

LAURO P. LEVISTE, PETITIONER VS. EUSEBIO F. RAMOS, JUDGE OF THE EIGHT JUDICIAL DISTRICT, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ORIENTAL MINDORO, T...*G.R. No. L-14769. November 29, 1960*

Ponente: PADILLA, J.

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This is a petition under Rule 67 for writs of certiorari and mandamus to annul an order of the Court of First Instance of Oriental Mindoro denying his petition for appointment of a receiver in civil case No. R-802 and to compel the court to appoint one.

In a verified complaint dated 9 July 1958 filed in the Court of First Instance of Oriental Mindoro, Lauro P. Leviste, the petitioner, seeks to recover from the respondents possession of a parcel of land situated at barrio Ina-rawan, municipality of Naujan, province of Oriental Mindoro, Lot No. 5013, Cad-200-Ext., S. A. No. 22196, containing an area of 132 hectares, 26 areas and 83 centares, covered by original certificate of title No. P-706, issued in his name upon a patent by the Registrar of Deeds of Oriental Mindoro; to secure a judicial declaration that he is the owner of the plants and trees sown or planted and buildings constructed thereon in bad faith by the respondents; to collect the sums of P12,000 as actual damages for the value of the crops that he had failed to gather or harvest as a result of the respondents' unlawful occupation of the parcel of land, P35,000 as moral damages, P3,300 as expenses of litigation including attorney's fee, incurred by the petitioner in defending his rights thereto in the administrative case commenced by the respondents, and P3,500 as expenses of litigation including attorney's fee, incurred by him in this suit. The petitioner further prayed for the appointment of a receiver, preferably Gabriel Fernandez of Inarawan, Naujan, Oriental Mindoro, of the "crops, plants and improvements sown and/or planted, or otherwise constructed." (Annex A.) The respondents an answer to the complaint with a counterclaim of P15,000 as moral damages, P900 for attorney's fee and for "expenses M litigation (Annex B). On 16 August 1958 the respondent court denied the petitioner's motion for appointment of a receiver (Annex C). The petitioner moved for reconsideration of the foregoing order (Annex D). On 4 November 1958 the respondent court denied the petitioner's motion for reconsideration (Annex E).

The petitioner claims and contends that the respondent court graveljr abused its discretion in denying his petition for appointment of a receiver and that he has no other plain, speedy and adequate remedy in the ordinary course of law.

A receiver of property in litigation may be appointed by a competent court where the action is pending "When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund willed is the subject of the action, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to guard and preserve it," or "Whenever in other cases 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." [1] The appointment of a receiver largely lies in the discretion of the court to which application is made; [2] and should be made only when there is no other means by which the rights of the petitioner could be protected. [3] Just as a writ of preliminary injunction should not be issued to put a party in possession of the property in litigation and to deprive another party who is in possession thereof, except in a very clear case of evident usurpation, so also a receiver should not be appointed to deprave a party who is in possession of the property in litigation. [4] In an action for ejectment where there is no claim on the crops, a receiver cannot be appointed to take charge of the crops. [5] Conversely, where the fruits of the land are claimed, a receiver thereof may be appointed, but such power should be sparingly used. [6]

Bearing in mind the foregoing rules evolved by this Court on receivership, it is difficult to conceive how the respondent court may be held to have gravely abused its discretion in denying the petitioner's motion for appointment of a receiver. In his complaint the petitioner avers that sometime in 1955 the respondents entered upon the parcel of land without previous authority from him and over the objection of his overseer, and cultivated it. One of the remedies he prays is that he be declared owner of the crops, plants and trees sown or planted and buildings constructed thereon in bad faith by the respondents. In their answer, the respondents claim that since 1951 they have been in actual possession and occupation of the parcel of land when it was still virgin forest and that believing that it was of the public domain, they made clearings thereon for the purpose of cultivation without molestation from no one. As the good faith or bad faith of the respondents is yet to be determined by the respondent court, the status of the parties in relation to the crops plants, trees and buildings sown and erected thereon should not be disturbed until after the case shall have been fully decided.

The writs prayed for are denied, with costs against the petitioner.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur..

Writs denied.

[1] Section 1(b) and (e), Rule 61.

[2] *Mendoza vs. Arellano*, 36 Phil., 59; *Lama vs. Apacible*, 79 Phil., 68; *Laeson vs. Hodges*, 80 Phil., 216; *Go Tecson vs. Macadaeg*, 88 Phil., 604; *Calderon vs. Aquino*, G. R. No. L-4118, 31 January 1952; *Medel vs. de Aquino*, 92 Phil., 895; 49 Off. Gaz. (8) 3336.

[3] *Lacson vs. Hodges*, *supra*.

[4] *Municipality of Camiling vs. de Aquino*, 103 Phil., 128; 54 Off. Gaz. 4716; see *Ylarde vs. Enwquez*, 78 Phil., 527.

[5] *Valenton vs. Murciano*, 3 Phil., 537.

[6] *Almarez vs. Florentine* 46 Phil., 407, 408.

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