

GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. HON. ALFREDO C. FLORENDO, PRESIDING JUDGE OF BRANCH XXXVI OF THE COURT OF FIRST INSTANCE OF MANILA, AND FELIPE T. ANG, RESPO...

G.R. No. L-48603. September 29, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari and prohibition, with prayer for the immediate issuance of a restraining order and/or a writ of preliminary injunction of the orders of respondent Judge Alfredo C. Florendo dated June 2, June 16 and June 30, 1978 in Civil Case No. 115669 of the Court of First Instance of Manila (now Regional Trial Court), entitled "Felipe T. Ang, Plaintiff, v. Government Service Insurance System, Defendant."

The pertinent facts as culled from the petition are as follows:

As of August, 1965, private respondent Felipe T. Ang's total indebtedness to petitioner Government Service Insurance System (hereinafter referred to as GSIS) has amounted to P7,175,000.00. To secure its payment, Ang executed real estate mortgage contracts in favor of GSIS covering, among other properties, the lot and the building known as the House International Building, including all the improvements thereon.

Despite many repeated demands upon Ang to liquidate his then increasing obligation to GSIS, he failed to make any payments, although he made several promises to do so.

In October, 1971, GSIS finally initiated foreclosure proceedings against Ang of the properties covered by the real estate mortgage contracts. At this time, Ang's account stood at P12,544,201.00.

On March 21, 1974, the properties in Manila, including those involved in the present controversy were sold to GSIS as the highest bidder in the public auction for P19,695,369.00.

The period for redemption having expired, the titles to all the properties in Manila were registered in the name of GSIS on August 27, 1975. On January 29, 1976, GSIS took-over the possession of the properties.

On May 25, 1978, Ang filed a complaint against GSIS which was docketed as Civil Case No. 115669 before the Court of First Instance of Manila by reason of GSIS' alleged unlawful takeover of the House International Building and appropriation of personal properties thereon which were not included in the real estate mortgage, praying for the following (p. 54, Rollo);

"(a) to return to plaintiff all the personal belongings owned by him and his family consisting of furnitures, clothings and jewelries, all valued at more than P100,000.00, in default thereof, to pay said amount to plaintiff, with interest thereon at the legal rate from 23 January 1976 until fully paid;

"(b) to pay to plaintiff moral and exemplary damages in such amount as he shall be able to prove at the trial of this case;

"(c) to return to plaintiff all the personal properties owned by him which he was then leasing to House International, Inc., consisting of air-conditioning units, telephone equipments, furnitures, electrical and plumbing fixtures and other hotel paraphernalia, as well as the elevator facilities and centralized air-conditioning unit and other equipments being used in the building, as afore-stated, and to pay rentals for defendant's use thereof at P25,000.00 per month from 23 January 1976; or in default of such return, to pay to plaintiff such fair market value thereof as plaintiff shall prove at the trial of this case, with interest thereon at the legal rate from 23 January 1976 until fully paid, plus said rentals;

"(d) to pay to plaintiff the amount of P100,000.00, as and for attorney's fees and expenses of litigation; and

"(e) to pay the costs of suit."

On June 2, 1978, respondent Judge Alfredo C. Florendo directed the issuance of a temporary restraining order, the relevant portion of which reads (p. 45, Rollo):

"In the meantime, let a temporary restraining order be issued directing the defendants, its agents, representatives or persons acting under their title and/or authority and commanding them, singly and collectively, to desist from using one centralized air-conditioning system on the second floor of the House International Building being leased by defendant to the Grand House Restaurant, furnitures, personal belongings owned by the plaintiff and his family consisting of furnitures, clothings, pieces of jewelries, equipments and individual air-conditioning units (window type), plumbing fixtures from the 9th to the 12th floors of the building, until further orders from this court."

On June 16, 1978, the respondent judge, after hearing, issued another order directing the issuance of a writ of preliminary, preventive and mandatory injunction, the dispositive portion of which reads (p. 49, Rollo):

"WHEREFORE, premises considered, let a writ of preliminary, preventive and mandatory injunction be issued restraining the defendant from using the personal properties it is now using in its operation of the hotel business in House International Building consisting of the individual air-conditioning units, window-type, pieces of furniture, plumbing fixtures, one centralized air-conditioning unit, personal belongings like clothings and pieces of jewelry belonging to the plaintiff upon the filing of a bond in the amount of P15,000.00."

On June 22, 1978, the writ of preliminary, preventive and mandatory injunction was issued.

