

**AGRIPINO JOCSON, PETITIONER, VS. ESPERIDION PRESBITERIO,
ESTANISLAO HECHANOVA, AND HONORABLE EDUARDO D.
ENRIQUEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, RESP...**

G.R. No. L-7684. May 10, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner Agripino Jocson is one of the defendants in Civil Case No. 1948 of the Court of First Instance of Negros Occidental, entitled "Esperidion Presbiterio vs. Jesus M. Mascuñana and Agripino Jocson," for the recovery of a sum of money. Upon the petition of plaintiff therein, the court issued a writ of preliminary attachment, pursuant to which lot No. 3082 of the San Carlos Cadastre—with certificate of title No. 30779 (RT-5342), of the office of the Register of Deeds of the province of Negros Occidental, in the name of the defendants in said case, Jesus Mascuñana and Agripino Jocson, in the proportion three-fourths share and one-fourth share respectively—was levied upon. After due trial, said court rendered judgment in June, 1953, the dispositive part of which reads as follows:

"En su virtud, el Juzgado dicta sentencia en esta causa condenando a los demandados a pagar mancomunadamente al demandante la cantidad de P400.00, con sus intereses legales desde la fecha de la presentacion de la demanda a devolver tambien mancomunadamente, al demandante 155 cavanos de palay, o en su defecto, a pagar su importe de P1,550 con sus intereses legales desde la fecha de la presentacion de la demanda; y, finalmente, a pagar mancomunada y solidariamente, al demandante la suma adicional de P1,326.57, con su intereses de 6 por ciento anual desde el dia 5 de Marzo de 1947 hasta su completo pago y pagar las costas del presente juicio. Asi se ordena."

A motion of Jocson for the reconsideration of said decision having been denied, he perfected his appeal therefrom, by filing the corresponding notice of appeal, appeal bond and record on appeal, which was approved on August 15, 1953. Thereafter, the record was forwarded to the Court of Appeals, where it is now pending as case CA-G. R. No. 11833-R. On January 22, 1954, Presbiterio, the plaintiff in said case, filed, with the Court of First Instance of Negros Occidental, a petition for the appointment of respondent Estanislao Hechanova "as receiver of the property, Lot No. 3082 of San Carlos Cadastre and the crops thereof in order to preserve and conserve the same during the pendency of the appeal." Despite Jocson's opposition thereto, the petition was granted by said court, presided over by Honorable Eduardo Enriquez, Judge, by an order dated March 10, 1954. Soon thereafter, or on March 24, 1954, Jocson instituted the present case against Esperidion Presbiterio, Estanislao Hechanova and Honorable Eduardo D. Enriquez, as Judge of First Instance of Negros Occidental. In his petition, Jocson prayed for a writ of certiorari and prohibition to annul said order of March 10, 1954, upon the ground that respondent Judge was without jurisdiction to issue the same. The petition contained, also, a prayer for a writ of preliminary injunction enjoining said respondent, as well as respondent Hechanova, respectively, from enforcing the order aforementioned and assuming the office of receiver. Although, by a resolution dated April 27,

1954, we ordered "that, upon the filing by the petitioner of a bond of P500, the writ of preliminary injunction prayed for in the petition be issued," said writ was not issued, for failure of the petitioner to file said bond. This inaction on the part of petitioner is seemingly due to the circumstance, set forth in respondents' answer, that Estanislao Hechanova had, meanwhile, assumed office as receiver and taken possession of the property already referred to. Respondents, likewise, maintain that respondent Judge had full authority to issue the order complained of.

The issue thus raised by the pleadings is whether the Court of First Instance of Negros Occidental has jurisdiction to appoint a receiver while the main case is pending before the Court of Appeals, on appeal taken from the decision of the first court. In this connection, Rule 61, section 1, of the Rules of Court provides:

"One or more receivers of the property, real or personal, which is the subject of the action, may be appointed by the judge of the Court of First Instance in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court, in the following cases:

(a) When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

(b) 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 which 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;

(c) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(d) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment debtor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

(e) 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."

Respondents maintain that subdivision (d) of this section justifies the order complained of, whereas petitioner argues that said provision is applicable only when the receiver is appointed by the court "in which the action is pending"—in the words of the opening paragraph of said section 1—and that the main case between the parties is now pending in the Court of Appeals, not in the Court of First Instance of Negros Occidental. This question has already been settled in the case of *Velasco & Co. vs. Go Chuico* (28 Phil., 39), in which it was said:

"We are of the opinion that, although the case has been appealed and the appeal perfected, the Court of First Instance still has the power to hear and decide an application for the appointment of a receiver. It may be contended against the jurisdiction of the Court of First Instance that no action was pending in that court to which the petition for the appointment of a receiver could become ancillary and that an appeal from the original judgment to this court had been perfected, the allowance of the bill of exceptions having the effect to stay all further proceedings in the case. In reply to such contention we might say that, although the cause has been appealed to the Supreme Court, it may be regarded as yet pending for the purpose of an application for a receiver and we are of the opinion that the court that rendered the decree appealed from is the proper court to hear and determine such an application. The office of a receiver is manifestly to aid, by the preservation of property, in making effective the court's decree. It has always been regarded as an auxiliary or ancillary proceeding and rarely, if ever, as an independent one. If occurrences arise after decree which threaten the effectiveness of the decree, the court has the power then to make the appointment. The questions raised on the

appointment of a receiver do not involve any matter litigated by the appeal. (Brinkman vs. Ritzinger, 82 Ind., 358; Chicago & Southeastern Railway Co. vs. St. Clair, 144 Ind., 371; Moran vs. Johnston, 26 Grat., Va., 108; Adkins vs. Edwards, 83 Va., 316.)" (Italics supplied.)

What is more, even though the court in which the main suit is pending on appeal may, undoubtedly, appoint a receiver, in appropriate cases, it was declared, in the Velasco case, that the question of receivership had better be taken up with the court of origin, for:

"Even though we held that this court has authority to appoint a receiver in an action pending on appeal, we should not exercise that authority under the facts and circumstances of this case. This court is not provided with adequate resources and machinery for dealing with the situation presented by the appointment of a receiver and all of the details connected therewith. It would impose upon us obligations and duties which we are not fully prepared to discharge and which we are not called upon to meet under the circumstances." (Italics supplied.)

The philosophy of the rule laid down in the Velasco case was reiterated in the case of Dizon vs. Moir (36 Phil., 759), in which it was held:

"That a judge of the Court of First Instance does not exceed his jurisdiction or authority by approving a contract of rent, voluntarily entered into by the parties, of property in litigation after an appeal has been perfected."

It is clear, therefore, that petitioner's claim can not be sustained, for which reason, the petition is hereby denied, with costs against the petitioner. It is so ordered.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

Petition denied.

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