the sale of the 2,500,000 shares of stock to J. H. Marsman, by Marsman Investments, Ltd., in 1953, and the rf subsequent assignment of said shares by the former to Mary A. Marsman in 1956. take possession of and remove, as in fact they did take possession of and remove in the morning of December 30, 1960, from the premises of plaintiff Marsman Investments, Ltd. all its records, books of accounts, and other papers for. delivery to a custodian that they (Nuevas and Tabios) may agree upon; that such resolution was illegal and not authorized either by law or fhe articles of association of Marsman Investments, Ltd. and that said plaintiff is entitled to the immediate possession of the aforementioned properties. Plaintiffs then asked for a writ of preliminary injunction to restrain defendants from committing the acts (specified in the complaint. They also prayed that the running of the 60-day period within which the balance on the purchase price of the shares in question would be paid by plaintiff Mary A. Marsman, be suspended pending final termination of the case, and after trial, judgment be rendered making the writ of injunction permanent and upholding the validity of the sale of the 2,500,000 shares to Mary A. Marsman.

A writ of preliminary injunction was issued by the court ex parte on the same day.

On January 3, 1961, defendants Sy-quia, et al. filed an urgent petition to dissolve the aforementioned writ of injunction, which was opposed by plaintiffs on January 4, 1961. By order of January 10, the court denied the petition to dissolve the injunction upon finding that with stock certificates Nos. V-405 and V-421, Mary A. Marsman has prima facie evidence of ownership of the 2,500,000 shares. The writ of injunction, however, was

modified to lift therefrom paragraph (f) thereof and eliminate from paragraph (d) the words "plaintiff Marsman Investments, Ltd. and/or" appearing twice in the context thereof.

In the meantime, or on January 6, 1961, Sy-quia, et al. amended their complaint in Civil Case No. 6427 of the Court of First Instance of Rizal, so as to include Marsman Investments, Ltd. as party plaintiff, and Marsman & Co., Inc. as party defendant, and by alleging, for the first time, as a second cause of action, the invalidity and irregularity of the document entitled "Confirmation of Sale" dated December 14, 1960, and the transactions mentioned therein. Accordingly, they asked the court, in addition to the original plea for a writ of preliminary injunction (which was already granted) that "the resolution of the stockholders adopted during the meeting of December 29, 1960 repudiating the 'Confirmation of Sale in favor of defendant Mary A. Marsman be sustained and that defendant Marsman & Co., Inc. be ordered to cancel the certificates of stock issued in favor of Mary A. Marsman (V-405 and V-421) and to issue new ones in the name ;^ of plaintiff Marsman Investments, Ltd."

On the following day, January 7, 1961, Leopoldo Sy-quia, et al. filed the motion subject of this present proceeding, praying for the dismissal of the complaint in Civil Case No. 45935 of the Court of First Instance of Manila on the ground of (1) pendency of another action between the same parties for the same cause (referring to Civil Case No. 6427 of the Rizal court); and (2) failure of the complaint to state a cause of action for injunctive relief (a petition for quo warranto allegedly being the proper remedy).

On February 23, 1961, the motion for dismissal of Civil Case No. 45935 was denied, the Manila court holding that there is no identity between the cause of action in Civil Case No. 6427, as evident from the allegations of the original complaint, and that in Civil Case No. 45935; that the amendment of the complaint in Civil Case No. 6427 on January 6, 1961, by including the subject matter already covered by Civil Case No. 45935, not being a mere amplification or elaboration of the original cause of action, could not relate back to the date of the filing of the original complaint; since the complaint in the Manila court was filed ahead of the amendment of the complaint in the Rizal Court, the latter case can not abate the former. If at all, it is the case in the Rizal court that should be dismissed.

Their motion for reconsideration of the foregoing order having been denied on March 14, 1961, Sy-quia, et al. filed the instant petition for the purpose already stated at the beginning of this opinion.

In this instance, petitioners contend that while Civil Case No. 45935 (of the Manila court) was filed on December 31, 1960 or ahead of the amendment of Civil Case No. 6427 (of the Rizal court), under the relation-back doctrine, such amendment retroacts to the date of the filing of the original complaint, which was on December 28, 1960. At any rate, even conceding arguendo the priority in point of time of the case in the Manila court to the one filed in the Court of First Instance of Rizal, petitioner maintain that the former case could still properly be dismissed by reason of a pending, although not necessarily prior, action between the same parties for the (same cause, on the strength of the ruling in the case of *Teodoro vs. Mirasol* (L-8934, prom. May 18, 1956).

