

**TRANQUILINO CALO AND DOROTEO SAN JOSE, PETITIONERS, VS.
HON. ARSENIO C. ROLDAN, JUDGE OF FIRST INSTANCE OF LAGUNA,
REGINO RELOVA AND TEODULA BARTOLOME, RESPONDENTS.**

G.R. No. L-252. March 30, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for a writ of certiorari against the respondent Judge Arsenio C. Roldan of the Court of First Instance of Laguna, on the ground that the latter has exceeded his jurisdiction or acted with grave abuse of discretion in appointing a receiver of certain lands and their fruits which, according to the complaint filed by the other respondents, as plaintiffs, against petitioners, as defendants, in case No. 7951, were in the actual possession of and belong to said plaintiffs.

The complaint filed by plaintiffs and respondents against defendants and petitioners in the Court of First Instance of Laguna reads as follows:

"1. That the plaintiffs and the defendants are all of legal age, Filipino citizens, and residents of Pila, Laguna; the plaintiffs are husband and wife.

"2. That the plaintiff spouses are the owners and the possessors of the following described parcels of land, to wit:

* * * * *

"3. That parcel No. (a) described above is now an unplanted rice land and parcel No. (b) described in the complaint is a coconut land, both under the possession of the plaintiffs.

"4. That the defendants, without any legal right whatsoever and in connivance with each other, through the use of force, stealth, threats and intimidation, intend or are intending to enter and work or harvest whatever existing fruits may now be found in the lands above-mentioned in violation of plaintiffs' proprietary rights thereto and tending to render the judgment in this case ineffectual.

"5. That unless defendants are barred, restrained, enjoined, and prohibited from entering or harvesting the lands or working therein though ex-parte injunction, the plaintiffs will suffer injustice, damages and irreparable injury to their great prejudice.

"6. That the plaintiffs are offering a bond in their application for ex-parte injunction in the amount of P2,000, subject to the approval of this Hon. Court, which bond is attached hereto marked as Annex A and made an integral part of this complaint.

"7. That on or about June 26, 1945, the defendants, through force, destroyed and took away the madre-cacao fences and barbed wires built on the northwestern portion of the land designated as parcel No. (6) of this complaint to the damage and prejudice of the plaintiffs in the amount of at least P200.

"Wherefore, it is respectfully prayed:

"(a) That the accompanying bond in the amount of P2,000 be approved;

"(b) That a writ of preliminary injunction be issued ex-parte immediately restraining, enjoining and prohibiting the defendants, their agents, servants, representatives, attorneys, and, (or) other persons acting for and in their behalf, from entering in, interfering with and/or in any wise taking any participation in the harvest of the lands belonging to the plaintiffs; or in any wise working the lands above-described;

"(c) That judgment be rendered, after due hearing, declaring the preliminary injunction final;

"(d) That defendants be condemned jointly and severally to pay the plaintiffs the sum of P200 as damages; and

"(e) That plaintiffs be given such other and further relief just and equitable with costs of suit to the defendants."

The defendants filed an opposition dated August 8, 1945, to the issuance of the writ of preliminary injunction prayed for in the above-quoted complaint, on the ground that they are the owners of the lands and have been in actual possession thereof since the year 1925; and in their answer to the complaint filed on August 14, 1945, they reiterate that they are the owners and were then in actual possession of said property, and that the plaintiffs have never been in possession thereof.

The hearing of the petition for preliminary injunction was held on August 9, 1945, at which evidence was introduced by both parties. After the hearing, Judge Rilloraza, then presiding over the Court of First Instance of Laguna, denied the petition on the ground that the defendants were in actual possession of said lands. A motion for reconsideration was filed by plaintiffs on August 20, 1945, but said motion had not yet, up to the hearing of the present case, been decided either by Judge Rilloraza, who was assigned to another court, or by the respondent judge.

