

**MARIANO T. NASSER, PETITIONER, VS. THE COURT OF APPEALS,
HON. MALCOLM SARMIENTO, IN HIS CAPACITY AS PRESIDING
JUDGE, COURT OF FIRST INSTANCE OF PAMPANGA, BRANCH I,
AURORA RIVERA...**

G.R. No. L-32945. December 03, 1990

Ponente: PARAS, J.

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PARAS, J.:

These are petitions for certiorari and/or prohibition filed by petitioner Mariano T. Nasser, in G.R. No. L-32945 entitled "Mariano T. Nasser v. Court of Appeals, Hon. Malcolm Sarmiento etc., Aurora Rivera Canlas, Paterno R. Canlas and Tomas Centillas" seeking: (1) to annul and set aside: (a) the decision* of the Court of Appeals dated October 7, 1970 in CA No. 45317-R between the same parties, dismissing the petition for lack of merit and dissolving the writ of preliminary injunction issued on June 17, 1970 and (b) the resolution dated December 4, 1970 denying the motion for reconsideration and (2) to restrain or enjoin the Chief of Police of Governor Generoso, Davao Oriental from implementing the Order of Attachment issued by the Court of First Instance of Pampanga in Civil Case No. 3641 and in G.R. No. L-32946 entitled "Mariano T. Nasser, et. al. v. The Court of Appeals, Paterno R. Canlas, Aurora Rivera-Canlas, Tomas Centillas and the Chief of Police of San Isidro, Davao Oriental seeking: (1) to annul and set aside the decision of the Court of Appeals dated October 10, 1970 in CA-G.R. No. 44856-R entitled "Aurora Rivera-Canlas et al. v. Hon. Judge Vicente P. Bullecer, et al." which declared permanent the Amended Writ of Preliminary Injunction it issued on June 16, 1970 directing the CFI of Davao Oriental to refrain from enforcing the writs of preliminary injunctions it issued in Civil Case No. 3641 of the Court of First Instance of Pampanga and (2) to restrain or prohibit: (a) the Court of Appeals from enforcing the amended writ of preliminary injunction it issued on June 16, 1970 and (b) Tomas Centillas, Chief of Police of Governor Generoso and the Chief of Police of San Isidro, both of Davao Oriental from further executing or implementing the Order of Attachment dated January 20, 1970, issued also in Civil Case No. 3641, CFI of Pampanga.

These two cases have their origin from an order of attachment issued in Civil Case No. 3641, entitled "Aurora Fe Rivera Canlas vs. Mariano T. Nasser" in the Court of First Instance of Pampanga (now Regional Trial Court, RTC for short) Branch I, presided by respondent Hon. Judge Malcolm G. Sarmiento, for collection of a sum of money. It is evident that both petitions seek to enjoin or prohibit the implementation of the said order.

As gathered from the records, the facts of the case are as follows:

Petitioner Mariano T. Nasser was a lessee of haciendas La-Union, Montserrat, Sigaboy, Pundaguitan and Colatinan, in Davao Oriental owned by the Estate of Don Amadeo Matute Olave (G.R. No. 32945, p. 109, Vol. I, Rollo).

Matias S. Matute, co-administrator of the Olave Estate executed (a) an original Contract of Lease dated February 10, 1965, to expire on August 10, 1970 and (b) a Supplemental Contract of Lease dated June 12, 1965, for a

period of five (5) years after the expiration of the original Contract of Lease dated February 10, 1965, both of which are in favor of NASSER as lessee (pp. 112-113, G.R. No. 32945).

On April 25, 1966, NASSER executed three (3) Promissory Notes in favor of Matias S. Matute, with the following highlighted provisions, viz:

(1) "P378,000.00

x x x

"Should my original contract of lease dated February 10, 1965 and supplemental contract of lease dated January 7, 1966 over the haciendas of the Estate (Hacienda La Union, Sigaboy, Montserrat, Colatinan and Pundaguitan) leased by the co-administrator Matias S. Matute is already terminated or cancelled before the expiration of the period thereof by final court judgment or sale to us, any and all future installments of this PROMISSORY NOTE as of said date of termination and cancellation shall be deemed also extinguished, cancelled and become no longer payable.

