

**FELIXBERTO MEDEL AND PRISCO JOJUYCO, PETITIONERS VS. HON. BERNABE DE AQUINO ETC., ET AL., RESPONDENTS.***G. R. No. L-5587. April 17, 1953*

Ponente: MONTEMAYOR, J.

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This is a petition for certiorari to annul the order of respondent Judge Bernabe de Aquino of the Court of First Instance of Tarlac dated November 26, 1951, appointing a receiver in Civil Case No. 7 in the said Court. From the petition and other pleadings filed in the present case, including their annexes, we gathered the following facts.

On November 19, 1933 respondent Prisco Jojuyco, claiming to be the owner of lots 4354 and 4355 of the cadastral survey of Paniqui, Tarlac, covered by Transfer Certificate of title No. 7025 executed an escritura de venta absoluta in favor of Jose Jojuyco and Maria Marquez purporting to sell and convey to them the two lots in question in consideration of P700. The vendees took possession and continued their cultivation through tenants from whom they received their share in the yearly harvests. On July 3, 1944, the vendor Prisco Jojuyco filed a motion in the Court of First Instance of Tarlac asking for the issuance to him of a second owner's duplicate transfer certificate of title No. 7025 claiming that the duplicate copy he had was lost as a result of the war. The motion was granted on July 4, 1944, and the Register of Deeds of Tarlac was directed to issue a second owner's duplicate transfer certificate of title No. 7025. On the same day Prisco Jojuyco sold the same two lots to the present petitioner Felixberto Medel. As vendee, Medel was said to have taken possession of the two parcels and appropriated the yearly products therefrom.

On June 19, 1945, Jose Jojuyco, the first vendor filed civil case No. 7 in the Court of First Instance of Tarlac against Felixberto Medel, Prisco Jojuyco and the Register of Deeds of Tarlac to establish his ownership of the two lots in question and to recover their possession. Defendants Medel and Prisco Jojuyco answered the complaint maintaining the theory that the deed of sale of November 19, 1933 in favor of Jose Jojuyco was a mere contract of antichresis to secure the payment of a loan. Pending the final determination of civil case No. 7, on November 7, 1951, plaintiff Jose Jojuyco filed an urgent ex-parte petition for the appointment of a receiver. Despite the opposition of defendant Medel, respondent Judge Aquino issued his order of November 26, 1951, appointing one Dionisio Manalo of Parrique, Tarlac, receiver upon his filing a bond of P500. As already stated, to annul said order the present petition for certiorari was filed by Medel and Prisco Jojuyco.

On behalf of the petitioners it is claimed that the urgent petition for the appointment of a receiver was not verified, and that furthermore, they were not notified of the hearing of said petition. Respondent Jose Jojuyco equally claims, however, that his urgent petition for the appointment of a receiver was duly verified as shown by a copy he has submitted, and that furthermore, petitioner Medel was duly notified of the hearing of said motion. We consider this question not very important. On the basis of cases decided by this Court, Moran in his Comments on the Rules of Court, Vol. II, 1952 edition, p. 84, says the following:

"The application for a receiver should be made not by motion but by petition under oath and supported by

affidavit's. The failure to follow such procedure constitutes a defect which may justify a denial of the petition. But such defect does not affect the jurisdiction of the court and cannot serve as a ground for certiorari, unless there has been a gross abuse of discretion that amounts to substantial prejudice to the adverse party."

As to the supposed lack of notification of the hearing of the petition for the appointment of a receiver, suffice it to say that the petition was ex-parte and section 3 of Rule 61 of the Rules of Court contemplates the appointment of a receiver upon an ex-parte application, this, assuming that herein petitioners were not really notified of the hearing although it is a fact that Medel must have known of the petition because he filed his written opposition to it.

The important and decisive point to determine is whether or not the respondent Judge acted in excess of his jurisdiction or gravely abused his discretion, in appointing a receiver. It is a well-settled rule that the granting of a petition for the appointment of a receiver is discretionary with the court. Once the discretion of the trial court is exercised on the matter of appointment of a receiver, the appellate court will not interfere with it except in a clear case of abuse thereof or an extralimitation of jurisdiction. (Moran, op. cit, pp. 85-86). It will be remembered that the complaint in civil case No. 7 was filed as early as June 19, 1945, and the petition for the appointment of a receiver was filed only on November 7, 1951, and it is alleged therein that since 1945 defendant Medel had been enjoying the products of the lands to the prejudice of plaintiff Jose Jojuycos; that he had not offered any security and assurance that he would be able to reimburse the plaintiff the amount or value of the products corresponding to him in case decision was rendered in his favor; and that a receiver should be appointed to preserve the products of the land in question in such a way that the decision of the court may not be rendered ineffectual because of inability of the losing party to make good the restoration of the products of the land to the prevailing party. This lack of security mentioned in the petition for the appointment of the receiver is confirmed by Medel himself who admits that he has no other property except the parcels in question.

On the basis of the facts above recited and considering the circumstances surrounding the appointment of the receiver in civil case No. 7, we cannot say that the respondent Judge abused his discretion in making the appointment. On the contrary, there is reason to believe that said appointment was justified and warranted.

In view of the foregoing, the petition for certiorari is hereby denied, with costs.

Paras, C.J., Feria, Pablo, Bengzon, Tuason and Labrador, JJ., concur.

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