The plaintiffs (respondents) filed on September 4, 1945, a reply to defendants' answer in which, among others, they reiterate their allegation in the complaint that they are possessors in good faith of the properties in question.

And on December 17, plaintiffs filed an urgent petition ex parte praying that plaintiffs' motion for reconsideration of the order denying their petition for preliminary injunction be granted and/or for the appointment of a receiver of the properties described in the complaint, on the ground that (a) the plaintiffs have an interest in the properties in question, and the fruits thereof were in danger of being lost unless a receiver was appointed; and that (b) the appointment of a receiver was the most convenient and feasible means of preserving, administering and or disposing of the properties in litigation which include their fruits. Respondent Judge Roldan, on the same date, December 17, 1945, decided that the court would consider the motion for reconsideration in due time, and granted the petition for appointment of and appointed a receiver in the case.

The question to be determined in the present special civil action of certiorari is, whether or not the respondent judge acted in excess of his jurisdiction or with grave abuse of discretion in issuing the order appointing a receiver in the case No. 7951 of the Court of First Instance of Laguna; for it is evident that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against the said order, which is an incidental or interlocutory one.

It is a truism in legal procedure that what determines the nature of an action filed in the courts are the facts alleged in the complaint as constituting the cause of the action. The facts averred as a defense in the defendant's answer do not and can not determine or change the nature of the plaintiff's action. The theory adopted by the plaintiff in his complaint is one thing, and that of the defendant in his answer is another. The plaintiff has to establish or prove his theory or cause of action in order to obtain the remedy he prays for; and the defendant his theory, if

necessary, in order to defeat the claim or action of the plaintiff.

According to the complaint filed in the said case No. 7951, the plaintiff's action is one of ordinary injunction, for the plaintiffs allege that they are the owners of the lands therein described, and were in actual possession thereof, and that the defendants without any legal right whatever and in connivance with each other, through the use of force, stealth, threat and intimidation, intend or are intending to enter and work or harvest whatever existing fruits may be found in the lands above mentioned in violation of plaintiffs' proprietary rights thereto;" and prays "that the defendants, their agents, servants, representatives, and other persons acting for or in their behalf, be restrained, enjoined and prohibited from entering in, interfering with, or in any way taking any participation in the harvest of the lands above described belonging to the plaintiffs."

That this is the nature of plaintiffs' action is corroborated by the fact that they petitioned in the same complaint for a preliminary prohibitory injunction, which was denied by the court in its order dated August 17, 1945, and that the plaintiffs, in their motion for reconsideration of said order filed on August 20 of the same year, and in their urgent petition dated December 17, moving the court to grant said motion for reconsideration, reiterated that they were actual possessors of the land in question. The fact that plaintiffs, in their reply dated September 4, after reiterating their allegation or claim that they are the owners in fee simple and possessors in good faith of the properties in question, pray that they be declared the owners in fee simple, has not changed the nature of the action alleged in the complaint or added a new cause of action thereto; because the allegations in plaintiffs' reply were in answer to defendants' defenses, and the nature of plaintiffs' cause of action, as set forth in their complaint, was not and could not be amended or changed by the reply, which plaintiffs had the right to present as a matter of course. A plaintiff can not, after defendant's answer, amend his complaint by changing the cause of action or adding a new one without previously obtaining leave of court (section 2, Rule 17).

Respondents' contention in paragraph I of their answer that the action filed by them against petitioners in the case No. 7951 of the Court of First Instance of Laguna is not only for injunction, but also to quiet title over the two parcels of land described in the complaint, is untenable for the reasons stated in the previous paragraph. Besides, an equitable action to quiet title, in order to prevent harassment by continued assertion of adverse title, or to protect the plaintiff's legal title and possession, may be filed in courts of equity (and our courts are also of equity), only where no other remedy at law exists or where the legal remedy invokable would not afford adequate remedy (32 Cyc, 1306, 1307). in the present case wherein plaintiffs allege that they are the owners and were in actual possession of the lands described in the complaint and them fruits, the action of injunction filed by them is the proper and adequate remedy in law, for a judgment in favor of plaintiffs would quiet their title to said lands.