On June 23, 1978, GSIS immediately filed its Urgent Motion for Reconsideration. On the same day, Ang filed an Urgent Ex-Parte Motion requesting that the sheriff be duly authorized to use reasonable force within his discretion in the implementation of the writ of injunction.

Notwithstanding the fact that the Urgent Motion for Reconsideration filed by GSIS was still unresolved, on June 30, 1978, the respondent judge issued an order granting Ang's motion, the dispositive portion of which reads (p. 50, Rollo):

"WHEREFORE, premises considered, Deputy Sheriffs Mario Hizalan and Adolfo Garcia are hereby authorized to use reasonable force within their discretion for the purpose of opening any part of the premises where such equipment and furnitures may be located in the implementation of the writ of injunction."

On July 7, 1978, a hearing was conducted on the Urgent Motion for Reconsideration. On that same day, Ang furnished GSIS a copy of its Opposition to Motion for Reconsideration. The respondent Judge required GSIS to file its reply thereto and the hearing was reset to July 27, 1978.

On July 17, 1978, the Sheriff broke the door leading to the centralized air-conditioning unit, cut-off its electrical connections, and subsequently prevented its use by GSIS.

Hence, the present petition.

The issue to be resolved may be stated as follows:

Whether or not the respondent judge acted without or in excess of his jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction when he issued the challenged orders dated June 2, 1978 directing the issuance of a temporary restraining order; dated June 16, 1978 directing the issuance of a writ of preliminary preventive and mandatory injunction; and dated June 30, 1978 authorizing the use of reasonable force to implement the writ of injunction.

On August 2, 1978, this Court issued a temporary restraining order, restraining the respondents from enforcing the writ of preliminary injunction.

GSIS alleges that the June 2, 1978 order which directed the issuance of a temporary restraining order was issued without any hearing or evidence whatsoever.

A temporary restraining order is generally granted without notice to the opposite party, and is intended only as a restraint on him until the propriety of granting a temporary injunction can be determined, and it goes no further than to preserve the status until that determination (The Revised Rules of Court in the Philippines, Vol. IV-A by Vicente J. Francisco, 1971, pp. 184-185). Its purpose is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted, and it is not intended to operate as an injunction pendente lite, and should not in effect determine the issues involved before the parties can have their day in court, or give an advantage to either party by proceeding in the acquisition or alteration of the property the right to which is disputed while the hands of the other party are tied (43 C.J.S. 415).

GSIS submits next that the June 16, 1978 order which directed the issuance of the writ of preliminary, preventive and mandatory injunction directly asserted that the questioned properties belonged to Ang. This runs counter to the evidence on record in view of the fact that other than the allegations of the complaint and the evidence introduced by the parties during the hearing on June 9, 1978, there is nothing which may be considered as evidence of Ang's title to the questioned properties. According to GSIS, the questioned properties were included in the real estate mortgage except with reference to the personal belongings like clothings and pieces of jewelry. While these may be considered as personal properties, there was no evidence whatsoever adduced in Civil Case No. 115669 to show receipt by GSIS of such properties. Withal, there is a total absence of any clear, specific and precise identification of the questioned properties, making compliance with the writ of injunction a virtual impossibility. It contends further that the June 30, 1978 order which directed the use of force to implement the writ of injunction was issued notwithstanding the fact that the June 16, 1978 order was then still the subject of a pending motion for reconsideration of which respondent judge was officially cognizant.

A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action (Calo, et al. v. Roldan, et al., 76 Phil. 445; Commissioner of Customs v. Cloribel, et al., 19 SCRA 234; Bengzon v. Court of Appeals, 161 SCRA 745). Before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right (National Power Corporation v. Vera, etc., et al., G.R. No. 83558, February 27, 1989).

In directing the issuance of the writ of injunction, the respondent judge made the following findings (pp. 47-49, Rollo):

"The principal issues, therefore, in this application for the issuance of a writ of mandatory injunction is whether or not (1) the properties sought by the plaintiff in his complaint are personal properties or immovables and (2) the real estate mortgage already foreclosed included the aforementioned properties.

