

JOSE M. DIZON, PETITIONER, VS. PERCY M. MOIR, JUDGE OF FIRST INSTANCE OF PAMPANGA, FLORENTINO PAMINTUAN, TOMAS GARCIA AND FRANCISCO SIOPONGCO, RESPONDENTS.

G.R. No. L-12823. August 11, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition presented in the Supreme Court for the writ of prohibition. The only question presented is whether or not a judge of the Court of First Instance exceeds his jurisdiction by approving a contract of rent, voluntarily entered into by the parties, of property in litigation after an appeal has been perfected.

The facts pertinent to that question may be stated as follows:

- (1) That on the 19th day of December, 1914, Florentino Pamintuan commenced an action in the Court of First Instance of the Province of Pampanga against Tomas Garcia, Francisco Siopongco, Jose M. Dizon, and Esteban Victorio, as sheriff of the Province of Pampanga; that said action related to the title and possession of property described and referred to in the complaint.
- (2) That later, after issue was joined between the parties, a decision and judgment was rendered by the Hon. Percy M. Moir on the 7th day of December, 1915.
- (3) That from said judgment an appeal was duly taken to the Supreme Court. A bill of exceptions was presented and duly approved by the judge of the Court of First Instance on the 22d day of January, 1916; and the record or expediente was received in the Supreme Court on the 28th day of June, 1916.
- (4) That on the 21st day of December, 1915, the Honorable Percy M. Moir, judge, approved a contract of rent for the land in question for the agricultural years 1915-1916 and 1916-1917, with the condition that the amount of the rent (P7,000) should be deposited with the clerk of the court; that said contract of rent was voluntarily entered into by the plaintiff in that action, Florentino Pamintuan (one of the respondents herein), and Jose M. Dizon, the petitioner herein (one of the defendants in said action).

Notwithstanding the fact that Jose M. Dizon, through his attorney, consented to the order of the court approving said contract of rent, he now alleges that the court, in so doing, exceeded its jurisdiction.

To the petition the respondents herein demurred upon the ground that the facts set out in the petition do not constitute a cause of action. In support of the demurrer the respondents allege that the trial court did not lose its jurisdiction, by reason of the appeal, over incidental matters necessary for the preservation of the property and to maintain its status in quo.

While the doctrine that trial courts may take such action as may be necessary to protect the rights of the parties and to maintain the status in quo of the property in litigation during the pendency of an appeal has been announced in various causes by this court, yet but few decisions have been prepared and published relating thereto. In the case of *Velasco & Co. vs. Gochuico & Co.* (28 Phil. Rep., 39), in discussing that question, we said:

"Although a case has been appealed and the appeal perfected, the Court of First Instance still has the power to hear and decide an application for the appointment of a receiver.

"In such case the action may be regarded as yet pending for the purpose of an application for a receiver.

"The office of a receiver is manifestly to aid, by the preservation of property, in making effective the court's decree." (Bronson vs. LaCrosse R. R. Co., 1 Wall., 405; Spring vs. South Carolina Ins. Co., 6 Wheat., 519; State vs. Houston, 35 La. Ann., 236; "Joannes" vs. Underwood, 6 Allen (Mass.), 240; Goode vs. Wiggins, 12 Ohio St., 341.)

For the purpose of protecting and preserving the rights of the parties and the property during an appeal it has been held that the trial court may make an order providing for the renting and leasing of the same, or for the investment of funds resulting from the sale of property under an order made pending the litigation. (Parrish vs. Ross, 95 Ky., 318; Spring vs. South Carolina Ins. Co., 6 Wheat, 519.)

It has also been held that if the bond given to perfect the appeal should become insufficient after the appeal it was the same as if no bond had been given, and its sufficiency may be inquired into by the trial court which granted the appeal. (Stanton vs. Parker, 2 Rob. (La.), 550; 2 Cyc. 978.)

The effect of an appeal varies according to the statutory provisions in various jurisdictions. In this jurisdiction the appeal, ipso facto, stays the execution of the judgment, unless an order is made to the contrary (sec. 144, Act No. 190). Notwithstanding the effect of an appeal in this jurisdiction the parties may enter into a contract affecting the possession and occupation of the property during the pendency of the appeal if they desire. If the parties may, without the intervention of the court, enter into a contract for the use and occupation of property during the appeal, there can be no objection to their securing the approval of the court to such a contract. That is all the parties did in the present case. The petitioner himself consented to the agreement and to the approval by the court. The evident purpose of the approval of the court was to give the clerk of the court authority to receive and retain the fruits of said contract during the pendency of the appeal.

For the foregoing reasons, the demurrer is sustained. Unless the petitioner presents an amended complaint within the period of five days from notice hereof, let a judgment be entered dismissing the petition herein, with costs to the petitioner. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

CARSON, J., concurring:

Understanding that there is no necessary conflict in the doctrine upon which the judgment in this case rests and that announced in our decisions in Calvo vs. De Gutierrez (4 Phil. Rep., 203), and Macke vs. Camps (5 Phil. Rep., 185), I concur.

I may add, that as I understand the petition, there is no question here of the jurisdiction of the court to approve the rental contract of December 21, 1915, which expired under its terms at the end of the agricultural year of 1916-17, that is to say, on May 31, 1917, as alleged in the complaint and admitted on demurrer. By express stipulation the parties agreed to the rental of the land under that contract, and at this time, no question is raised by the proceedings in regard thereto. The contention in these proceedings is whether, that contract having expired, the trial judge had jurisdiction, without the consent of the petitioner, to take the necessary action looking to the rental of the land pending further proceedings on appeal, from and after the end of the period covered by the original contract which was executed with the consent of all the parties, that is to say, from and after May 31, 1917.

Demurrer sustained; petition dismissed unless amended.

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