"Any action involving the enforcement of this contract shall be brought within the City of Manila, Philippines x x x" (G.R. No. L-32945, Vol. I, p. 109)

(2) "ORIGINAL LEASE

P231,000.00

x x x

(3) "SUPPLEMENTAL LEASE

P210,000.00

x x x."

(G.R. No. L-32945, Vol. I, pp. 110;

On February 7, 1967, Matias S. Matute assigned, sold, transferred and set-over unto respondent Aurora Rivera-Canlas, all the above described promissory notes with the express conformity of petitioner Nasser (G.R. No. L-32945, Vol. I, p. 107).

In 1968, NASSER bought the hereditary shares of the heirs Luis Augustina, Elena, Amadeo, all surnamed Matute and Anunciacion Candelario for the total amount of P660,000.00 (Rollo of G.R. No. 32945, pp. 182-186-195, Vol. I).

Out of the total amount of P819,000.00 due on the three (3) promissory notes, petitioner has paid only P121,983.45 leaving a total unpaid balance of P697,016.55.

In G.R. No. L-32945

Respondent Aurora joined by her husband, Paterno R. Canlas, filed a complaint on January 6, 1970 for a sum of money with application for a Writ of Preliminary Attachment docketed as Civil Case No. 3641 before the Court of First Instance of Pampanga (now Regional Trial Court) dated December 27, 1969 (Rollo, G.R. No. L-32945, pp. 99-105; 106-108) which was granted by Judge Sarmiento upon a bond of P20,000.00 put up by respondents (G.R. No. L-32945, pp. 120-121). The Sheriff of Manila issued a notice of garnishment against NASSER as transferee-pendente-lite of heirs Luis and Jose Matute and Amadeo Matute Candelario, Jr., which was entered and made part and parcel of the case in Special Proceeding No. 25876 in Re: Testate Estate of Amadeo Matute Olave (G.R. No. L-32945, p. 122). Upon motion of Canlas spouses, respondent judge issued an order deputizing the

Chief of Police of Governor Generoso, Davao Oriental, to serve, execute and fully implement the Order of Attachment dated January 20, 1970, until the amount of P697,016.55 is realized.

By virtue of the writ, respondent Chief of Police attached the properties of petitioner, not otherwise exempt from execution, among which were the latter's leasehold rights in Hacienda Sigaboy, Montserrat, La Union, Colatinan and Pundaguitan, which are producing copra and rendered his report of such action to the court on February 18, 1970. (underscoring supplied)

Meanwhile, NASSER, as defendant, filed: (1) an Urgent Motion to Dismiss on the ground of improper venue (G.R. No. L-32945, pp. 136-140) and (2) an Urgent Motion to Dissolve or Discharge the Order of Attachment issued on January 20, 1970, on the ground that the order of attachment was improperly and irregularly issued (G.R. No. L-32945, pp. 143-150). Said motions were opposed by the respondent spouses on February 10, 1970 (G.R. No. L-32945, pp. 152-159; 162-167) both of which were denied by respondent Judge. Instead of filing an answer, NASSER filed an urgent Motion for Reconsideration.

Hence, on March 19, 1970, respondent judge declared Nasser in default, allowed spouses Canlas to present their evidence ex-parte (G.R. No. L-32945, p. 206), and on the following day, March 20, 1970 rendered judgment in Civil Case No. 3641 in favor of said spouses and ordered Nasser to pay them P684,015.55, with interest at 6% per annum from the filing of the complaint until fully paid plus P20,000.00 as attorney's fees and another P5,000.00 for expenses of litigation.

However, respondent judge *motu proprio* set aside the order of default on March 23, 1970 (Rollo, Vol. I, pp. 206-208), it appearing that Nasser had filed an "Urgent Ex-Parte Motion to Lift Order of Default dated March 19, 1970" (Rollo, p. 201-204).

Then on April 3, 1970, herein petitioner filed in the lower court another "Urgent Motion to Set Aside or Revoke the order of January 24, 1970" deputizing the Chief of Police of Governor Generoso, Davao Oriental as special sheriff with prayer for restraining order or injunction (Rollo, pp. 208-223). This was opposed by the Canlas spouses on April 8, 1970 (Rollo, pp. 228-250) to which Nasser filed a "Reply".

