

**SALVADOR SERRA SERRA, HEIRS OF GREGORIO SERRA SERRA,
REPRESENTED BY CARMELO IMAZ, AS SPECIAL ADMINISTRATOR
OF THE ESTATE OF GREGORIO SERRA SERRA, MARGARITA SERRA
SERRA, FRANCISC...**

G.R. No. L-34080. March 22, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

These consolidated petitions under Rule 65 seeks the issuance of the following writs:

"G.R. No. L-34080

"a) Certiorari - To annul and set aside the Resolution of the respondent Court of Appeals, promulgated on August 3, 1971, setting aside the writ of preliminary injunction it previously issued on June 7, 1971 in CA-G.R. No.00139-SP, entitled 'Salvador Serra Serra, et al., Petitioners, vs. Hon. Carlos Abiera, et al., Respondents.' x x x.

"b) Prohibition - To enjoin private respondents, respondent Judge Carlos Abiera and respondent Provincial Sheriff of Negros Occidental or his deputies or representatives from further dispossessing petitioners of Lot No. 1316 of Kabankalan Cadastre and Lot Nos. 2685 and 717 of Ilog Cadastre.

"c) Mandamus - Directing private respondents to immediately restore petitioners in possession of Lot No. 1316 of Kabankalan Cadastre and Lot. Nos. 2685 and 717 of Ilog Cadastre." (pp. 1-2, Rollo of G.R. L-34080)

"G.R. No. L-34693

"a) Certiorari - To annul and set aside the Orders of the respondent Judge Nestor B. Alampay, issued on November 29, 1971 and December 29, 1971, in Civil Case No. 10040 of the Court of First Instance of Negros Occidental entitled 'Salvador Serra Serra, et al. v. Felipe Garaygay, et al.' The Order of November 29, 1971 dissolved the writ of preliminary injunction previously issued by Executive Judge Cesar Kintanar enjoining private respondent SONEDCO from issuing and delivering sugar quedans to private respondent Felipe Garaygay, while the Order of December 29, 1971 directed the issuance of the writ of preliminary injunction enjoining petitioners from harvesting, hauling and selling sugar canes from Lot Nos. 717 and 2685 'Ilog Cadastre' and Lot No. 1316 'Kabankalan Cadastre.' As hereafter shown, both Orders were issued with grave abuse of discretion and in utter violation of the resolution of this Honorable Court of Appeals adopted on September 24, 1971 in G.R. No. L-34080, entitled 'Salvador Serra Serra, et al. v. Hon. Court of Appeals, et al.'

"b) Prohibition - To enjoin respondents, their agents, deputies or representatives from interfering in any manner with petitioners' right of possession of Lot Nos. 717 and 2685 'Ilog Cadastre' and Lot No. 1316 'Kabankalan Cadastre.'

"c) Mandamus – To compel private respondent Felipe Garaygay to return to petitioners the value of the sugar canes covered by the sugar quedans issued and delivered to him by respondent SONEDCO." (pp. 1-2, Rollo of G.R. No. L-34693)

The facts are as follows:

On December 27, 1967, Primitivo, Rogaciana and Luisa, all surnamed Hernaez (Hernaezes, for brevity) filed with then CFI of Bacolod City a petition for reconstitution of allegedly lost original certificates of title in the name of their predecessor-in-interest, Eleuterio Hernaez, covering Lot No. 1316 of Kabankalan Cadastre and Lot Nos. 2685 and 717 of Ilog Cadastre, all in the Province of Negros Occidental. The petition was supported by a certification from the Register of Deeds, Bacolod, Negros Occidental, that no certificates of titles had been issued covering the properties. The petition was docketed as Cadastral Case No. 17, GLRO Records No. 163 (Annex "J").

On April 6, 1968, the petition was granted and the Register of Deeds of Negros Occidental issued on May 6, 1969 reconstituted original certificates of title nos. RO-10173 [N.A.]; RO-10174 [N.A.] and RO-10175 [N.A.] for Lot Nos. 1316, 2685 and 717, respectively. On May 29, 1969, these reconstituted original certificates of title were cancelled upon presentation by the Hernaezes of a "declaration of heirship" and in lieu thereof, TCT Nos. T-51546, T-51547 and T-51548 were issued in their names.

