

CONRADO ALCANTARA, PETITIONER VS. HON. MACAPANTON ABBAS, PRESIDING JUDGE, BRANCH II OF THE COURT OF FIRST INSTANCE OF DAVAO AND MARTIN T. BACARON, RESPONDENTS.

G.R. No. L-14890. September 30, 1963

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

The Case.—Petitioner seeks to annul the order of the respondent judge removing him as receiver, and appointing Martin T. Bacaron in his place.

Material Facts.—In March, 1957, Alcantara sued Bacaron partly to foreclose the chattel mortgage executed by the latter on a caterpillar tractor with its accessories (Civil Case No. 2282 of Davao). Pursuant to a clause in the mortgage contract, the Davao court designated Alcantara as receiver of the tractor; and he duly qualified Alcantara vs. Hon. Abbas, et al. as such. Thereafter, with the court's approval, he leased the machine to Serapio Sablada. Upon the expiration of the lease, and after Sablada's failure to return the machine, said court at the instance of Alcantara,[1] declared Sablada to be in contempt of court and fined him in the amount of P100.00 on October 6, 1958.

Meanwhile, on October 2, 1958, alleging that Alcantara had neglected his duties as receiver, because he did not get the tractor, Bacaron petitioned the court to relieve such receiver, and to appoint him (Bacaron) as the receiver instead.[2] Opposing the petition, Alcantara made the following manifestations, in a pleading to the court dated November 26, 1958:

"2. That in fact the herein plaintiff-receiver has exerted all efforts to secure the possession of the tractor in question, and has come to court time and again to compel the lessee, Serapio Sablada to deliver the tractor to the receiver, but it seems that even the Honorable Court is at the mercy of said Serapio Sablada;

"3. That in fact, until and unless the tractor is delivered to the receiver as ordered by the Honorable Court, the said Serapio Sablada, is liable to the Honorable Court for continuous contempt in as much as the subject of the contempt is non-compliance with the order of the Honorable Court; * * *

"6. That in view of the attendant circumstances related to the tractor in this case, it is most respectfully prayed that the plaintiff-receiver be immediately authorized to file a case of replevin with damages against, the person of Serapio Sablada, holding his surety bond liable therefor, if proper, as the most legal and expedient procedure to retake the tractor in question.

However, despite the above representations, the respondent judge of the Davao court, in an order dated December .10, 1958, relieved Alcantara and appointed Bacaron as receiver of the tractor, without bond, with authority to receive the sum of P2,000.00 in Alcantara's hands as rentals of the tractor, and to spend the same for repairs if necessary.

His motion to reconsider having been denied, Alcantara filed with this Court the instant special civil action. And

at his request, a preliminary injunction was issued to restrain enforcement of His Honor's aforesaid order of December 10, 1958.

The questions are: (a) the propriety of Alcantara's removal; and (b) the legality of Bacaron's appointment and qualifications.

Discussion.—It appears that acting on the complaint of Alcantara on September 11, 1958, (3) the court required Sablada under pain of contempt, to deliver the tractor on or before September 30, 1958,[3] at the junction of the Davao Penal Colony Road and the National Road going to Agusan in Panabo, Agusan. It also appears that upon Sablada's failure, he was declared to be in contempt on October 6, 1958, and fined P100.00—as previously stated. The order further said .that upon failure to pay in one week, he will be imprisoned for ten days. Lastly, the order directed Alcantara to take steps to recover possession of the tractor, with the admonition that "should he fail to take possession of the tractor within fifteen (15) days after notice thereof, he may be relieved as receiver and the defendant who is willing to be the receiver may be appointed in his place."

Then on December 10, 1958, the court—overlooking or overruling Alcantara's pleading—issued the order now in question, which for convenience is quoted below:

"It appearing that plaintiff-receiver failed to take steps to take possession of the tractor leased to Sablada and bring it to Davao City as directed in the Order of this Court dated October 6, 1958, the plaintiff is hereby relieved as receiver, and in his stead the defendant is hereby appointed as receiver without bond. Upon his qualification as such receiver, the defendant is hereby authorized to receive from the plaintiff the sum of P2,000.00 representing the rentals received by the latter from Sablada for the use of the tractor, and to spend said sum or so much thereof as may be necessary for bringing the tractor to Davao City and for payment of necessary repairs; and the plaintiff is hereby ordered to turn over to the defendant the said sum of P2,000.00 on demand." It is not clear what steps the court had in mind when it declared that "plaintiff-receiver failed to take steps to take possession of the tractor leased to Sablada." It could not have meant that Alcantara failed to take the tractor directly from the hands of Sablada from the place where it was, without resorting to official help. If the . court meant—as it must have meant—that Alcantara failed to exhaust judicial remedies to compel Sablada to comply with the order to place the tractor at the "junction" previously mentioned, then it fell into error, because Alcantara had in effect, suggested that Sablada be held in "continuous contempt" (Annex J) i.e., imprisoned until he placed the tractor at the "junction"; and the court instead of acting accordingly under Rule 64, sec. 7[4] held Alcantara to be negligent, and removed him.

In this connection, it should be observed that in his aforesaid pleading of November 26, 1958, Alcantara even asked for permission to sue Sablada for replevin.

If it was error to remove Alcantara, a clearer error occurred when Bacaron—the defendant—was appointed as receiver without bond, over the objection of Alcantara —the plaintiff. The general rule is that neither party to a litigation should be appointed receiver without the other's consent[5] because "a receiver ought to be an indifferent person between the parties" [6] and "should be impartial and disinterested"[7]. Note that Bacaron was the defendant, and his personal interest would conflict with his duties to the court and the plaintiff.[8] Furthermore, under the Rules of Court, the receiver must file a bond; and yet Bacaron was exempted from such obligation. The effect of the whole proceeding was to discharge the receivership at the request of the defendant, without so much as a bond—contrary to sec. 4, Rule 61, of the Rules of Court.[9]

Conclusion.—Such mistakes causing prejudice to petitioner,, call for interference with that discretion which usually vest in trial courts in the matter of receivership. Consequently, the order of December 10, 1958, should be and is hereby annulled. Costs against respondent Bacaron.

So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] And of Bacaron.

[2] He also complained against Sablada.

[3] And of Bacaron.

[4] Sec. 7. Imprisonment until order obeyed.— When the contempt consist in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it.

[5] Clark on Receivers, 2nd Ed. Vol. I, p. 138.

[6] Moran, Rules of Court, Vol. Ill, 1963 Ed. p. 84 and cases.

[7] 75 Corpus Juris Secundum p. 721.

By the way, Alcantara could be properly appointed, because there was consent of the parties in the chattel mortgage contract. 75 Corpus Juris Secundum p. 722.

[8] Appointment of Defendant as receiver held error.— Penn. Mut. Life vs. Cudd, 172 S.E. 787, 75 Corpus Juris Secundum p. 722

[9] SEC. 4 Denial of application or discharge of receiver on defendant's bond.—* * * The application may also be denied, or the receiver discharged, when the party opposing the appointment files a bond executed to the applicant in amount to be fixed by the court, to effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment.

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