

HEIRS OF ENRIQUE ANDRES, NAMELY, ISIDRA GROSPE, FORTUNATA ANDRES, SIMEON ANDRES, NARCISO ANDRES, NICOLAS ANDRES, DOMINGA ANDRES, AND ISIDRA GROSPE, IN HER WON RIGHT, PETITIONERS...

G.R. No. L-2613. June 16, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari assailing the appointment of a receiver for the crops of certain lands situated in the municipality of Sto. Domingo, Nueva Ecija, the title to which is the subject matter of litigation in a pending suit in the Court of First Instance of that province.

While six grounds are advanced in support of the petition, we need take up only two of them, the rest being ancillary to those two.

Preliminary to the discussion of these questions, it is well to set out the salient antecedents of the case in so far as they are not controverted, omitting details that are not essential to the disposal of the petition.

It appears that Enrique Andres and Isidra Grospe, husband and wife, executed in November, 1931, a document purporting to be a deed of conveyance of the parcels of land in question in consideration of P14,000.00, one-half of which was paid to the sellers and the other half to the Philippine National Bank, to which the lands were mortgaged. By virtue of that transaction, the sellers' certificate of title was cancelled and a new certificate issued to the purchaser; and, later, the lands were consecutively leased to Matias Andres and Cornelio Andres, sons of Enrique Andres and Isidra Grospe.

Cornelio yearly paid the agreed rent of P1,680, until the agricultural year 1939-1940 when he defaulted, as a result of which an action for unlawful detainer was brought against him on June 20, 1940, in the justice of the peace court, which condemned the defendant to vacate the lands. The case was appealed to the Court of First Instance, where it was docketed as No. 8546 and was still pending when the present proceeding was instituted.

Meanwhile, alleging that the contract between them and Villaruz was one of loan, the spouses Enrique Andres and Isidra Grospe, on May 11, 1941, commenced an action in the Court of First Instance, docketed as No. 8822, against Francisco Villaruz, Hatias Andres and Cornello Andres, to annul Villaruz's title, to declare the alleged loan usurious, etc. As the lands were in the physical possession of the plaintiffs and/or of their sons, on September 22, 1941, Villaruz applied for and secured, in case No. 8822, the appointment of a receiver of the crops. However, the court on October 21 allowed the plaintiffs to file a counter bond of P4,000 and discharged the receiver.

It seems that nothing was done in the case during the Japanese occupation. It was after liberation, on August 16, 1947, that Villaruz revived the matter of receivership. (What became of the P4,000 bond filed before the war is not disclosed.) This time, the plaintiffs put up a counter bond of P10,000. Besides, they abided by an order to file thereafter an additional bond of P5,000 each year, as security for the subsequent crops, until the case was finally

terminated.

Certain papers attached to the record of case No. 8546 (for detainer) and said to be material evidence in case No. 8822 were lost, and because, apparently, the plaintiffs in the latter case would not go to trial without the missing papers, the court dismissed said case No. 8822 without prejudice. From the order of dismissal, the plaintiffs attempted to perfect an appeal but the record on appeal was filed too late and the same was not given course. As an alternative to appeal, the plaintiffs filed a new complaint, docketed as case No. 409, in lieu of case No. 8822.

It is the contention of the plaintiffs that they "are not bound by those bonds or interlocutory orders since they have no more effect after case No. 8822 was dismissed."

The orders complained of here were dated August 24, 1948, and November 9, 1948, respectively. In the first, Judge Vicente Santiago, "after considering the petition for appointment of receiver and plaintiffs' opposition thereto in connection with the pleadings in the case," decreed "that no receiver should be appointed * * * unless plaintiffs fail to file a bond executed to the applicant Francisco Villaruz in the sum of P5,000 within ten (10) days from the date a copy of this order has been received in conformity with the provisions of section 4 of Rule 61 of the Rules of Court." The second order, signed by Judge Primitivo Gonzalez, denied a motion for reconsideration of Judge Santiago's order. Judge Gonzalez opined that "the plaintiffs were in estoppel because they had moved for the extension of the period for the filing of the bonds twice and in doing so, practically recognized the validity and reasonableness of the order of August 24." Aside from denying the motion for reconsideration, Judge Gonzalez gave a peremptory order that if the plaintiffs should fail to "file the bond of P5,000 within the definite period of five days from the date of receipt of a copy of this order, which term of five days is hereby declared unextendable, Angel Villaruz, the proposed receiver, will be automatically appointed receiver in this case with the bond of P5,000."

The petition itself for certiorari states that the orders sought to be reviewed were issued on the application of Francisco Villaruz filed in case No. 409 now pending. It is these orders and not any of those issued in case No. 8822 which the respondents would put into effect. If the orders complained of have any connection with orders issued and bonds filed in the dismissed case, No. 8822, the new orders are predicated on a new application and on the new pleadings standing on their own merit and independent of the old case. Accordingly, we do not believe that the proceeding below is without basis or irregular.

The second question is whether Villaruz being a defendant is entitled to demand the appointment of a receiver.

Section 1 of Rule 61 contains these provisions:

"Section 1. When and by whom receiver appointed.—One or more receivers of the property, real or personal, which is the subject of the action, may be appointed by the judge of the Court of First Instance in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court, in the following cases:

"(a) * * * * *

"(b) When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund which is the subject of the action, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to guard and preserve it;

"(c) * * * * *

"(d) * * * * *

"(e) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible

means of preserving, administering, or disposing of the property in litigation."

In the answer Villaruz filed in case No. 409 he makes a counterclaim alleging that he was in material possession of the lands in question; that these are rice lands under cultivation, that during the agricultural year 1947-1948, the plaintiffs caused him damages in the amount of P10,000, for which the plaintiffs had posted a bond for that sum, that he (Villaruz) is entitled to receive the fruits of the properties, fruits of which he has been deprived. In his prayer, the defendant asks that the plaintiffs be sentenced to vacate the properties in question and to pay him all the damages he has suffered for the past agricultural years and those which he would suffer annually from the present agricultural year to the extent of 1,000 cavanese of palay a year.

In addition to these allegations, there is a document which, although impugned, recites that the lands in dispute were sold absolutely and definitely by the plaintiffs or their predecessors in interest to the defendant nearly twenty years ago, and it is admitted that Villaruz parted with P14,000 for these lands, and that by the decision of the justice of the peace court of Sto. Domingo, decision which stands unreversed, Villaruz leased the properties to the vendors' children who paid the stimulated rent from 1934 to 1940.

We are fully satisfied, in the light of these facts and allegations, that strong grounds have been shown for the appointment of a receiver and that, far from being injudicious or arbitrary, the orders under consideration are positively necessary to protect the crops from danger of destruction, loss, fraud, or insolvency of one of the parties. We are also of the opinion that the allegations herein before set forth bring the case within the terms of the Rule above quoted and that the appointment of a receiver was not in excess of the court's jurisdiction or an abuse of discretion.

The cases cited by the petitioners are not applicable; the receivership here extends to fruits and rents and not to the land itself.

Whether the contract between Enrique Andres and his wife on the one hand and Villaruz on the other was a contract of loan and not one of sale, whether the loan was usurious and should be annulled? and whether the plaintiffs or their heirs and successors in interest should be paid back the Interest heretofore collected—these are matters which properly belong to the main case. Needless to say, the appointment of a receiver does not adjudicate or prejudice the parties' purported rights in the principal action.

The petition therefore will be denied, with costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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