"At the outset, the Court cannot subscribe to the idea that the properties in question (air-conditioning units, pieces of furniture, clothings, pieces of jewelry, individual air-conditioning units, window type, plumbing fixtures from the ninth to the twelfth floors of the building) are immobilized by destination as provided for under Art. 415, No. 5 of the Civil Code. In *Mindanao Bus Co. vs. City Assessor and Treasurer*, 6 SCRA, p. 197 citing the case of *B.H. Berkenkotter vs. Cu Unjieng*, 61 Phil. 663, the Supreme Court held that so that movable equipments to be immobilized in contemplation of the law must first be 'essential and principal elements' of an industry or works without which such industry or works would be unable to function or carry on the industrial purpose for which it was established'.

"In the instant case, the Court considers that these properties in question are merely incidentals not essential and principal elements to carry on the business. The hotel and restaurant business can continue or carry on their functions without these equipments. To the mind of the Court, these properties mentioned above are like cash registers, typewriters, etc. usually found and used in hotels, restaurants, theaters, etc. and as held in the aforecited case of *Mindanao Bus Co. vs. City Assessor and Treasurer*, 'they are merely incidentals and are not and should not be considered immobilized by destination for these businesses can continue or carry on their functions without these equipments'. With regards (sic) to the elevators, there is no controversy in view of the manifestation of plaintiff in open court that he is excluding these equipments from his prayer for injunction.

"Now, are these personal properties included in the real estate mortgage executed by plaintiff in favor of defendant? Defendant claims that they are included. Defendant relies very much on Exhibit '3-A' which reads as follows:

'That the first monthly amortization on this loan shall become due and payable one month after the completion of the proposed building and installation of the elevators and air-conditioning equipments offered as collateral for this loan x x x.'

"A careful perusal of said exhibit, however, shows that the installation of the elevators and air-conditioning equipments is mentioned merely to indicate when the first monthly amortization on the loan shall be due and payable. What is offered as collateral is the proposed building. This is obvious considering that the word 'collateral' is singular. Exhibit '4-B' is a portion of the Memorandum for the Board of Directors of defendant GSIS by the manager of the Real Estate Department, GSIS. It is clear that the plaintiff is not a party to this document, hence, he is not bound by it. Exhibit (sic) '2' and '6-A' have reference to buildings and improvements. Since the Court has already ruled that the properties in question are not immobilized by destination in contemplation of Article 415, No. 5 of the Civil Code, it is obvious that they cannot be considered included in the Deed of Real Estate Mortgage. Exhibits 'A' and 'B', on the other hand, clearly show that what defendant acquired by virtue of the auction sale are only the parcels of land and the buildings erected thereon. Absolutely, nothing was mentioned about these properties in question. Moreover, Exhibit 'D' shows that the defendant has given its consent to the plaintiff to constitute a chattel mortgage on the properties in question. This is, therefore, a clear indication that defendant did not consider said properties mortgaged to it. Thus, on the strength of Exhibit 'D', the plaintiff constituted a Deed of Chattel Mortgage of these personal properties with the General Bank and Trust Company as shown by Exhibit 'E' and in the Inventory of Properties Mortgaged shown by Exhibits 'F' to 'F-5'. These evidence adduced clearly show that the properties in question were not included in the Real Estate Mortgage executed by plaintiff in favor of the defendant. The other contention of the defendant that the value of the personal properties in question should already be set-off against the real estate taxes in arrears and water bills to the Metropolitan Waterworks and Sewerage System paid by the defendant is not tenable. In the first place, no evidence was adduced showing that these obligations were really outstanding to the plaintiff and neither were there evidence showing that they were actually paid by the defendant.

"Under these circumstances, the right of the plaintiff is clear and unmistakable on the law and facts. That there exists an urgent and paramount necessity for the issuance of the writ in order to prevent extreme or rather serious damage which ensues from withholding it."

It is evident that nowhere in the aforequoted decision did the respondent judge make any categorical statement that the questioned properties are owned by Ang or that he is entitled to the possession thereof, on the basis of the evidence presented. Furthermore, contrary to the observation made by the respondent judge that Exhibit "D" shows that GSIS has given its consent to Ang to constitute a chattel mortgage on the questioned properties, the document itself belies this statement because the personal properties that may be subjected to the chattel mortgage were not identified, to wit (p. 132, Rollo):

"In reply to your letter dated December 20, 1966 requesting this office to give its consent to the assignment of a portion of the rental income of the House International Building, please be informed that the same is granted. It is understood that the amount assignable by you in favor of the General Bank & Trust Company is P31,000.00 only and that any loan accommodation that you are getting will be secured by properties other than the Real Estate properties mortgaged with the System as securities for your loan of P7,700,000.00. Specifically, your personal properties may be mortgaged but not your Real Estate properties mortgaged with the System."

