

CASTOR FELISMINO ET AL., PETITIONERS, VS. THE HONORABLE DIEGO GLORIA, JUDGE OF FIRST INSTANCE OF TAYABAS, ET AL., RESPONDENTS.

G.R. No. L-22448. August 02, 1924

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The respondents demur to the petition for mandamus filed by Castor Felismino et al., against the Honorable Diego Gloria et al., on the ground that it does not state facts sufficient to constitute a cause of action and that there is a defect of parties.

The case having been submitted to our consideration, this court in a resolution of the 19th day of this month of July, 1924, sustained the demurrer, providing that unless the petitioners should amend their petition within ten days from receipt of notice of said resolution, their petition would be dismissed with the costs against them.

On July 28, 1924, counsel for petitioners informed this court in writing that they waived the right to amend the petition and prayed that "in the interests of the jurisprudence and the rights which the petitioners are and have been seeking to enforce in the courts of justice, a reasoned decision be handed down in this case."

Granting this request, which we find justified, this opinion is now delivered.

The facts alleged in the petition are substantially as follows:

On January 9, 1924, the Court of First Instance of Tayabas rendered judgment in civil case No. 1618, wherein the Philippine Sugar Estate Development Co., Ltd., was plaintiff and Ramon Ramos, his wife Pilar Ibañez, Bernardo Marquez, and Arego Hermanos y Cia. were defendants, and which was for foreclosure of mortgage. Said judgment was in favor of the plaintiff corporation and gave a period of three months from the date thereof for the payment of the debt claimed and interest thereon, ordering the sheriff, in case such debt should not be paid within the period fixed, to proceed with the sale of the properties mortgaged described in the judgment.

No appeal having been taken from said judgment, and the periods fixed by the law having elapsed, said judgment became final.

The petitioners allege that it was only on April 7, 1924, that they happened to learn of such decision which they consider injurious to their rights, inasmuch as they are the persons who planted the plants existing on the lands involved in said action for foreclosure of mortgage, pursuant to contracts in writing executed with the mortgagors, defendants in that case, according to which "the permanent improvements should be, according to each contract, (?) or their value must be paid at the rate of P1 for each coconut tree, or one-half or one-third of said improvements together with the land should be delivered or transferred in fee simple to said planters" (Par. 2, Exhibit B).

The petitioners aver that as soon as they learned of the decision, they secured the professional services of an

attorney, and on April 19, 1924, they filed with the Court of First Instance of Tayabas two petitions, one for intervention under section 121 of the Code of Civil Procedure, and the other for the annulment of said judgment under section 113 of the same Code.

As that court denied these petitions and ordered, at the instance of the mortgagee, the execution of the aforesaid judgment, and the sheriff, one of the respondents, announced the sale at public auction of the mortgaged properties, to be held May 21, 1924, the petitioners came to this court, bringing this action and praying for the issuance of an injunction against the respondents; that the aforesaid decision be annulled; that the petitioners be allowed to intervene and the respondents sentenced to pay the costs and an indemnity for the damages caused to them by reason of this proceeding.

As may be seen, this is for the reason that the respondent judge refused to annul the judgment under the provisions of section 113 of the Code of Civil Procedure, and to allow the petitioners to intervene in the aforesaid civil case No. 1618.

As to the refusal of the trial court to grant the petitioners the benefits of section 113, it must be noted that the relief provided in said section is not of strict right, but is purely discretionary on the part of the court to grant or not (*Siguenza vs. Municipality of Hinigaran*, 14 Phil., 495). And in cases involving discretion we cannot compel a trial court to act through mandamus (*Lamb vs. Phipps*, 22 Phil., 456).

With regard to the denial of the applicants' petition for permission to intervene in the case, we find no sufficient ground for such a petition for intervention, inasmuch as it is a case already decided by a final judgment. Such intervention is late. While the Spanish text of section 121 of the Code of Civil Procedure may, perhaps, give rise to a mistaken understanding as to the meaning of the phrase "durante la tramitacion," the fact is that the English text of this section removes all doubt, for it says "during the trial" (*durante la vista*), and the period of the trial (*vista*) terminates when the judgment begins.

The Court of First Instance of Tayatxas having the right to deny such a late petition for intervention, we cannot compel it through mandamus to grant the same.

From all of this it results that the facts alleged in the petition for mandamus do not constitute a cause of action, and for this reason we have sustained the demurrer filed by the respondents, and this ruling is hereby confirmed.

The petitioners having waived the right to amend their petition, this proceeding is definitely dismissed with the costs against the petitioners. So ordered.

Johnson, Street, Malcolm, Villamor, and Ostrand, JJ., concur.

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