The provisional remedies denominated attachment, preliminary injunction, receivership, and delivery of personal property, provided in Rules 59, 60, 61 and 62 of the Rules of Court, respectively, are remedies to which parties litigant may resort for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action. If an action, by its nature, does not require such protection or preservation, said remedies can not be applied for and granted. To each kind of action or actions a proper provisional remedy is provided for by law. The Rules of Court clearly specify the cases in which they may be properly granted.

Attachment may be issued only in the cases or actions specifically stated in section 1, Rule 59, in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be recovered by plaintiff from defendant. For that reason a property subject of litigation between the parties, or claimed by plaintiff as his, can not be attached upon motion of the same plaintiff.

The special remedy of preliminary prohibitory injunction lies when the plaintiff's principal action is an ordinary action of injunction, that is, when the relief demanded in the plaintiff's complaint consists in restraining the

commission or continuance of the act complained of, either perpetually or for a limited period, and the other conditions required by section 3 of Rule 60 are present. The purpose of this provisional remedy is to preserve the status quo of the things subject of the action or the relation between the parties, in order to protect the rights of the plaintiff respecting the subject of the action during the pendency of the suit. Because, otherwise or if no preliminary prohibitory injunction were issued, the defendant may, before final judgment, do or continue the doing of the act which the plaintiff asks the court to restrain, and thus make ineffectual the final judgment rendered afterwards granting the relief sought by the plaintiff. But, as this court has repeatedly held, a writ of preliminary injunction should not be granted to take the property out of the possession of one party to place it in the hands of another whose title has not been clearly established.

A receiver may be appointed to take charge of personal or real property which is the subject of an ordinary civil action, when it appears that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or litigation, and that such property or fund is in danger of being lost, removed or materially injured unless a receiver is appointed to guard or preserve it (section 1 [b], Rule 61) ; or when 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 (section 1 [e] of said Rule). The property or fund must, therefore, be in litigation according to the allegations of the complaint, and the object of appointing a receiver is to secure and preserve the property or thing in controversy pending the litigation. Of course, if it is not in litigation and is in the actual possession of the plaintiff, the latter can not apply for and obtain the appointment of a receiver thereof, for there would be no reason for such appointment.

Delivery of personal property as a provisional remedy consists in the delivery, by order of the court, of a personal property by the defendant to the plaintiff, who shall give a bond to assure the return thereof or the payment of damages to the defendant if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from damaging, destroying or disposing of the same during the pendency of the suit. Undoubtedly, according to law, the provisional remedy proper to plaintiffs' action of injunction is a preliminary prohibitory injunction, if plaintiffs' theory, as set forth in the complaint, that he is the owner and in actual possession of the premises is correct. But as the lower court found at the hearing of the said petition for preliminary injunction that the defendants were in possession of the lands, the lower court acted in accordance with law in denying the petition, although in their motion for reconsideration, which was still pending at the time the petition in the present case was heard in this court, plaintiffs insist that they are in actual possession of the lands and, therefore, of the fruits thereof.

From the foregoing it appears evident that the respondent judge acted in excess of his jurisdiction in appointing a receiver in case No. 7951 of the Court of First Instance of Laguna. Appointment of a receiver is not proper or does not lie in an action of injunction such as the one filed by the plaintiff. The petition for appointment of a receiver filed by the plaintiffs (Exhibit 1 of the petition) is based on the ground that it is the most convenient and feasible means of preserving, administering and disposing of the properties in litigation; and according to plaintiffs' theory or allegations in their complaint, neither the lands nor the palay harvested therein, are in litigation. The litigation or issue raised by plaintiffs in their complaint is not the ownership or possession of the lands and their fruits. It is whether or not defendants intend or were intending to enter or work or harvest whatever existing fruits could then be found in the lands described in the complaint, alleged to be the exclusive property and in the actual possession of the plaintiffs. It is a matter not only of law but of plain common sense that a plaintiff will not and legally can not ask for the appointment of a receiver of a property which he alleges to belong to him and to be actually in his possession. For the owner and possessor of a property is more interested than other persons in preserving and administering it.

