

LEONOR ARCEGA, AS SPECIAL ADMINISTRATRIX OF THE TESTATE ESTATE OF BONIFACIA DE GUZMAN, AND ANTONIO MIRANDA, AS JUDICIAL RECEIVER OF THE ESTATE INVOLVED IN CIVIL CASE NO. 74 OF C...*G.R. No. L-1267. July 28, 1947*

Ponente: TUASON, J.

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This application for certiorari contests the discharge of a receiver, it being contended that receivership is necessary. The receiver had been appointed in an ordinary action of ejectment brought by a special administratrix who had been appointed pending the probate of what purports to be the last will and testament of Bonifacia de Guzman, now deceased. The complaint in that action recites that the real property sought to be recovered, consisting of several parcels of land and a house, forms part of the decedent's estate. The discharged receiver is joined with the special administratrix as plaintiff. The defendant, a relative of the testatrix and a devisee in the will, for answer alleges that the parcels and house in question were acquired by him by donation from Bonifacia de Guzman.

In *Calo and San Jose vs. Roldan* (76 Phil., 445), we said that "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." And in the recent case of *Ylarde vs. Enriquez* (p. 527, ante), we applied this doctrine citing other previous decisions:

" 'The appointment of a receiver, because of its drastic nature and of its character as a special remedy under our Code of Civil Procedure, is a power which should be exercised with great caution.' (Philippine Motor Alcohol Corp. and Palanca vs. Mapa, 64 Phil., 714.) 'Where the effect of the appointment of a receiver 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.' (*Mendoza vs. Arellano and B. de Arellano*, 36 Phil., 59.) Of equal application is 'the rule that a court should not, by means of a preliminary injunction, transfer property in litigation from the possession of one party to another * * * where the legal title is in dispute and the party having possession asserts ownership in himself.' (*Gordillo and Martinez vs. Del Rosario*, 39 Phil., 829; *Evangelista vs. Pedreños*, 27 Phil., 648; *Palafox vs. Madamba*, 19 Phil., 444; *Devesa vs. Arbes*, 13 Phil., 273; 53 C. J., 26.) If, save in exceptional cases, a preliminary injunction is improper where real property is involved, receivership is even more so because it is harsher, more drastic and more costly than an injunction. It has been said that 'of all the extraordinary remedies authorized by law, the appointment of a receiver is the most drastic and far-reaching in its effect.' (*Delcambre vs. Murphy*, 5 S. W. [2d], 789-791, cited as a footnote in 53 C. J., 20.)"

There are no special reasons shown here which would warrant the taking of this case out of the above rule. The charge that the deed of donation upon which the defendant predicates his title and possession is a forgery deserves

no greater consideration as ground for the appointment of a receiver than the common run of allegations impeaching the defendant's ownership to the property in litigation. Certainly, the charge does not, without concrete evidence to support it, outweigh the effects of the disputed document which, on its face, is regular in every respect. It may not be irrelevant to bring out the fact that the property under consideration has been in actual possession of the defendant exclusively and under claim of title since 1943, three years before the suit was instituted against him, and that the testatrix does not appear to have left forced heirs or debts to be settled.

At the most, a counter bond with sufficient sureties and adequate to protect the plaintiff from any possible injury consequent upon being deprived of the possession of the questioned lands, (supposing the estate will be finally declared the owner thereof), should satisfy the interest of justice. Once such bond was allowed; and since the defendant himself had offered to put it up and he had made no objection to the increased amount fixed by the court, that bond should not have been disturbed. We think Judge Pecson committed an abuse of discretion in doing away with this convenient security in the face of the defendant's deferential attitude. The following brief outline of the proceeding in connection with the appointment of a receiver will show His Honor's mistake.

On motion of the plaintiff, Judge Pablo Angeles David ordered the appointment of Antonio Miranda as receiver, after which the appointee qualified. The defendant filed a motion for reconsideration and expressed willingness, "in the alternative," to execute a counter-bond for P500. Judge Catalino Buenaventura, who had succeeded Judge Angeles David, accepted the defendant's counter proposal and allowed him to file a bond but raised the amount to P4,000. This time it was the plaintiff's turn to file a motion to reconsider though the subject of her motion was a different order; she asked that Judge Buenaventura's order be revoked and Judge Angeles David's previous order restored. In the meantime Judge Potenciano Pecson had replaced Judge Buenaventura as presiding Judge, and, acting on the last-mentioned motion, he set aside the two previous orders and cancelled the appointment. It is this last order that we are urged to consider.