Upon learning of the existence of the above transfer certificates of title, Salvador Serra Serra, for and in behalf of his co-heirs (Serras, for brevity), filed with the Registry of Deeds an adverse claim against the reconstituted certificates of title in the name of the Hernaezes. They also filed in Cadastral Case No. 17, GLRO Records No. 163, a motion for cancellation of said certificates of title (Annex "L"), claiming that they are holders of valid existing certificates of titles and that they are in actual possession of the properties covered by the reconstituted certificates of titles since before the war. The motion was forwarded to the Court of First Instance of Himamaylan, Negros Occidental, then presided by Judge Carlos Abiera, where the lots are situated. The Hernaezes sought the dismissal of the motion for cancellation (Annex "M"). On March 16, 1970, Judge Abiera denied the motion for cancellation (Annex "O") without conducting a formal hearing. The order denying the motion was received by the Serras only on November 4, 1970. They moved for a reconsideration of the denial. On March 27, 1971, the Hernaezes filed a motion with the trial court of Himamaylan for execution of the order of the Bacolod court in the cadastral case granting the petition for reconstitution. The motion prayed that they be placed in possession of the subject properties. On April 29, 1971, the trial court denied Serras' motion for reconsideration of the denial of their motion for cancellation of the reconstituted certificates of title (p. 87, Rollo of G.R. No. L-34080). On May 7, 1971, the Himamaylan court issued the writ of possession prayed for (p. 91, Rollo of G.R. No. L-34080).

On May 12, 1971, the Serras challenged the legality of the issuance of the writ of possession before the Court of Appeals in a petition for certiorari, docketed as CA-G.R. No. SP-00139. They alleged that the order was issued with grave abuse of discretion and therein prayed that the order denying the motion for cancellation of the reconstituted certificates of titles as well as the writ of possession be nullified (Annex "T").

On May 21, 1971, the Court of Appeals gave due course to the petition and required the Hernaezes to answer (p. 100, Rollo of G.R. No. L-34080). A writ of preliminary injunction was issued upon the filing of a bond by petitioners in the amount of P500.00. On June 16, 1971, the Serras filed an ex-parte motion for the dissolution of the writ of preliminary injunction which was granted on August 3, 1971. On August 13, 1971 petitioners filed a motion for reconsideration of the order dissolving the writ. The motion was denied on August 23, 1971. From the resolution denying reconsideration, petitioners brought this petition docketed as G.R. L-34080.

Petitioners alleged that respondent Court of Appeals gravely abused its discretion when it set aside the writ of preliminary injunction previously issued thereby giving effect to the writ of possession issued by the trial court. They argued that the questioned dissolution of the writ was tantamount to an adjudication on the merits of the main petition which involves the issue of possession. The lifting of the writ was allegedly premature. They also

claimed that the order of the trial court for the issuance of a writ of possession over the disputed lots in favor of private respondents is void because a writ of possession in a cadastral proceeding can only be issued pursuant to a final decree of registration and not, on the basis of an order denying a motion to cancel certificates of title.

On September 24, 1971, the Court required respondents to answer the petition and to show cause why no mandatory injunction should issue requiring them to immediately return to petitioners whatever they might have received in the implementation of the writ of possession. On September 28, 1971, a preliminary prohibitory injunction was issued upon the posting of a bond by petitioners in the amount of P10,000.00 ordering respondents to desist from further dispossessing petitioners of the lots in question until further orders (p. 145, Rollo of G.R. No. L-34080).

While G.R. L-34080 was pending in this Court, on October 11, 1971, the Serras filed with the Court of First Instance of Negros Occidental, Civil Case No. 10040 against Felipe Garaygay and SONEDCO (Southern Negros Development Corp.). The complaint alleged that Garaygay cut, hauled and milled with SONEDCO's sugar central, sugarcane owned by the plaintiffs. The complaint also prayed for the delivery of sugar quedans covering several truckloads of sugarcane harvested by Garaygay on Field 17, Lot No. 4726 of the Kabankalan Cadastre that were entrusted by him to the corporation for milling; and for the issuance of a writ of preliminary injunction to restrain the corporation from issuing the quedans to Garaygay. The prayer for a writ of preliminary injunction was granted by Judge Cesar Kintanar, Executive Judge of the Court of First Instance of Negros Occidental, on October 12, 1971 (p. 312, Rollo of G.R. No. L-34080).

