

NATALIO VENTOSA, PETITIONER, VS. HON. WENCESLAO FERNAN, ET AL., RESPONDENTS.*G. R. No. L-14941. January 31, 1964*

Ponente: PAREDES, J.

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By virtue of the resolution (Exhibit A), dated January 6, 1958, of the stockholders of the La Paz Ice Plant and Cold Storage Co., Inc. (corporation for short), a corporation authorized to manufacture and sell ice, in Iloilo City, its franchise, factory and equipments and the premises were leased to petitioner Natalio Ventosa. The formal document of lease (Exh. B) was executed on January 31, 1958 and duly ratified before Notary Public Pedrito A. Gianzon, and approved in a resolution (Exh. C), by the Board of Directors of the said company. The contract of lease was further approved by the Public Service Commission on May 2, 1958 (Exh. D). On February 4, 1958, Ventosa allegedly took possession of the leased premises, including the factory and equipment and operated the same, as such lessee.

On September 24, 1958, respondent C. N. Hodges and Ricardo Gurrea filed an action in the CFI of Iloilo (being case No. 4994), against Manuel Lezama, as President and Paquito B. Lezama, as Secretary of the corporation (Exh. E) praying, among others, for the appointment ex-parte of a receiver for the properties of the corporation. Respondent Jose Dineros was appointed receiver and took possession of the plant. Benjamin Borja was then the one in charge of the factory, as manager, having been allegedly appointed as such by Ventosa.

Under date of October 1, 1958, petitioner wrote a letter to receiver Dineros (Exh. H) and another letter dated Oct. 3, 1958, (Exh. H-I), stating that he could not deliver the possession of the properties of the corporation, as the same were leased to him and requesting respondent receiver not to interfere with the management thereof. The respondent receiver continued to possess and refused to return the possession of the properties to the corporation.

Petitioner filed in said case No. 4994, a motion to intervene (Exh. I) and a complaint in intervention (Exh. J). On October 8, 1958, the defendants Lezama spouses in the civil case, filed their answer, with counterclaims. On October 13, 1958, the complaint in intervention was admitted (Exh. J). On October 8, 1958, petitioner filed a motion (Exh. L) for an order from the respondent Judge, directing the receiver not to interfere with the management of the corporation, claiming that the ice-plant was leased to him, that the receiver had no legal right to deprive petitioner of the possession thereof during the term of the lease, without due process of law, and that the only right of the receiver was to receive from petitioner the monthly rentals stipulated in the contract of lease. The consideration of the motion was deferred, until the parties shall have filed their pleadings in the complaint in intervention.

On October 29, 1958, Hodges and Gurrea filed their answers (Exh. M) to the complaint in intervention, assailing the contract of lease, and claiming that the receiver had the power and authority to continue to operate and manage the ice-plant in question, followed by petitioner's answers to the former's counterclaim (Exh. N).

On November 22, 1958, the respondent Judge denied petitioner's motion for restraining order, on the ground that

"plaintiffs are questioning the validity of the contract of lease in favor of petitioner". On December 23, 1958, the respondent Judge issued an order (Exh. S) denying the petitioner's motion for reconsideration (Exh. O), because the validity of the contract of lease, must first be decided before the petitioner could regain or assume control of the management and administration of the corporation.

The present action for certiorari with preliminary injunction, was filed on January 22, 1959, seeking the annulment of the orders dated November 23, 1958 and December 23, 1958, claiming that said orders were issued by the respondent Judge, in grave abuse of discretion. A preliminary mandatory injunction prayed for by the petitioner, was issued by this Court.

It appears that on February 8, 1959, respondents Hodges and Gurrea filed with this Court an ex-parte motion to dismiss the petition on the ground that the lease had already expired as per order of the Public Service Commission of Jan. 6, 1959 or in the alternative that the writ of preliminary mandatory injunction be lifted. Petitioner, however, explained that upon motion of Atty. Roman Cruz, said Commission on February 18, 1959, reconsidered its order of January 6, 1959, approving the renewal of the lease. Respondents ex-parte motions were, therefore, denied. The respondent Judge was directed to cite respondents "Ose Dineros and Ernesto Gianzon for contempt, in connection with the said preliminary injunction, result of which proceeding has not been reported by the respondent Judge, until the present.

On February 18, 1959, respondents Judge Fernan, Gurrea and Hodges filed their answer to the present petition alleging, among others, that Hodges was the registered owner of 2230 shares of the capital stock of the corporation while Gurrea, 215 shares; that they filed civil case No. 4994 as majority stockholders and in behalf of the corporation, to recover damages against defendants therein, for the mismanagement of the corporation; to effect an election of the Board of Directors and for the appointment of receiver for the properties of said corporation; that the lease contract was simulated, fictitious and contrary to law; and if valid, the same had already expired by virtue of the order of the Public Service Commission dated January 6, 1959. Later, receiver Dineros filed his answer, with the usual admissions and denials, alleging as special and affirmative defenses, the same as those of his correspondents, and also to the following: that the petition lacks the proper verification; that assuming the lease to be valid, the same could not be considered as a lien, in the sense the petitioner wanted to convey in the citation of authorities and that the present proceeding is not the proper remedy available to petitioner, because he was not a stranger in the receivership proceedings.

