

INES SAPONG CASEÑAS AND AGUSTIN O. CASEÑAS, PLAINTIFFS AND APPELLANTS, VS. RICARDO JANDAYAN, DEFENDANT AND APPELLEE.

G. R. No. L-17593. May 24, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Agusan, Hon. Montano A. Ortiz, presiding, dismissing the complaint filed by plaintiffs upon motion of defendant.

The facts alleged in the complaint may be briefly summarized as follows: That plaintiff Ines Spong Caseñas is in actual and material possession and occupation of a parcel of land known as lot No. 412 of the cadastral survey of Butuan, her possession thereto having been peaceful, continuous, open, etc., devoting a portion of the land to the cultivation of palay; that said plaintiff has declared the land in her name for taxation purposes and paid taxes thereon; that in July, 1957, the said plaintiff filed a free patent application with the Bureau of Lands for the land described above; that while said petition was pending the defendant through force, threat, intimidation, strategy and stealth, entered upon a small portion of the land and succeeded in building a house thereon with a nipa roof; that because of this entry plaintiffs filed an action of forcible entry against the defendant in the municipal court of Butuan City, but this case is still pending before the said court; that in June, 1959, the Director of Lands ordered the investigation of the free patent application of plaintiff Ines Spong Caseñas and so the Lands officer informed said plaintiff and Pilar Piencanaves Vda. de Jandayan, in representation of Juan Jandayan, to appear for investigation in Butuan City on July 28, 1959; that Juan Jandayan had allegedly filed a homestead application over the land since 1951, having possessed the land since 1938 until his death, and that upon his death his heirs succeeded him thereto; and that the widow and children of said Jandayan had filed a homestead application for six months after plaintiff Ines Spong Caseñas had filed her free patent application.

The most important allegations of plaintiffs' complaint are contained in paragraphs 11 and 14 which are herein-below quoted for purposes of clarity.

"That in or about the month of June, 1959, before the commencement of the investigation ordered by the Director of Lands and set for hearing on July 28, 1959, by the District Land Officer at Butuan City, the herein defendant, emboldened to be sure by the dismissal of the forcible entry case against him mentioned in paragraphs VI and VII above, employing again force, threat, intimidation, stealth and strategy, entered upon another area of about two (2) hectares of the land in question, over the protest of plaintiff Ines Spong Caseñas through her overseer and tenant, the area newly usurped being rice land and coconut land located alongside the Buenavista-Butuan Provincial Road, and by force, threat, intimidation, stealth and strategy, and over the protest of said plaintiff, caused the said area to be plowed and planted to palay and had the fruits of the coconut trees gathered, converted the same to his own exclusive use; and intends and threatens to gather the harvest of palay on the land also by force, threat and intimidation, for his own exclusive use, to the great damage and prejudice of the herein plaintiffs,

unless restrained on time by this Honorable Court."

* * * * *

"That the defendant, taking advantage of the delay in the termination of the investigation referred to above and relying on mere brute force and on his being related to a member of the Philippine Constabulary now stationed at Butuan City, is committing, threatens or is about to commit a new incursion and usurpation by entering by force, threat, intimidation, stealth and strategy upon the remainder of the cleared and cultivated portion of about twelve (12) hectares of the land in question; and is building, threatens or is about to build another house thereon, the materials of which can now be seen piled in the premises, all in flagrant violation of the plaintiffs' rights respecting the subject of the action and of the investigation being conducted by the District Land Officer at Butuan City, upon order of the Director of Lands, as above alleged, which investigation has not yet been finished and terminated, and tending to render the judgment or decision that may be rendered by the Director of Lands after the conclusion of said investigation, ineffectual and illusory."

The prayer of the complaint is for a writ of preliminary injunction to issue against the defendant to prevent him from building another house on the land, or from performing any work thereon such as cultivation, ploughing, or planting or gathering the harvest, during the pendency of the investigation conducted by the Bureau of Lands, etc.

The defendant having been summoned, he promptly filed a motion to dismiss alleging that assuming without admitting that plaintiffs had a valid cause of action the same is barred by the pendency of another action and that the court has no jurisdiction over the subject matter. Plaintiffs' counsel opposed the motion for dismissal. After a hearing the court dismissed the complaint reasoning as follows:

"The Court believes and so holds that an independent action of injunction is not the remedy. Since the issue herein is physical, actual and natural possession from which the plaintiffs were allegedly deprived by force, threat, intimidation, stealth and strategy, the plaintiffs should have filed a case of forcible entry in the inferior court with a petition for preliminary injunction. This Court could very well disregard the title of the herein complaint by considering it as forcible entry but this cannot be done because the acts of illegal occupation were committed on June 19, 1959, within the period of one year after the unlawful deprivation, and this falls within the exclusive jurisdiction of the inferior courts."

It is against the above order of dismissal that this appeal has been prosecuted.

In this Court, counsel for plaintiffs-appellants argues that the proper action that plaintiffs have is one of preliminary injunction and not forcible entry and detainer. It is further argued that under paragraph 14 of plaintiffs' complaint, defendant is committing a new incursion and usurpation and is building or threatening to build another house, while in paragraph 15 it is alleged that plaintiffs are entitled to the relief prayed for, which consists in restraining the commission or continuance of the acts complained of; and in paragraph 16 it is alleged that great and irreparable injury would result to the plaintiffs unless a preliminary injunction is issued ex parte.

The above argument of plaintiffs-appellants' counsel would be correct if the above allegations are the only ones made in the complaint. But paragraph 11 thereof alleges that in June, 1959 defendant employed force, threat, intimidation, stealth and strategy to enter upon an area of two hectares of the land in question; and in paragraph 14, it is alleged that the defendant threatens or is about to commit a new incursion and usurpation by the same means. So that according to the plaintiffs' complaint, defendant entered upon the land in June, 1959, and continues occupying or usurping possession of said land of the plaintiffs; so that the defendant is committing a continuing usurpation or occupation and not an isolated act of usurpation or entry in June, 1959 and another at a later date.

The remedy of the plaintiffs is clearly an action of forcible entry and detainer under Rule 72. In connection with the continuance of the acts of usurpation and entry, these need not be the subject of another action but may be

remedied under Section 3 of Rule 72 of the Rules of Court, which reads as follows:

"Sec. 3. Preliminary injunction.—The Court may grant preliminary injunction, in accordance with the provisions of Rule 60 hereof, to prevent the defendant from committing further acts of dispossession against plaintiff."

It is, therefore, clear that the remedy of the plaintiffs is an action of forcible entry and detainer, and in the said action he may secure the writ of preliminary injunction that he prays for in the complaint.

There is another reason for dismissing the action, and that is the fact that there is a pending action for forcible entry and detainer filed by the plaintiffs against the defendant. In view of the pendency of this action the plaintiffs should not have been permitted to file another action in view of the principle against the multiplicity of suits.

For all the foregoing, the order dismissing the complaint should be, as it hereby is, affirmed, without costs.

Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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