Upon the other hand, respondents herein claim that the Original complaint in the Rizal court, being only for injunction to restrain them from presiding over the meetings of the Marsman Investments, Ltd., on the alleged ground of disqualification due to age and direct interest in the subject matter to be taken up in the meeting, the issue of the validity of the 2,500,000 shares introduced in the amended complaint is a new or different cause of action which must be treated as a fresh suit, and can not relate back to the date of the original complaint. And, as the Court of First Instance of Manila first acquired jurisdiction over the subject matter, said court retains such jurisdiction to the exclusion of other courts.

The main issue to be resolved in the instant proceeding, therefore, is whether Civil Case No. 45935 of the Court of First Instance of Manila may be dismissed in view of the pendency of Civil Case No. 6427 of the Court of First

Instance of Rizal.

It appears to us that prior to the amendment of the complaint in Civil Case No. 6427 of the Rizal court, there is no identity between that case and Civil Case No. 45935 of the Manila court save with respect to some of the parties only. Marsman Investments, Ltd. and Marsman & Co., Inc., are plaintiffs in the Manila case; they were not parties in the Rizal case, before the complaint was amended.

In the action commenced by Mary A. Marsman, et al., in Manila, the validity of the sale of the 2,500,000 shares is one if not the main issue. The original complaint in Civil Case No. 6427 of Rizal, on the other hand, alleges . but one cause of action and only for one purpose, that of injunction, the main averments thereof reading as follows:

"3. Since liberation, and up to December 14, 1960, Marsman Investments, Ltd., was and had been the owner and holder of 76% of the capital stock of Marsman and Company, a corporation organized in accordance with Philippine law;

"4. Since liberation and up to December 14, 1960, defendant Mary Marsman has been Chairman, Director and one of the biggest stockholders of Marsman Investments, Ltd., and is the Chairman, director and controlling stockholder of Marsman and Company.

"5. That on or about December 14, 1960, the defendant Mary Marsman caused to be approved at an alleged meeting of the Board of Directors of Marsman Investments, Ltd., a resolution confirming an alleged sale and transfer to her (Mrs. Marsman) by Marsman Investments, Ltd., x x x.

"6. That the Annual General Meeting of Marsman Investments, Ltd., is scheduled to be held at 3 p.m., today, December 28, 1960, pursuant to a notice sent for that purpose;

"7. That one of the items to be taken up at said General Meet] ing is the alleged sale described above; '

"8. That under the law and authorities, her presence at a meeting of stockholders or members for the precise purpose of considering a sale in her favor is illegal; in particular, she can not be counted for the purpose of determining a quorum, much less can she act as presiding officer of such a meeting;

"9. The defendant Mary Marsman, along with the other defendant directors under her domination and control and who participated in the transaction abovementioned, threaten, propose, and are determined to preside over the Annual General Meeting aforesated for the purpose, inter alia, of taking up the alleged sale of the shares in her favor, allegedly approved by a Board, entirely under her control and determination.

"10. That entirely apart from this, under English law, defendant Mary Marsman is disqualified from acting as Director, much less as Chairman, in view of her age disqualification, she being beyond the age of 70;

"11. That unless defendants are enjoined from presiding over the meeting and ruling in questions affecting the transaction abovestated, plaintiffs will suffer great and irreparable injury;

"12. That the issuance of a preliminary injunction ex parte is in order in view of the injury to which plaintiffs are exposed, and from which they will indubitably suffer, apart from preventing them from challenging and disputing the validity of the alleged sale in appropriate proceedings;

"13. That plaintiffs are ready and willing to file the necessary bond in such amount as this Honorable Court may fix as a requirement to the issuance of a writ of preliminary injunction:

"PRAYER

"Wherefore, it is most respectfully prayed that this Honorable Court issue the writ of preliminary injunction restraining defendants from committing, or participating in the commission of the following acts: namely, defendant Mary Marsman from presiding over the Annual General Meeting of December 28, 1960 and such

other Meetings as have been lawfully called, and the defendants Apolonio V. Santiago, Amando L. Velilla, Zoilo Alberto and Henry Doornbosch from presiding over the Annual General Meeting where the matter of the sale of the 76% stock holding of Marsman Investments, Ltd., in Marsman and Company, is to be taken up or discussed; and after hearing on the merits, that they be perpetually enjoined from the commission of said acts.

