

HARRY LYONS, PETITIONER V.S. HON. JUDGE HIGINIO B. MACADAEG, ANTONIO QUIRINO AND MACARIO M. OFILADA, RESPONDENTS.

G.R. No. L-8172. May 14, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for certiorari to annul an order issued by the Court of First Instance of Manila in Civil No. 22938,

That civil case was riled by Ted Lewin and Ray Lewin against Antonio Quirino, Harry Lyons and Arturo Alafritz for the recovery of P12, 500.00, and as security for the satisfaction of the judgment that might be rendered therein, plaintiffs had preliminary attachment levied on certain properties referred to as the Caledonia Pile, consisting of one lot of tractor crane parts and spare parts owned in common by the defendants in the proportion of two-thirds to Antonio Quirino and the remaining one-third for Harry Lyons and Arturo Alafritz.

At the instance of Quirino and upon sufficient bond to answer for his share of the obligation sued upon, the court on June 7, 1954 ordered the release of his two-thirds share in the properties levied upon, and for the proper implementation of the order the court later issued another one, dated July 6, directing the division of said properties and releasing to Quirino his two-thirds share thereof. But upon receipt of the latter order, Lyons, Alafritz and Quirino appeared before the court and submitted the following stipulation for approval:

"1. That the entire pile of tractor and spare parts now in storage at 1930 Bonifacio Drive, Port Area, Manila, be placed in the possession of Antonio Quirino or his duly authorized representative, with the power to sell the same at such price as may seem most beneficial to the parties; provided, however, that at least, one-third (1/3) of the proceeds of the sale be in cash and the balance in terms not exceeding sixty (60) days; provided that if more time is necessary, the same must be with the express written consent of Harry Lyons, subject to the following conditions:

"(a) The entire proceeds shall be divided into three equal parts, one-third (1/3) to be delivered to the Sheriff of Manila, the same to be kept subject to the outcome of the instant case in so far as it concerns Harry Lyons and Arturo Alafritz; and

"(b) The two-thirds (2/3) to be retained by Antonio Quirino.

"It is expressly understood that before any division of the proceeds is made, the corresponding rentals of the warehouse"; from and after this date, shall be deducted from the said proceeds of sale,

"It is expressly understood that if the attachment with respect to Harry Lyons and Arturo Alafritz is, at any time, lifted, the one-third (1/3) proceeds of sale shall be delivered directly to the aforesaid Harry Lyons and/or Arturo Alafritz."

Forthwith, the court issued an order, dated same day, July 6, 1954, approving the above stipulation and enjoining

compliance therewith”

Alleging tint despite the above order Lyons continued to have possession and control of the properties in question and was disposing of a largo portion thereof without accounting for its proceeds and that through his reckless negligence a substantial portion of the stock had been lost aid stolen, Quirino filed a motion under date of August 26, 1954, asking that the sheriff be ordered to place him in possession of the properties and Lyons on his part to be ordered to account for the sales and for properties stolen while in his possession. Answering the motion, Lyons alleged, by way of defense, that he had already on July 7, 1954 acquired Quirino's rights to two-thirds of the properties in question for the sum of P20,000.00. But at the hearing of the motion, Lyons failed to appear, allegedly because he was then sick arid in the hospital, Aiding the motion well-founded, the court on September 1, 1954 issued an order directing: Lyons to deliver possession of the properties to Quirino, to render a full accounting thereof, including the proceeds of the sales made by him, and to deliver two-thirds of said proceeds to Quirino. The court also designated the sheriff of Manila, or any of his deputies, to enforce the order". Reconsideration of the order having been denied, Lyons filed the present petition for certiorari with injunction, asking that the said order be declared null and void as having been issued in excess of jurisdiction and with grave abuse of discretion.

We find no merit in the petition. It would appear that the last order complained of was only for the enforcement of a previous order rendered at the request of the parties themselves and upon the very terms stipulated by them. There can be no question as to the authority of the court to issue that last order, because, though the properties involved had already been ordered released to Quirino, the release was only for the purpose therein specified, which was that of having them converted into cash and having one-third of the proceeds delivered to the sheriff to answer for the result of the main action in so far as Lyons and Alafriz were concerned. Until that purpose had been realized, the properties could not be considered entirely released from attachment so that the manner of their disposition was still subject to the authority of the court, at least to the authority of seeing to it that its order wax being complied with.

Lyons claims that he has already acquired Qiurino's share of the properties. But the claim, is do nisei and it is not supported by any bill of sale or other document. And anyway, even if what lie claims Is true, he had no right to disobey or interfere with the court's order of July 6, 1954, which was handed dawn at the request of himself and his co-owners, without that order having been first revoked or properly modified.

Wherefore, the petition for certiorari with injunction is denied with costs against the petitioner.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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