The case was raffled to the sala of Judge Nestor Alampay. On October 17, 1971, Felipe Garaygay, who claimed that he obtained from the Hernaezes a contract to harvest and dispose of the sugar canes produced from the disputed lots, filed a motion to dismiss the complaint. On October 18, 1971, Garaygay filed a motion to dissolve the writ of preliminary injunction issued by Judge Kintanar. On November 29, 1971, the trial court dissolved the writ of preliminary injunction dated October 12, 1971 (p. 331, Rollo of G.R. No. L-34080). In the same case, Garaygay filed an urgent motion dated December 17, 1971 for the issuance of a writ of preliminary injunction against the Serras who allegedly harvested and thereafter planted sugarcane on the lots disputed contrary to the intention of this Court in its resolution of September 28, 1971 that the parties maintain the status quo. On December 29, 1971, the trial court issued the writ against the Serras (p. 343, Rollo of G.R. No. L-34080). The motion for reconsideration filed by them was denied on January 12, 1972 (p. 357, Rollo of G.R. No. L-34080).

Petitioners challenged both orders (November 29, 1971 and December 29, 1971) before this Court thru G.R. No. L-34693. They assailed that both orders of respondent Judge Alampay were issued with grave abuse of discretion. They claimed that the writ of injunction issued by respondent judge on October 12, 1971 was aimed to preserve their rights pending determination by this Court in G.R. No. L-34080 of their prayer for the issuance of a writ of preliminary mandatory injunction. The dissolution of the said writ disturbed the status quo and allowed private respondent Garaygay to obtain possession of the sugar quedans from SONEDCO. Petitioners also asserted that the December 29, 1981 order of respondent judge for the issuance of a writ of preliminary injunction against them and their representatives blatantly defied the resolution of this Court dated September 28, 1971 in G.R. No. L-34080 which enjoined private respondents Hernaezes, their representatives and/or agents from executing further acts of dispossessing them of the lots in questions.

On February 15, 1972, the Court ordered the consolidation of G.R. No. L-34080 and G.R. No. L-34693 and the issuance of a temporary restraining order restraining respondent Judge Nestor Alampay, his representatives, assigns, or persons acting upon his order and the Hernaezes, their agents, representatives and successors-in-interest from interfering in any manner with petitioners right of possession of Lots Nos. 717 and 2685 (Ilog Cadastre) and Lot No. 1316 (Kabankalan Cadastre) and directed private respondent Garaygay to return

to petitioners the value of the sugarcanes covered by the sugar quedans which were released to him by SONEDCO (p. 359, Rollo of G.R. No. L-34080). The petitions were heard (p. 397, Rollo of G.R. No. L-34080) on July 25, 1972 after which they were deemed submitted for decision (p. 401, Rollo of G.R. No. L-34080).

The issue in this petition is whether or not the Court of Appeals acted with grave abuse of discretion when it lifted the writ of preliminary injunction it previously issued. The main petition in the Court of Appeals, CA-G.R. No. SP-00139, questioning the propriety of the issuance of a writ of possession by the trial court has not been resolved to date and the issue before Us cannot be resolved without resolving also the issue in the Court of Appeals. Therefore, We deemed it proper to resolve also the issue on the propriety of the issuance of the writ of possession by the trial court in this petition.

After studying the first petition carefully, We hold that the issuance of the writ of possession by Judge Abiera after the motion for cancellation of the reconstituted certificates of title filed by petitioners was dismissed and under the circumstances obtaining in this case, was not proper. Consequently, the lifting of the previously issued writ of preliminary injunction by the respondent appellate court, resulting in the enforcement of the writ of possession issued by the trial court and the dispossession of the petitioners of the subject properties was a grave abuse of discretion amounting to a lack of jurisdiction.

In the case of *Mabale v. Apalisok*, L-46942, February 6, 1979, 88 SCRA 247, this Court enumerated the cases where a writ of possession may be issued:

"In that connection, it should be borne in mind that the law specifies when a writ of possession may be issued. That writ is available (1) in a land registration proceeding, which is a proceeding in rem (Sec. 17, Act. No. 496; *Estipona v. Navarro*, L-41825, January 30, 1976, 69 SCRA 285, 291); (2) in an extra-judicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135); (3) in a judicial foreclosure of mortgage, a quasi in rem proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened (*Rivera v. Court of First Instance of Nueva Ecija and Rupac*, 61 Phil. 201; *Ramos v. Mañalac and Lopez*, 89 Phil. 270, 275) and (4) in execution sales (last par. of Sec. 35, Rule 39, Rules of Court).