On April 24, 1970, respondent judge issued two orders, namely: (1) holding in abeyance his resolution on petitioner's motion to relieve the Chief of Police of Governor Generoso, in view of the pendency of CA-G.R. No. 44856-R before the Court of Appeals, where the same issue was supposedly raised (Rollo, p. 267); and (2) denying Nasser's motion for a reconsideration of the order dated February 23, 1970 denying his motion to dismiss.

From the orders dated April 24, 1970, petitioner filed a petition for certiorari and/or prohibition with the Supreme Court, the same was docketed as G.R. No. L-31904. After finding that the issues posed are closely connected and interdependent with those raised in CA-G.R. No. 44856-R pending in the Court of Appeals, the Supreme Court remanded the case to the Court of Appeals for appropriate action in its resolution dated May 8, 1970 and was docketed as CA-G.R. No. 45317-R.

On June 17, 1970, the Court of Appeals gave due course to the petition and issued a writ of preliminary injunction enjoining the respondent judge Malcolm G. Sarmiento from continuing the hearing of Civil Case No. 3641 in whatever stage it may be found and to enforce the Order of Attachment issued in Civil Case No. 3641, and enjoining also the Chief of Police of Governor Generoso, Davao Oriental, from executing such Order of Attachment.

An answer to the petition was filed by the Canlas spouses on July 23, 1970.

On October 7, 1970, the respondent Court of Appeals rendered its decision in CA-G.R. No. 45317-R, the

dispositive portion of which reads:

"WHEREFORE, the present petition for writs of certiorari and/or prohibition is hereby denied for lack of merit and the writ of preliminary injunction issued by this Court on June 16, 1970 in connection with this case is ordered dissolved. The costs of this proceeding shall be borne by the petitioner.

SO ORDERED." (Rollo, Vol. II, p. 644).

Nasser's motion and supplemental motion for reconsideration were denied. Hence, this petition in G.R. No. L-32945.

In G.R. No. L-32946

Meanwhile, Nasser on February 12, 1970 filed Civil Case No. 138 in a co-equal court CFI-Davao Oriental, a complaint for injunction against respondent Chiefs of Police of Governor Generoso and San Isidro praying that the latter be enjoined or restrained from attempting to stop petitioner from removing or disposing the copra from the haciendas for lack of authority.

Respondents Chiefs of Police filed an Urgent Opposition to the Issuance of a Writ of Preliminary Injunction and Motion to Dismiss Civil Case No. 138 alleging that the CFI-Davao Oriental lacks jurisdiction over the case and that the complaint states no cause of action.

On February 23, 1970, NASSER filed Civil Case No. 140 with the CFI-Davao Oriental against respondents Canlas and Matias S. Matute for annulment of said Promissory Notes and Deed of Assignment.

On even date NASSER filed in Civil Case No. 138, a Supplemental Complaint with Urgent Motion for Grant of a Writ of Preliminary Injunction Ex-Parte and Urgent Motion for Restraining Order dated February 28, 1970, which motions (G.R. No. L-32946, pp. 14-15, Vol. I) were granted by Judge Vicente Bullecer, CFI-Davao Oriental in the Order of March 3, 1970, restraining the Chiefs of Police of Governor Generoso and San Isidro from further attaching the copra of petitioner. (Emphasis supplied)

On March 7, 1970, Canlas and the respective Chiefs of Police of Governor Generoso and San Isidro filed a petition for certiorari and prohibition with preliminary injunction before the Court of Appeals docketed as CA-G.R. No. 44856-R against Judge Bullecer of CFI-Davao Oriental and petitioner, praying that Judge Bullecer be restrained from continuing the hearing of Civil Case No. 138 and from enforcing the restraining order he had issued.

On March 11, 1970, the Court of Appeals issued the writ of preliminary injunction prayed for, enjoining petitioner or any of his agents, representatives or employees to refrain from interfering and taking possession of the properties levied on the properties subject of leasehold rights and levied on attachment by the special sheriff and from impeding and obstructing the Writ of Attachment issued in Civil Case No. 3641, CFI-Pampanga, until further orders.