In *Emilia v. Bado*, G.R. No. L-23685, April 25, 1968, 23 SCRA 183, We ruled:

"The remedy of injunction has been the subject of numerous judicial pronouncements. The court cannot now afford to depart from the well-ingrained precept that injunctions are not available to take property out of possession or control of one party and place it into that of another whose title has not clearly been established."

And since the legal title of the questioned properties is in dispute, with GSIS (the one in possession) asserting ownership in itself, with more reason that the writ of injunction should not have issued. In the earlier case of *Rodulfa v. Alfonso, et al.*, 76 Phil. 225, We held:

"The rule that a court should not, by any means of a preliminary injunction, transfer property in litigation from the possession of one party to another, is more particularly applicable where the legal title is in dispute and the party having possession asserts ownership in himself (*Gordillo and Martinez v. Del Rosario*, 39 Phil. 829)."

The rule is predicated on the proposition that the ownership as well as the possession of the (properties) in dispute are the main issue and that the relief was prayed for before the issue had been decided on the merits. The philosophy of the rule seems to be that before the issue is determined in the light of the evidence presented, justice and equity demand that the parties be maintained in their status quo so that no advantage may be given to one to the prejudice of the other, and so it was ruled that unless there is a clear pronouncement regarding ownership and possession of the land, or unless the land is covered by a torrens title pointing to one of the parties as the undisputed owner, a writ of preliminary injunction should not issue to take the (properties) out of possession of one party to place it in the hands of another (*The Revised Rules of Court in the Philippines*, Vol. IV-A, by Vicente J. Francisco, 1971, p. 226, citing *Villadores v. Encarnacion*, 95 Phil. 913).

Likewise, a writ of injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused. (*Golding v. Balatbat, et al.*, 36 Phil. 941).

In the order dated June 16, 1978, the respondent judge declared the questioned properties as movable properties not included in the real estate mortgage contract, which are the main issues raised by Ang in his complaint. Equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction which, in effect, would dispose of the main case without trial (or would result in) a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioner is ineptly duty

bound to prove (*National Power Corporation v. Vera, etc., et al., supra*).

Besides, the questioned properties were not properly identified in the writ of injunction but were merely generalized, to wit: centralized air-conditioning units, individual window-type air-conditioning units, pieces of furniture, plumbing fixtures, clothings and pieces of jewelry. We agree with GSIS that any order of this nature will surely place its execution at the mercy of the whim and caprice of the sheriffs or any other court officers. The issuance of a blanket and all encompassing injunction surely cannot be upheld.

The issuance of a writ of preliminary injunction in the present case, as in any other case, is addressed to the sound discretion of the court, conditioned on the existence of a clear and positive right of the movant which should be protected. It is an extraordinary peremptory remedy available only on the grounds expressly provided by law, specifically Section 3 of Rule 58 of the Rules of Court.* (*Valley Trading Co., Inc. v. Court of First Instance of Isabela, et al., G.R. No. L-49529, March 31, 1989*). In the issuance thereof, the courts are given sufficient discretion to determine the necessity for the grant of the relief prayed for as it affects the respective rights of the parties, with the caveat that extreme caution be observed in the exercise of such discretion (*Bataclan, et al. v. Court of Appeals, et al., G.R. No. 78148, July 31, 1989*). It is also a settled rule that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the court taking cognizance of the case, the only limitation being that this discretion should be exercised based upon the grounds and in the manner provided by law. The exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse (*Detective and Protective Bureau, Inc. v. Cloribel, G.R. No. L-23428, Nov. 29, 1968, 26 SCRA 255*).

With these principles in mind, and after a careful consideration of the undisputed facts and the arguments of the parties, the Court finds that the respondent judge acted with grave abuse of discretion in having issued the order dated June 16, 1978. The respondent judge also committed a grave abuse of discretion when he issued the order dated June 30, 1978, notwithstanding the fact that the Urgent Motion for Reconsideration of the June 16, 1978 order filed by GSIS was still unresolved.

ACCORDINGLY, the petition is hereby GRANTED and the orders dated June 16 and 30, 1978 are hereby SET ASIDE. The temporary restraining order dated August 2, 1978 is made permanent. The respondent judge is directed to proceed with dispatch in the trial of Civil Case No. 115669.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

* Section 3, Rule 58 of the Rules of Court provides:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted at any time after the commencement of the action and before judgment, when it is established:

- (a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or
- (c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act

probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

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