

**MACARIO QUINTERO AND RAMON GUZMAN, PETITIONERS, VS.
FELIX MARTINEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF
MANILA, THE SHERIFF OF THE CITY OF MANILA, AND PIO D.
LIWANAG, RESPON...**

G.R. No. L-3063. August 30, 1949

Ponente: FERIA, J.

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FERIA, J.:

This is a special action of mandamus to compel the respondent judge to issue in the civil case No. 7359, instituted by the petitioner against the respondent Pio D. Liwanag and the Sheriff of the City of Manila a preliminary prohibitory injunction restraining the respondent sheriff from executing the final judgment of the Municipal Court of Manila in the civil case No. 4217 on the ground that the said judgment was obtained through fraud, falsification and collusion.

There can not be any question that it is a discretionary, and not a ministerial duty of the respondent judge, to issue or not a preliminary injunction in a case pending before its court, for section 3, Rule 60, provides that a preliminary injunction may be granted when it appears prime facie "that the plaintiff is entitled to the relief demanded and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of; that the commission or continuance of the acts complained of during the litigation would probably work injustice to the plaintiff; and that the defendant is doing, threatens or is about to do, or is procuring or suffering to be done some act probably in violation of the plaintiff's rights respecting the subject of the action."

It is obvious that mandamus lies against a tribunal or judge who unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from his office, that is to perform a ministerial duty specially enjoined by law. It is not the function of mandamus to compel a judge exercising a judicial function such as the issuance of preliminary injunction, to grant or deny it, however clearly erroneous its action in granting or denying the injunction may be; and therefore the respondent judge can not be compelled to issue the injunction sought by the petitioned just because he acted contrary to law or with grave abuse of discretion in denying the injunction. The ruling of this Court in the case of Bañares vs. Flordeliza and Gavito, 51 Phil., 786, was a very special one laid down under the special circumstance of particular case not applicable to the case at bar.

Besides the respondent judge acted in the present case in conformity with law. The first and principal cause of action in civil case No. 7359 is to annul the final judgment of the municipal court in the case No. 4217 on the ground of fraud. And in the third cause of action, the plaintiffs seek to restrain the sheriff of the City of Manila from carrying out the order of execution of said judgment, on the ground that the judgment is null and void; that the commission or continuance of the execution complained of during the litigation would work injustice to the plaintiffs, and that the defendant sheriff is ejecting or threatens to eject the plaintiffs in violation of their rights. It is evident that the third cause of action does not state facts sufficient to constitute a cause of action, and therefore the plaintiffs are not entitled prima facie to the relief demanded therein, which consists in restraining the

defendant sheriff from executing the judgment; and that the sheriff in executing the final judgment of the Municipal Court of Manila by order of the said court is only complying with his official duty, and does not violate the plaintiffs' right. Therefore none of the requisites required by section 3, Rule 60, for granting a preliminary injunction exists.

Unless and until the court sets aside as null and void the final judgment of the Municipal Court of Manila in the civil case No. 4217 on the ground of fraud, the execution thereof can not be enjoined in an action of injunction against the sheriff of Manila, because the presumption is that the judgment was legally rendered. If the first cause of action seeking to annul said final judgment is decided in favor of the petitioners and the judgment is set aside, which will carry with it the nullity of the writ of execution, the sheriff could no longer enforce it without necessity of being enjoined not to do so. The third cause of action can have no independent existence, for it is a mere sequence of the first. To issue a preliminary injunction as ancillary to the third cause of action alleged in the plaintiffs' complaint in civil case No. 7359, would be to allow judgment debtors to delay the execution of its final judgment against them by filing a complaint like the one filed by the petitioners in the said case, irrespective of the final outcome of the action.

In view of the foregoing, the petition mandamus is dismissed, and the preliminary injunction issued by this Court in the present case is consequently set aside, with costs against the petitioner. So ordered.

Mogran, C.J., Ozaeta, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

PARAS, J.:

I dissent for the same reason stated in the *Lopez vs. Gutierrez*.

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