

ARSENIO V. CALUYA ET AL., PETITIONERS, VS. SIMEON RAMOS, JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, AND MARIANO ASIS, RESPONDENTS.*G.R. No. L-1307. November 28, 1947*

Ponente: PARAS, J.

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In Civil Case No. 4634 of the Court of First Instance of Ilocos Norte, Domingo Caluya et al. vs. Mariano Asis et al., said court, presided over by Judge Francisco E. Jose, issued an order dated July 24, 1941, directing the issuance of a writ of preliminary injunction prohibiting the defendants and their agents or representatives from entering the parcels of land involved in the first and second causes of action of plaintiffs' complaint, or interfering with the latter's possession. Said order was issued after a hearing in which both parties adduced their respective evidence. Under date of May 15, 1946, the defendants, through their counsel, filed an unverified motion for the dissolution of the writ of preliminary injunction, to which motion the attorneys for the plaintiffs in due time interposed an opposition. At the hearing of this motion the attorneys for opposing parties orally argued their respective sides without, however, presenting any evidence. In an order dated September 4, 1946, the Court of First Instance of Ilocos Norte, then presided over by Judge Simeon Ramos, directed the dissolution of the writ of preliminary injunction upon the filing by the defendants of a bond in the sum of P5,000. Upon motion for reconsideration filed by the attorneys for the plaintiffs, Judge Ramos issued another order dated October 9, 1946, providing that said injunction should be maintained as regards the six parcels involved in plaintiffs' second cause of action, upon the filing by said plaintiffs of a bond in the sum of P6,000, and that said injunction should be dissolved as regards the three parcels involved in plaintiffs' first cause of action, upon the filing by the defendants of a bond in the sum of P3,000. The bonds required in the orders of September 4, 1946, and October 9, 1946, had been filed by the defendants and approved by Judge Ramos, although they were previously subscribed before and approved by the justice of the peace of the capital. It appears that meanwhile the attorneys for the plaintiffs had complained, by proper motions for contempt, before the Court of First Instance of Ilocos Norte of alleged violations by the defendants of the writ of preliminary injunction prior to the orders dissolving the same, which motions have so far remained pending.

In the instant special civil action for certiorari instituted by the petitioners (plaintiffs in Civil Case No. 4634) the simple question raised in the rather voluminous pleadings is whether Judge Simeon Ramos, now one of the respondents, acted without or in excess of jurisdiction, or with grave abuse of discretion, in ordering the dissolution of the writ of preliminary injunction as regards the parcels involved in plaintiffs' (petitioners') first cause of action in civil case No. 4634.

The first contention of the petitioners is that, as said injunction was issued after a hearing, the same cannot be dissolved, specially on the strength of an unverified motion for dissolution and in the absence of proper evidence to support it. Reliance is placed on section 6 of Rule 60 of the Rules of Court which provides that "the injunction may be reduced, or, if granted ex parte, may be dissolved," thereby arguing that if an injunction is not issued ex

parte the same cannot be dissolved. The contention is clearly erroneous. Although said section prescribes the grounds for objecting to, or for moving the dissolution of, a preliminary injunction prior to its issuance or after its granting ex parte, it does not thereby outlaw a dissolution if the injunction has been issued after a hearing. This is to be so, because a writ of preliminary injunction is an interlocutory order which is always under the control of the court before final judgment. (*Manila Electric Company vs. Artiaga and Green*, 50 Phil., 144, 147.) And it is at no moment whether the judge dissolving an injunction is different from that who issued it, since a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action, and the former is not required to hear the parties, if and when a reading of the record convinces him that the order should be revoked because improperly granted or that it should be disapproved. (*Ong Su Han vs. Gutierrez David*, 76 Phil., 546.)

Petitioners' criticism that the motion to dissolve filed by the defendants in Civil Case No. 4634 was not verified, is also groundless inasmuch as even an indirect verbal application for the dissolution of an ex parte order of preliminary injunction has been held to be a sufficient compliance with the provisions of section 6 of Rule 60 (*Moran, Comments on the Rules of Court, Second Edition, Vol. II, p. 65*, citing the case of *Sy Yam Bio vs. Barrios*, 63 Phil., 206), the obvious reason being that said rule does not prescribe the form by which an application for the dissolution or modification of an order of preliminary injunction should be presented. (*Id.*) The fact that the defendants in civil case No. 4634 did not submit any evidence in support of their motion for dissolution, does not also help petitioners' side, for the reason that said motion relied on the evidence already on record. And the respondent judge appears to have done the same in granting the motion. At any rate, as already stated, the respondent judge was not even required to hear the parties, if the record convinced him that the writ of preliminary injunction should be dissolved. (*Ong Su Han vs. Gutierrez David, supra.*) Specifically, it has been held that, in dissolving an injunction already issued, the court cannot be considered as having acted without jurisdiction or with excess of jurisdiction, even if the dissolution has been made without previous notice to the adverse party, and without a hearing. (*Moran, Comments on the Rules of Court, Second Edition, Vol. II, p. 66.*)

The petitioners also allege that the bonds filed by the defendants in Civil Case No. 4634 for the dissolution of the injunction were approved only by the justice of the peace of the capital. The allegation may be admitted, but the defect, if any, is cured by the subsequent approval of said bonds by the respondent judge himself. Neither is the failure of said defendants to furnish the petitioners with copies of the bonds prior to their approval sufficient to invalidate the orders now complained of. In the first place, the attorneys for the petitioners were notified of the filing of the first bond. In the second place, they ultimately received copies of the bonds, after which they had all the chances to except to their sufficiency or to the solvency of the sureties, this being the only apparent purpose of section 8 of Rule 60 requiring that "the party filing a bond * * * shall forthwith serve a copy of such bond on the other party." In the third place, the petitioners do not here contend that the aforesaid bonds are insufficient or that the sureties are not solvent.

The further circumstance that the petitioners' motions for contempt were still pending at the time the preliminary injunction was dissolved, does not make the orders of the respondent judge improper, since the contempt incident may be looked into even after the dissolution of the injunction, as the contemptuous acts are alleged to have been previously committed.

Wherefore, the petition is denied with costs against the petitioners. So ordered.

Perfecto, Hilado, Briones, and Tuason, JJ., concur.

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