Afterwards other cases were filed against respondents allegedly by dummies of NASSER and in which Judge Bullecer of CFI-Davao Oriental also issued writs of preliminary injunction as follows:

Civil Case No. 174 entitled Renato Cruz, plaintiff versus Sisenando Rivera, Jr., Vicente Castro, Tomas Centillas, Defendants.

Civil Case No. 175 entitled Felixberto Carios, plaintiff versus Sisenando Rivera, Jr., Rufino Nasser, Tomas Centillas and Vicente Castro, defendants.

Civil Case No. 176 entitled Jose S. Matute, Rosario S. Matute, Trinidad Matute, Fortunata Zambrano Matute,

plaintiffs versus Sisenando Rivera, Jr., Rufino Nasser, Tomas Centillas, Vicente Castro, Cesario Udtoman, and Rolando Centillas, defendants.

enjoining the defendants, their agents, and/or representatives and men working under them to desist from interfering harassing and molesting and taking away the possession of and management of the five (5) haciendas (which were subject matter of the Order of Attachment issued in Civil Case No. 3641, CFI-Pampanga). (pp. 226-227, Vol. I, G.R. No. L-32946; and pp. 622-633, Vol. II, Ibid. (underscoring supplied)).

In view thereof, upon motion of respondent Canlas, the Court of Appeals issued an Amended Writ of Preliminary Injunction which likewise enjoined the hearing of Civil Cases Nos. 140, 174, 175, 176 or any other case brought before the CFI-Davao Oriental by any party for the purpose of rendering nugatory or ineffective, impeding or obstructing the writ of preliminary attachment issued by the CFI-Pampanga in Civil Case No. 3641.

On October 10, 1970, the Court of Appeals rendered its decision in CA-G.R. No. 44856-R making permanent the Amended Writ of Preliminary Injunction dated June 16, 1970.

A motion to reconsider said decision was filed by NASSER but the same was denied by the Court of Appeals on November 3, 1970.

Hence, this petition in G.R. No. L-32946.

G.R. Nos. L-32945 and L-32946 were consolidated in the resolution of January 12, 1971 and a writ of preliminary injunction was issued in G.R. No. L-32945 enjoining the Court of Appeals from enforcing its decision dated October 7, 1970 and respondent judge from continuing the hearing of Civil Case No. 3641 and the Chief of Police of Governor Generoso from executing the Order of Attachment.

Respondents filed a Joint Memorandum in both cases (G.R. No. L-32946, p. 747, Vol. II) while petitioner failed to file the required memorandum.

The center of the conflict is whether or not the writ of preliminary attachment in Civil Case No. 3641 (G.R. No. L-32945) issued by the CFI of Pampanga in favor of Canlas may be enjoined in Civil Case No. 138 (G.R. No. L-32946) by the CFI of Davao Oriental in favor of Nasser.

The issues common to both G.R. No. L-32945 and L-32946 are: (1) that the venue was improperly laid, subject Civil Case No. 3641 having been filed in Pampanga instead of in Manila as stipulated; (2) that the appointment of the Chief of Police of Governor Generoso, Davao Oriental as Special Sheriff to serve and implement the Order of Attachment was erroneous; and (3) that the Order of Attachment was not validly issued.

Aside from the fact, that it has already been settled, that stipulations in a contract which specify a definite place for the institution of an action arising in connection therewith, do not, as a rule, supersede the general rule on the matter set out in Rule 4 of the Rules of Court, so that it should be construed merely as an agreement on an additional forum, not as limiting venue to the specified place (*Western Minolco Corporation v. Court of Appeals*, 167 SCRA 592 [1988]), Nasser has in effect waived his objection thereto, by: (a) his motion to dismiss based not on the court's lack of authority to issue the Order of Attachment but on the non-observance of requirements of the Rules; (b) his motion to lift order of default; and (c) his answer with counterclaim filed in the Court of First Instance of Pampanga. Consequently, it is immaterial as whether or not there is a novation of contract in this case.

It is likewise evident that respondent judge did not err in deputizing the Chief of Police of Governor Generoso, as special sheriff under Section 2, Rule 57 of the Revised Rules of Court where the former is expressly authorized to require not only the sheriff but also other officers of the province or the sheriffs or other proper officers of

different provinces in this case, the Chief of Police of Governor Generoso, to attach all the properties of the party against whom it may be issued within the province not exempt from execution.

