

RAYMUNDA SIVA ET AL., PETITIONERS, VS. FELIXBERTO IMPERIAL REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND CORNELIO QUIDATO, RESPONDENTS.

G.R. No. L-1590. April 27, 1949

Ponente: PARAS, J.

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PARAS, J.:

In the present petition for certiorari, the petitioners seek the review and annulment of the order of the respondent judge in civil case No. 798 of the Court of First Instance of Iloilo, the dispositive part of which reads as follows:

"Procede ordenar, como por el presente ordena, a los demandantes que de hoy en adelante y hasta que recaiga decision final en este asunto se abstengan de cometer actos de usurpacion y de intromision en la posesion de los demandados en el terreno, objeto de este litigio, so pena de ser declarados incurso en desacato."

This order was entered before trial on the merits of civil case No. 798, and it is contended for the petitioners that until the question of ownership and possession has been determined, they cannot be enjoined in the manner, stated in the order complained of.

It is insisted, however, by the respondents that said order amounts to a writ of preliminary injunction which the respondent Judge may issue during the pendency of said civil case.

The contention of counsel for the respondents as to the nature of the order is correct. Even so, we have no hesitancy in holding that its issuance was irregular, in that, contrary to the provisions of section 4 of Rule of Court No. 60, no bond was required by the respondent Judge and filed by the party in whose favor the order was issued. Said rule plainly provides that a preliminary injunction may be granted only, aside from the requirement that the complaint in the action must be verified and must show facts entitling the plaintiff to the relief demanded, when "the plaintiff files with the clerk or judge of the court in which the action is pending a bond executed to the party enjoined, in an amount to be fixed by the court, to the effect that the plaintiff will pay to such party all damages which he may sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto."

Without deciding whether or not the facts of the case justify the issuance of any restraining order against the petitioners, we rule that, for lack of the requisite bond, the order in question should be, as the same is hereby, set aside. Petition granted with costs against respondent Cornelio Quidato. So ordered.

Moran, C.J., Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

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