In accordance with our resolution dated April 8, 1959, the parties adduced their evidence, before Deputy Clerk Ejercito of this Court, as Commissioner. After petitioner had presented his first witness, Joso Manuel Lezama, the petitioner asked the Commissioner to limit the cross-examination of respondent on matters relevant to the main question pending before this Court. This Court, however, promulgated a resolution deferring action on said motion to limit evidence, until the date when this case could be heard on the merits, without prejudice to the Commissioner continuing the reception of evidence in the meanwhile. Respondents, thru receiver Dineros, were able to show that he took possession of the ice-plant in the afternoon of September 27, 1958 and found therein Benjamin Borja who did not tell him anything, much less identified himself as manager of the petitioner; that one week thereafter, Atty. Treflas and Borja told him that the ice-plant was leased to the petitioner; that in his investigation of the corporate papers, Borja was not a manager of the said corporation; that the City Hall papers showed that the license of the business, taxes paid, and purchases made of materials, were not in the name of the petitioner Ventosa but in the name of the corporation.

It would, therefore, appear that the dominant issue in the present proceeding, is whether or not respondent Judge acted with grave abuse of discretion, when he issued the order dated November 23, 1958, denying petitioner's motion dated October 8, 1958 (Exh. L), which prayed for an order restraining the respondent receiver Jose S.

Dineros from interfering with the possession, management and control of the corporation; and his order dated December 23, 1958 (Exh. S), which denied petitioner's motion for reconsideration, dated November 26, 1958 (Exh. P).

One fact stands in bold relief from the evidence of record, and that is, at the time the petitioner had intervened in the civil case No. 4994, the receiver was already in possession, operation and control of the ice-plant. The receiver took possession of the ice-plant in the afternoon of Sept. 27, 1958, from the defendants in said civil case No. 4994 and not from the petitioner. It was only on October 8, 1958, that petitioner filed his motion, in said case, praying that the respondent receiver be restrained from interfering with the possession and control of the ice-plant, because he said he was a lessee. As things stand in the record, before the respondent Court, there was no evidence at all, showing that the petitioner had been in the actual possession and control of the ice-plant. As a matter of fact, an issue before that court is whether or not the intervenor had ever been in possession of the ice-plant or its properties. Neither is there evidence in said case that respondent-receiver took over the operation and control of the said ice-plant. There were allegations on the part of petitioner that he was already in possession of the ice-plant, when the respondent-receiver forcibly took it over, which the latter denied, by asserting, also that it was delivered to him, voluntarily, without objection on the part of anyone.

Having thus submitted himself to the jurisdiction of the respondent court by his intervention, petitioner necessarily became a party to Civil Case No. 4994. He must lay his cards before the said court, for adjudication and determination. "After the appointment of a receiver, claimants of the property or any interest therein may enforce their claims only by permission of the court appointing the receiver. Such a claimant may be made a party to the suit in order to establish his claim; or he may petition to have it heard before a master; or he may, by express permission of the court, bring a suit for the possession, care being taken to protect the receiver.

But a receiver will not be ordered to deliver the property to a claimant until his right is established in one of these modes." (23 R.C.L- p. 55 and cases cited therein.) "The procedure in the presentation of claims against a receivership is either by motion or petition in the same proceeding, or by way of intervention * * *. But whichever procedure is to be followed, all parties in interest must be notified of each claim, which shall be determined not in a summary manner, but after regular hearing." (Po Pauco vs. Siguenza, et al., 52 Phil. 241; China Banking Corp., et si. vs. Michelin & Cie., 58 Phil. 261, cited in II Moran's Comments on the Rules of Court, 1957 Ed pp. 99-100.) It is also held that property under receivership is property in custodia legis which should remain under the administration and control of the receivership court, through its creation, the receiver, for the purpose of preservation and for the benefit of the party who may be adjudged entitled to it; that the effect of the appointment of a receiver is to remove the parties to the suit from the possession of the property (34 Cyc. 183-184, 157). These principles of law being true, there must be a hearing of some form or a regular trial of the issues in the said civil case No. 4994, as between respondents Gurrea and Hodges, on one hand, and the petitioner herein, on the other, as intervenor therein, so as to determine the party who is legally entitled to the possession and control of the ice-plant in question; and until such party is adjudged that right, the property must remain under the control and supervision of the court, through its receiver.

In denying the motion to restrain dated October 8, 1958, and the motion for reconsideration dated November 26, 1958, the respondent judge did not act with abuse of discretion, much less grave abuse of discretion- On the contrary, respondent court acted precisely within its jurisdiction and on what the law and jurisprudence dictated on the matter and under the facts obtaining in that particular case. Neither were the acts capricious and whimsical exercise of judgment.

The questions of whether or not the petitioner was in possession of the properties of the corporation prior to and at the time the respondent-receiver herein took possession of the same, pursuant to the order of the respondent

Court in Civil Case No. 4994; and the other issues raised by the parties in the present proceedings, can be best ventilated in the said civil case.

The petition is, therefore, dismissed; the Order of the respondent Judge complained of affirmed, and the writ of preliminary injunction issued herein dissolved, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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