Finally, it is settled that a verified statement incorporated in the complaint without a separate affidavit is sufficient and valid to obtain the attachment (*Tolentino v. Carla, et al.*, 66 Phil. 140-143). Thus, under the same ruling, the verified complaint in the case at bar entitled "Application for a Writ of Preliminary Attachment" which specifically stated that to avoid redundancy and repetition, the affidavit of the plaintiffs as required under Section 3, Rule 57 of the Revised Rules of Court is dispensed with, as the matters to be treated and contained therein are already incorporated and made part of the complaint, duly verified by them, has undoubtedly substantially complied with the requirements of the Rules and the court to which the application for the attachment was filed has jurisdiction to issue the writ prayed for (*Central Capiz v. Salas*, 43 Phil., 30 [1922]).

Additional issues raised in G.R. No. L-32946, are: (1) the prematurity of the petition for certiorari and prohibition and (2) lack of legal standing of Canlas to file this petition.

The certiorari and prohibition case instituted by respondents Chiefs of Police was not filed prematurely in view of the injunction order issued by the CFI-Davao Oriental enjoining the further enforcement of the Order of Attachment in Civil Case No. 3641, which injunction order unduly interfered with the acts of another court of co-equal, coordinate and concurrent jurisdiction.

It is doctrinal that no court has the power to interfere by injunction with the judgment or order of another court of concurrent or coordinate jurisdiction (*Ngo Bun Tiong v. Sayo*, 163 SCRA 237 [1988]; *Investors Finance Corporation v. Ebarle*, 163 SCRA 60 [1988]; *Municipality of Malolos v. Libangang Malolos, Inc.*, 164 SCRA 290 [1988]).

Respondents Canlas are aggrieved parties within the meaning of Sections 1 and 2 of Rule 65. Revised Rules of Court even if not made parties nor intervenors in Civil Case No. 138 since they are the plaintiffs in the prior case (Civil Case No. 3641) in whose favor the Order of Attachment was issued and which order was being enforced by respondents Chiefs of Police. It is but natural that any interference with or obstruction to the implementation of said Order of Attachment would work prejudice to them and make them aggrieved parties. Otherwise stated, respondents Canlas as ruled in a recent case, are real parties in interest who would be benefitted or injured by the judgment or entitled to the avails of the suit (*Lee v. Romillo, Jr.*, 161 SCRA 589 [1988]).

In the same manner, the Court of Appeals cannot be faulted by its issuance by mere motion of respondents Canlas of an Amended Writ of Preliminary Injunction which included Civil Cases Nos. 140, 174, 175, 176 or any other case brought before the Court of First Instance of Davao Oriental by any party for the purpose of obstructing or rendering nugatory the preliminary attachment issued by the Court of First Instance of Pampanga in Civil Case No. 3641. To require the parties to file a new petition or an independent suit for the purpose would be preposterous, it being the very objective of the petition in CA-G.R. No. 44856-R where the motion was filed, to enjoin the undue and improper interference of the CFI-Davao Oriental to the Order of Attachment issued by the CFI-Pampanga.

The issuance of an amended writ of preliminary injunction by the Court of Appeals is within its inherent power to amend and control its processes and orders so as to make them conformable to law and justice (Section 5(g), Rule 135, Revised Rules of Court). Undoubtedly, the injunction is essential for the orderly administration of justice and was sought to avoid multiplicity of suits.

In *Government Service Insurance System vs. Hon. Alfredo C. Florendo, etc., et al.*, G.R. No. L-48603, September 29, 1989, the High Tribunal ruled that:

“x x x The very foundation of the jurisdiction to issue the writ of injunction rests in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of multiplicity of suit x x x”.

PREMISES CONSIDERED, both petitions in G.R. Nos. L-32945 and L-32946 are hereby DISMISSED for lack of merit and the assailed decisions of the Court of Appeals are hereby AFFIRMED and the temporary restraining order issued in G.R. No. L-32945 is hereby LIFTED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Jose S. Rodriguez and concurred in

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