Besides, even if the plaintiffs had amended their complaint and alleged that the lands and palay harvested therein are being claimed by the defendants, and consequently the ownership and possession thereof were in litigation, it appearing that the defendants (now petitioners) were in possession of the lands and had planted the crop or palay harvested therein, as alleged in paragraph 6 (a) and (b) of the petition filed in this court and not denied by the respondent in paragraph 2 of his answer, the respondent judge would have acted in excess of his jurisdiction or with a grave abuse of discretion in appointing a receiver thereof. Because relief by way of receivership is equitable in nature, and a court of equity will not ordinarily appoint a receiver where the rights of the parties depend on the determination of adverse claims of legal title to real property and one party is in possession (53 C. J., p. 26). The present case falls within this rule.

In the case of *Mendoza vs. Arellano and B. do Arellano*, this court said:

"Appointments of receivers of real estate in cases of this kind lie largely in the sound discretion of the court, and where the effect of such an appointment is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage. (34 Cyc, 51, and cases there cited.) No such showing has been made in this case as would justify us in interfering with the exercise by the trial judge of his discretion in denying the application for a receiver." (36 Phil., 59, 63, 04.)

Although the petition is silent on the matter, as the respondents in their answer allege that the Court of First Instance of Laguna has appointed a receiver in another case No. 7989 of said court, instituted by the respondents Relova against Roberto Calo and his brothers and sisters, children of Sofia de Oca and Tranquilino Calo (petitioner in this case), and submitted copy of the complaint filed by the plaintiffs (now respondents) in said case No. 7989 (Exhibit 9 of the respondents' answer), we may properly express and do hereby express here our opinion, in order to avoid multiplicity of suits, that as the cause of action alleged in the complaint filed by the respondents Relova in that other case is substantially the same as the cause of action averred in the complaint filed in the present case, the order of the Court of First Instance of Laguna appointing a receiver in said case No. 7989 was issued in excess of its jurisdiction, and is therefore null and void.

In view of all the foregoing, we hold that the respondent Judge Arsenio C. Roldan of the Court of First Instance of Laguna has exceeded his jurisdiction in appointing a receiver in the present case, and therefore the order of said respondent judge appointing the receiver, as well as all other orders and proceedings of the court presided over by said judge in connection with the receivership, are null and void.

As to the petitioners' petition that respondents Relova be punished for contempt of court for having disobeyed the injunction issued by this court against the respondents requiring them to desist and refrain from enforcing the order of receivership and entering into the possession of the rice lands and harvesting the palay therein, it appearing from the evidence in the record that the palay was harvested by the receiver and not by said respondents, the petition for contempt of court is denied. So ordered, with costs against the respondents.

Moran, C. J., Ozaeta, Jaranilla, De Joya, Pablo, Perfecto, Hilado, and Bengzon, JJ., concur.

BRIONES, M., con quien esta conforme PARAS, M., conforme :

Estoy conforme con la parte dispositiva por la unica razon, breve pero lucidamente expuesta en la ponencia, de que cuando hay controversia sobre el titulo de propiedad no debe utilizarse el nombramiento de depositario para per turbar el status quo trasladando la posesion del terreno litigioso de una parte a otra. Solamente cuando el dominio es indisputable—verbigracia, hay de por medio un titulo Torrens—cabe nombrar un depositario para los

fines especificos señalados por la ley, entre ellos principalmente la preservacion del objeto litigioso cuando corre el peligro de dañarse o echarse a perder.

Orders and proceedings declared null and void.

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