"Since the instant case does not fall among the cases mentioned above, the issuance of the writ of possession was not proper (*Gatchalian v. Arlegui*, L-35615 and L-41360, February 17, 1977, 75 SCRA 234, 244).

In a land registration case, a writ of possession may be issued only pursuant to a decree of registration in an original land registration proceedings "not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up to the issuance of the decree." (*Lucero v. Loot*, G.R. No. L-16995, October 28, 1968, 25 SCRA 687; *Marcelo v. Hon. Mencias*, L-15609, April 29, 1960; *Demorar v. Hon. Ibañez and Paras*, G.R. No. L-7595, May 21, 1955, 97 Phil. 72). It cannot however, be issued in a petition for reconstitution of an allegedly lost or destroyed certificate of title. Reconstitution does not confirm nor adjudicate ownership over the property covered by the reconstituted title as in original land registration proceedings where, in the latter, a writ of possession may be issued to place the applicant-owner in possession.

The purpose of the reconstitution of any document, book or record is to have the same reproduced, after observing the procedure prescribed by law in the same form they were when the loss or destruction occurred. The reconstitution of certificates of title should be made, as just stated, in the same form and exactly as they were at the time they were lost or destroyed, x x x (*Gov't. of the Philippine Islands v. Abada*, 48 O.G., p. 1872, April 1952). A person who seeks a reconstitution of a certificate of title over a property he does not actually possess cannot, by a mere motion for the issuance of a writ of possession, which is summary in nature, deprive the actual occupants of possession thereof. Possession and/or ownership of the property should be threshed out in a separate

proceeding.

It should be noted also, that the motion for cancellation of the reconstituted titles filed by the petitioners in the cadastral case, contained serious charges against the reconstitution proceedings which, if proven would result in the nullity of the reconstituted titles. The motion alleged:

"That there had never been at any time decreed or any title issued in favor of Eleuterio Hernaez over said lots which were in fact decreed and titled originally in favor of the deceased Isabelo Javellana and Salvador Serra whose successors-in-interest, the herein movants, hold subsisting transfer certificates of title and who are actually in possession and owners of all improvements and buildings of said lands since before the War continuously up to the present; the lands are declared for tax purposes in their names and taxes paid by them; neither Eleuterio Hernaez, alleged predecessor-in-interest, nor the alleged heirs who had fraudulent titles transferred in their names, declared the lands for tax purposes nor paid any land tax up to the present;

"That the Hon. Court has been misled by the petitioners for reconstitution, Messrs. Primitivo and Rogaciana Hernaez, into ordering the reconstitution of the so-called lost certificates of title which were NON-EXISTENT in the first place by:

- Not specifying, contrary to the requirements of Sec. 12 of Rep. Act No. 26, the names and addresses of the actual occupants or persons in possession of the property and, instead of the real adjoining owners, giving the names of fictitious persons who naturally could not be located and hence NO notice was cause to be sent to the herein movants-owners who were completely ignorant of the entire proceedings.

- Surreptitiously hiding from the Hon. Court the fact that these same parcels of land were formerly the subject of said petitioners' attempt to include them in the estate of Eleuterio Hernaez under Spec. Proc. No. 2336, CFI Neg. Occ., but which lots were found out by the court to be the properties of the movants herein and said special proceedings was dismissed; that petitioners attempted, for the second time, to claim ownership and take possession over these same lots by trying to include them in the alleged estate of Eleuterio Hernaez under a second Spec. Proceedings numbered 212-5470, CFI, Neg. Occ., but which special proceedings was also dismissed by the court after it was found out that the lots alleged to compose the estate of Eleuterio Hernaez were owned by and titled in the names of other persons, more particularly Lots Nos. 1316 Kabankalan Cad., 2685 and 717 Ilog Cadastre which are owned by and titled in the names of the movants herein;" (pp. 66-67, Rollo of G.R. No. L-34080).

