

ZOSIMO ARROYO, PETITIONER, VS. HON. EULOGIO MENCIAS, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (BR. II), ERNESTO T. SANTOS AND RAMON A. SANTOS-ROXAS, RESPONDENTS.*G.R. No. L-21186. August 31, 1965*

Ponente: BENGZON, J.P., J.

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Ernesto, Ramona, Nicanor, Miguel, Manuel, Remedios, Jose, Consuelo, Erlinda, Serafin, all surnamed Santos, Nicolas Belmonte and the heirs of Victorio C. Dionisio, are co-owners of various real estate. On March 20, 1961 Ernesto Santos and Ramona Santos assisted by her husband Victorio Roxas instituted an action (Civil Case No. 6557) in the Court of First Instance of Rizal, against their co-owners, for accounting and partition. They also prayed for the appointment of a receiver.

The defendants filed their answer, stating that the properties, held in common, were not administered by anybody in particular; that all of the properties were leased and the rentals thereon divided equally among the co-owners after deducting the expenses. Plaintiffs thereupon filed an urgent motion for the appointment of the Prudential Bank and Trust Company as receiver. The motion was denied. Instead, the trial court issued an order on January 9, 1963 commanding Jose J. Valdez, Roberto D. Yabut, Virgilio M. Abesamis, Zosimo Arroyo, Roque Sagum, Marianito de Guzman, Evangelina de los Reyes, Ernesto Alano and Dominador Francisco, all lessees of the co-owned, properties, to "deposit with the Clerk of this Court all rentals covering portions of said properties leased to them so that said rentals may later on be distributed among the parties in this case in proportion to their respective shares as will be determined by the Court."

A motion to reconsider said order was filed by the defendants but the same was denied.

Subsequently, on April 18, 1963, Zosimo Arroyo, one of the aforementioned lessees, filed with this Court the instant petition for certiorari praying for the issuance of a writ of preliminary injunction against the respondent Judge and, after hearing, for the setting aside of the order of January 9, 1963. Petitioner maintains that, he not being a party in the action for partition, the Court acquired no jurisdiction over his person; and, that it would be impractical for him to deposit with the Clerk of Court in Pasig, Rizal 450 cavans of palay all the way from Candaba, Pampanga.

Preliminary injunction was issued.

Nicanor T. Santos, Reynaldo T. Santos, Manuel T. Santos, Remedios Santos-Camus, Milagros Santos-Lopez, the intestate estate of Plorentino T. Santos, the intestate estate of Miguel T. Santos, Roberto D. Yabut, Virgilio Abesamis, Marianito de Guzman, Roque Sagum and Jose Valdez were allowed, upon motion therefore, to intervene in this case.

The record of the case shows that petitioner, after receipt of the trial court's order of January 9, 1963, came directly to this Court without first bringing his case to the attention of the lower court. This omission is fatal.

Certiorari, as a special civil action, will lie only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[1] When an adequate relief is available in the court of origin, it is of necessity that such relief be availed of. Otherwise, the writ will not issue.[2]

The remedy of petitioner was to make a special appearance in the trial court and move for the reconsideration of the order in question. The purpose is to give such court a chance to correct any error, if there be any, without involving the parties in another litigation. Questions which Courts of First Instance are required by law to decide should not summarily be taken away from them and presented to this Court without first giving them an opportunity of deliberately passing on such questions themselves.[3]

It may be argued, however, that defendants in Civil Case No. 6557, intervenors in this case, filed a motion for reconsideration of the order complained of, which motion was denied. Suffice it to state in this regard that such motion cannot take the place of the motion for reconsideration which ought to have been filed by petitioner himself.

Wherefore, the petition for a writ of certiorari is hereby denied. The preliminary injunction issued is dissolved. With costs against petitioner. So ordered.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Regala, Makalintal, and Zaldivar, JJ., concur.

[1] Rule 67, Old Rules of Court.

[2] *Nicolas vs. Castillo*, 97 Phil. 336; *Ricafort vs. Ferrian & Espero*, 54 Off. Gaz., 2534; *Sy It vs. Tiangco*, 114 Phil. 362.

[3] *Herrera vs. Barretto and Joaquin*, 25 Phil. 245, 272.

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