In its practical result, Judge Pecson's unqualified, sweeping and wholesale revocation of Judges Angeles David's and Catalino Buenaventura's orders affected only the part of Judge Buenaventura's order permitting the execution of a counter bond. Judge Angeles David's order already had been, at least by necessary implication, put out of operation by Judge Buenaventura's order. The latter order, on the other hand, accords in its main feature with Judge Pecson's opinion—that receivership is improper. The only difference between Judge Buenaventura's order and Judge Pecson's order is that the first followed the defendant's suggestion as a measure of compromise while Judge Pecson disapproved even the defendant's gesture of liberality.

In this respect, as we have said, Judge Pecson made a grievous mistake amounting to arbitrariness. It has been seen that not only was the filing of the bond the defendant's own idea, but there was no motion to reconsider or annul it although its amount was greater than that offered by the defendant. It thus appears that the respondent Judge in setting aside Judge Buenaventura's order pertaining to the bond took an action on a matter that was not even before him. Nor did His Honor give the slightest reason for eliminating the security which, as has been seen, the defendant himself had proposed and which is expressly authorized by the Rules of Court. Unless questions of public law, public morals, inalienable rights or other questions of public policy would be jeopardized, courts are not justified in excelling and outdoing the parties in the boundary of what they are willing to concede to each other. The fact that the parties are represented by competent attorneys, as they are in this case, should serve as added check on paternalistic disposition towards litigants on matters of purely private rights and outside the bounds of controversy. The filing of the bond in this case falls under this category and does not, besides, impose any undue hardship on the party giving it.

Petitioners' other subject of complaint is the alleged failure or refusal of the respondent Judge to examine the respondent Macario de Guzman relative to property of the estate he is accused of having concealed, etc. Macario

de Guzman, through his attorney, answers this allegation and states that the court below "granted the examination, but only with respect to three lots of the many lots involved, in its order of September 27, 1946." He further avers that "at the hearing of the case on January 24, 1947, the explanations were made by Macario de Guzman, through counsel, to the effect that one lot is claimed by him as his own being included in the donation, annex 4-A hereof; while the other two lots not being mentioned in the donation, are not claimed by him." Without deciding whether the proceeding thus conducted complies with the provision of section 6 of Rule 88, which says that "the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint," and without deciding whether the duty of the judge to make the examination upon the filing of a complaint is or not mandatory, we are satisfied that certiorari is not an appropriate remedy to compel a judge to perform his duty under the aforecited rule.

Our conclusion is that the petition will be granted in so far as the order under review discards and sets aside the counter-bond which Judge Buenaventura permitted to file in lieu of the appointment of the receiver and that in all other respects the said petition will be denied. It is so ordered, without costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Hontiveros, and Padilla, JJ., concur.

RESOLUTION ON MOTIONS FOR RECONSIDERATION

August 26, 1947

TUASON, J.:

Petitioners have filed two motions for reconsideration dated August 14 and 15, respectively, 1947. The last motion goes to the merits of the application for certiorari. The argument adduced therein is in substance a reiteration of that submitted by petitioners in their lengthy petition and lengthy memorandum filed before the decision was rendered, argument which we weighed and considered carefully. We find no cause to change our conclusion on the inadvisability of appointing a receiver in this case.

The other motion complains that we have not decided petitioners' urgent motion of March 12, 1947, in which they requested that (1) an order be issued directing respondent De Guzman to deliver to the receiver 700 cavanes of palay allegedly harvested by him from the lands in question, and (2) that the said respondent be ordered to show cause why he should not be punished for contempt. There was another prayer which this court denied outright "because similar remedies had been previously denied in the same proceedings, respondent Arcega (De Guzman) being apparently in possession of the land." This prayer asked that a preliminary injunction be issued restraining Arcega (De Guzman) and his agents from interfering with the alleged possession by Antonio Miranda of the lands in dispute.

Since the appointment of Antonio Miranda as receiver had been vacated by the orders of Judges Buenaventura and Pecson, and Macario de Guzman (Arcega) was in lawful possession of the lands, this respondent committed no contempt of court in harvesting the crops which he had planted on the said lands. The mere fact that the lands were involved in a proceeding pending before this court did not prohibit the possessor from doing the acts charged.

As to the delivery of the palay to the former receiver, the matter was necessarily embraced by the decision of this court denying the petition for certiorari and affirming the discharge of the receiver. The decision amounted to a declaration that the respondent was entitled to reap the products of the lands as well as to keep and use the lands during the pendency of the suit for ejectment.

The motions for reconsideration are denied for lack of merits.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, and Padilla, JJ., concur.

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