Plaintiffs further pray for such remedies and reliefs as may be just and equitable." (Italics supplied.)

Note that the only allegation of illegality in the aforementioned complaint is made in paragraphs 8, 9, and 10 thereof which refers, not to the sale of the shares, but to "her presence at a meeting of stockholders for the precise purpose of considering a sale in her favor". Although there is an allusion against the regularity of the resolution confirming the sale in paragraph 5 thereof, the same, however, read with the succeeding paragraphs, is nothing more than a part of the statement of facts upon which the action (to prevent defendants from retaining the chairmanship of the meeting), is predicated. This becomes more apparent when plaintiffs, in their prayer, merely applied for a writ of preliminary injunction to restrain defendants from presiding over the Annual General Meeting of December 28, 1960 and other meetings as may be lawfully called "where the matter of the sale of the 76% stockholding of Marsman Investments, Ltd., in Marsman & Co., Inc. is to be taken up or discussed; and after hearing on the merits, that they be perpetually enjoined from the commission of said acts", without seeking for an order declaring the sale invalid or for relief from the effects thereof. In other words, the action does not involve any of the items to be taken up in the meetings, one of which is the sale in question, but is directed against defendants' right to be present and to preside over such meetings.

Of course, with the amendment on January 6, 1961 of the complaint in Civil Case No. 6427, there exists, at least with respect to the issue of the validity of the transactions mentioned in the "Confirmation of Sale", an identity of parties, subject matter and relief between that action and Civil Case No. 45935. But it may be observed that such amendment of the complaint in Civil Case No. 6427 was only made after Mary Marsman, et al. had opposed (on January 4, 1961) the petition to dissolve the injunction in Civil Case No. 45935, and had pointed out the disparity between the causes of action in the case before the Manila court and that pending in the Court of First Instance of Rizal. The amendment of the complaint, clearly, was an attempt to bar the litigation of said issue in the Manila court, considering that at the start, herein petitioners did not intend to include in Civil Case No. 6427 the matter of the validity of the sale of the shares. Thus, in urging the necessity of the issuance ex parte of a writ of preliminary injunction in said Civil Case No. 6427, plaintiffs alleged that unless so granted, they would be prevented "from challenging and disputing the validity of the alleged sale in appropriate proceedings".

In the circumstances, the action taken by the respondent Judge, denying the motion to dismiss, must be upheld not only because the Manila court first acquired jurisdictions over the subject matter, but also that, considerations of justice would not countenance the dismissal of a duly constituted action by the mere expediency of amending the complaint in another case, to comprehend a subject matter not originally included therein and which has already been brought to the attention of the court in that other action.

Petitioners also claim that the Court of First Instance of Manila "had no jurisdiction over the complaint for injunction filed by respondents, or to issue the restraining writs complained of". The proposition is without merit.

Civil Case No. 45935 was instituted to determine the validity of (1) the sale to and/or acquisition by Mary Marsman of the 2,500,000 shares; (2) the election of herein petitioners as officers of the corporation; and (3) the removal of the corporate papers and books of Marsman Investments, Ltd. from its premises. It can not be seriously charged that the Court of First Instance of Manila does not have and did not acquire jurisdiction over the above-mentioned subject matter, nor over the persons of the defendants, considering that some of them are residents of the City of Manila (Sec. 1, Rule 5, Rules of Court). While it is true that the matter of the qualification and right of petitioners to the respective offices to which they were allegedly elected could properly be entertained

in another proceeding, yet, as ruled by the lower court, the complaint should not be dismissed on this ground alone considering that there are other equally substantial issues raised therein.

Neither is the case of *Acosta, et al. vs. Alvendia, et al.* (109 Phil., 1031; 60 Off. Gaz., [40] 6396) cited by petitioners, on the limited enforceability of writs of preliminary injunction issued by courts of first instance, material to the case at bar. The instant proceeding, as previously stated, has been instituted to determine the legality of the orders denying petitioners' motion to dismiss Civil Case No. 45835, and not the validity or enforceability of the writ of preliminary injunction issued by the respondent Judge in said case.

WHEREFORE, the orders appealed from are hereby affirmed and the instant petition dismissed, with costs against the petitioners. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, and De Leon, JJ., concur.

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