

**AGUSTINA PARANETE, PERINO VILLAR, PEDRO HERNANDEZ,
COMEDES DALLATON, VALERIANO MILLANO, FELISIANA NAVARRO,
AND EDUARDO B. OCAMPO, PETITIONERS, VS. BIENVENIDO A. TAN,
JUDGE, COURT...**

G.R. No. L-3791. November 29, 1950

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for a writ of prohibition wherein petitioner seeks to enjoin the respondent judge from enforcing his order of March 4, 1950, on the ground that the same was issued in excess of his jurisdiction.

On January 16, 1950, Felix Alcaras, Fructuosa Vasquez, Maxima Vasquez and Norberta Vasquez filed a case in the Court of First Instance of Rizal for the recovery of five parcels of land against Agustina Paranete and six other co-defendants. (Civil Case No. 1020). On January 28, 1950, plaintiffs filed a petition for a writ of preliminary injunction for the purpose of ousting the defendants from the lands in litigation and of having themselves placed in possession thereof. The petition was heard *ex parte*, and as a result the respondent judge issued the writ of injunction requested. On February 28, 1950, the defendants moved for the reconsideration of the order granting the writ, to which plaintiffs objected, and after due hearing, at which both parties appeared with their respective counsel, the respondent judge reconsidered his order, but required the defendants to render an accounting of the harvest for the year 1949, as well as all future harvests, and if the harvest had already been sold, to deposit the proceeds of the sale with the clerk of court, allowing the plaintiffs or their representative to be present during each harvest. This order was issued on March 4, 1950. Defendants again filed a motion for the reconsideration of this order, but it was denied, hence the petition under consideration.

The question to be determined is whether or not the respondent judge exceeded his jurisdiction in issuing his order of March 4, 1950, under the terms and conditions set forth above.

We hold that the respondent judge has acted in excess of his jurisdiction when he issued the order above adverted to. That order, in effect, made the Clerk of Court a sort of a receiver charged with the duty of receiving the proceeds of sale and the harvest of every year during the pendency of the case with the disadvantage that the Clerk of Court has not filed any bond to guarantee the faithful discharge of his duties as depositary; and considering that in actions involving title to real property, the appointment of a receiver cannot be entertained because its effect would be to take the property out of the possession of the defendant, except in extreme cases when there is clear proof of its necessity to save the plaintiff from grave and irremediable loss or damage, it is evident that the action of the respondent judge is unwarranted and unfair to the defendants. (Mendoza vs. Arellano, 36 Phil. 59; Agonoy vs. Ruiz, 11 Phil. 204; Aquino vs. Angeles David, 77 Phil., 1087; Ylarde vs. Enriquez, 78 Phil., 527; Arcega vs. Pecson, 44 Off. Gaz. (No. 12) 4884; Carmen Vda. de De la Cruz vs. Guinto, 45 Off. Gaz. pp. 1309, 1311; 79 Phil., 304.) Moreover, we find that Agustina Paranete, one of the defendants, has been in possession of the lands since 1943, in the exercise of her rights as owner, with her co-defendants working

for her exclusively as tenants,, and that during all these years said Agustina Paranete had made improvements thereon at her own expense. These improvements were made without any contribution on the part of the plaintiffs. The question of ownership is herein involved and both parties seem to have documentary evidence in support of their respective claims, and to order the defendants to render an accounting of the harvest and to deposit the proceeds in case of sale thereof during the pendency of the case would be to deprive them of their means of livelihood before the case is decided on the merits. The situation obtaining is such that it does not warrant the placing of the lands in the hands of a neutral person as is required when a receiver is appointed. To do so would be unfair and would unnecessarily prejudice the defendants.

While the respondent judge claims in his order of March 25, 1950, that he acted as he did because of a verbal agreement entered into between the lawyers of both parties, we do not consider it necessary to pass on this point because the alleged agreement is controverted and nothing about it has been mentioned by the respondent judge in his order under consideration.

Wherefore, petition is hereby granted. The Court declares the order of the respondent judge of March 4, 1950 null and void and enjoins him from enforcing it as prayed for in the petition.

Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

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