

**ARSENIO L. CANLAS AND ADENA GONZALES-CANLAS, PETITIONERS,
VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF TARLAC AND
JAIME TAYAG, RESPONDENTS.***G. R. No. L-19733. November 28, 1964*

Ponente: BARRERA, J.

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This is an original petition for, certiorari filed by the spouses Arsenio L. Canlas and Adena Gonzales-Canlas, questioning the order of the Court of First Instance of Tarlac in Civil Case No. 3512 of said court, dated October 14, 1961, dissolving the writ of preliminary injunction issued therein, on the ground that the aforesaid order runs counter to the judgment already rendered by this Court in 6. R. No. L-16815, entitled Arsenio L. Canlas, et al. vs. Hon. Bernabe de Aquino, etc., et al. promulgated on July 24, 1961.

Civil Case No. 3512 was instituted by the spouses Canlas to enjoin Jaime Tayag from constructing and operating a rice mill in front of their clinic and private hospital, and pursuant to their prayer, the then presiding Judge Zoilo Hilario of the Court of First Instance of Tarlac, granted and issued a writ of preliminary injunction. Subsequently, however, respondent Tayag, petitioned for the dissolution of the injunction order. Judge Bernabe de Aquino who later took cognizance of the case, granted the petition and dissolved the preliminary injunction. Their motion for reconsideration of the aforesaid dissolution order, having been denied, the spouses Canlas come to this Court (in G. R. No. L-16815) and obtained a judgment on July 24, 1961, in effect reinstating the preliminary injunction previously issued by the lower court against the construction of Tayag's rice mill, on the ground that Tayag's petition (for dissolution of the writ of preliminary injunction) was not verified and that the same was granted by the lower court without hearing and based only on information that the rice mill to be constructed would not constitute a nuisance to the neighborhood. :

At the continuation of the proceedings in the lower court as a result of our decision, Tayag filed an alternative petition again asking for the lifting of the writ of preliminary injunction. Considering the grounds given therein as well as the affidavits attached thereto, the said Petition was granted by order of the court of October 14, 1961, and the writ of preliminary injunction was again order dissolved. The spouses Canlas came again to this court and brought the instant petition for certiorari seeking the annulment of the aforesaid order and the maintenance of the writ of preliminary injunction issued, there- in, and reaffirmed by our decision in the first certiorari proceedings, contending that to again lift the original preliminary injunction before the final disposition of the case on the merits would be contrary to the decision of the Supreme Court and would amount to prejudging the case. As prayed for by petitioners, and upon their filing of the required bond, this Court issued a writ of preliminary injunction in this case, enjoining the lower court from enforcing its order of October 14, 1961.

On October 22, 1964, respondent Jaime Tayag filed a petition to lift the preliminary injunction issued herein, for the reason that the lower court has already rendered a final decision on the merits in the main case, dismissing the original petition filed therein and dissolving the writ of preliminary injunction issued in said action. Asked to

comment on this motion, petitioner Canlas objected alleging that the decision rendered in the main case has been appealed by them to the Court of Appeals and that the lower court had no authority to dissolve the preliminary injunction issued by this court at the inception of this certiorari proceedings.

There seems to be a misconception of the import of (1) the decision of this Court in G. R. No. L-15815 (*supra*) which annulled first order of the lower court dated February 4, 1960, lifting the writ of preliminary injunction previously issued by it, and (2) the writ of preliminary injunction issued by this Court in this present case dated February 11, 1963.

As has been stated earlier, our decision in case G. R. No. L-16815, merely annulled the lower court's last order of dissolution because the petition to that effect was not in proper form and the circumstances then prevailing did not justify such dissolution. This Court, in setting aside the order of dissolution, stated that:

"Indeed, the main action was filed by petitioners herein for the purpose of enjoining and prohibiting Tayag from constructing a ricemill, so that, upon the construction thereof, said action would become futile. Besides, the intention of respondent Judge to prohibit the continuance of the operation of said ricemill, Should it later be found to be a nuisance, is not sufficient to offset the harm already done to the operation of the hospital, specially the injury suffered by the patients therein and the public in general, which are hardly susceptible of estimation or compensation, Needless to say, by permitting Tayag to construct his building, and purchase and install the machinery for the operation of the ricemill respondent Judge exposed him to much greater damage than that which could possibly have resulted had the writ of preliminary injunction been maintained until the final disposition of the case."

"In effect, therefore, it was thought best that the preliminary injunction originally issued should remain in force only until the main case has been finally heard and decision therein rendered on the merits.

However, as also already mentioned above, after the promulgation of our decision in G. R. No. L-16815, respondent Tayag renewed his petition in the lower court for the lifting of the same original injunction reinstated by us in said case G.R. No. L-16815. Acting upon said petition, and in view of the rectification of the former defects and the affidavits attached to the new petition, the lower court on October 14, 1961, ordered the dissolution of the order of preliminary injunction. The herein petitioners, contending that this last order of the lower court was contrary to our decision in G. R. No. L-16815 and that the said dissolution constituted a prejudgment of the case on the merits, again came up here and filed the present petition for certiorari asking for the setting aside of this second order of dissolution. And, acting upon the prayer in the petition, we issued a writ of preliminary injunction on joining the enforcement of the second order of dissolution dated October 14, 1961. It is this case for certiorari which is now before us and which has already been submitted for decision on the merits.

However, in view of the decision on the merits now rendered by the Court of First Instance in Civil Case No. 3512, dismissing the petition and consequently the preliminary injunction originally issued therein, the maintenance of which was ordered by this Court only pending the trial and final disposition of the main case, it is clear that the writ of preliminary injunction issued by this Court on February 11, 1963 has become *functus officio* as the purpose thereof has already been attained. And this being the case, the issue before us in the present certiorari proceeding has become academic.

In view thereof, the writ of preliminary injunction issued herein is hereby dissolved and the case dismissed, for being moot. No. costs. So ordered.

Bautista Angelo, Concepcion, Reyes, J. B. L. Paredes, Bengzon, J. P. and Zaldivar, J.J. concur.

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