Moreover, petitioners were not mere possessors of the properties covered by the reconstituted titles. They are possessors under claim of ownership. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property (Article 433, New Civil Code), not summarily through a motion for the issuance of a writ of possession. Furthermore, petitioners were holders of existing certificates of titles to the same properties covered by the reconstituted certificates of title of private respondents. It was error for Judge Abiera to issue a writ of possession against petitioners ousting them from the premises without formal hearing.

Private respondents argue that the herein petitioners are bound by the order granting reconstitution because the reconstitution proceedings was heard after notices were sent to alleged boundary owners and the petition was published in the Official Gazette. However, the petitioners who were in actual possession of the properties were not notified. Notice by publication is not sufficient as regards actual possessors of the property. In the case of *Alabang Development v. Valenzuela*, No. 54094, August 30, 1982, 116 SCRA 277, We held that in petitions for reconstitution of titles, actual owners and possessors of the lands involved must be duly served with actual and personal notice of the petition.

"To repeat what the writer hereof said in his concurring opinion in the Bernad Case, 'The first lesson to be

drawn here is that courts must exercise the greatest caution in entertaining such petitions for reconstitution of allegedly lost certificates of title, particularly where the petitions are filed, as in this case, after an inexplicable delay of 25 years after the alleged loss. Furthermore, the courts must likewise make sure that indispensable parties, i.e. the actual owners and possessors of the lands involved, are duly served with actual and personal notice of the petition (not by mere general publication), particularly where the lands involve constitute prime developed commercial land including a part of the South Superhighway. x x x"

The private respondents alleged, and the trial court agreed, that the proceedings for their reconstituted titles can no longer be reopened because the order for reconstitution had already become final. The order for granting the reconstitution was issued on April 6, 1968 and the motion for the cancellation of the reconstituted title was filed only on November 4, 1968.

We do not agree. Republic Act No. 26, pursuant to which the "titles" of private respondents were reconstituted provides in its Sections 18 and 19, thus:

"Sec. 18. In case a certificate of title, considered lost or destroyed, be found or recovered, the same shall prevail over the reconstituted certificate of title, and, if both titles appear in the name of the same registered owner, all memoranda of new liens or encumbrances, if any, made on the latter, after its reconstitution, except the memorandum of the reservation referred to in Section seven of this Act, shall be transferred to the recovered certificate of title. Thereupon, the register of deeds shall cancel the reconstituted certificate of title and spread upon the owner's duplicate, as well as on the co-owners, mortgagee's or lessee's duplicate, if any has been issued, such annotations of subsisting liens or encumbrances as may appear on the recovered certificate of title, cancelling at the same time the memorandum of the reservation referred to in Section seven hereof: Provided, however, That if the reconstituted certificate of title has been cancelled by virtue of any deed instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the recovered certificate of title shall be likewise cancelled, but all subsisting liens or encumbrances, if any, appearing thereon shall be transferred to the new certificate of title and to its owner's duplicate, as well as to any co-owner's, mortgagee's or lessee's duplicate that may have been issued, the memorandum of the reservation referred to in section seven of this Act, if any, being thereby ipso facto cancelled.

"Sec. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the register of deeds should bring the matter to the attention of the proper Court of First Instance, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens or encumbrances, if any, made on the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require: Provided, however, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above with respect to memoranda of new liens or encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens or encumbrances, if any, as may have been made on the latter, after the issuance thereof."

Thus, if no such original title in fact exists, the reconstituted title is a nullity and the order for its reconstitution does not become final because the court rendering the order has not acquired jurisdiction. It may be attacked at any time. The same rule applies if in fact there is an earlier valid certificate of title in the name and in the possession of another person/s.

"The Court stresses once more that lands already covered by duly issued existing Torrens titles (which become incontrovertible upon the expiration of one year from their issuance under Section 38 of the Land Registration Act) cannot be the subject of petitions for reconstitution of allegedly lost or destroyed titles filed by third parties without first securing by final judgment the cancellation of such existing titles. x x x. The courts simply

have no jurisdiction over petitions by such third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The very concept of stability and indefeasibility of titles covered under the Torrens System of Registration rules out as anathema the issuance of two certificates of title over the same land to two different holders thereof. A fortiori, such proceedings for 'reconstitution' without actual notice to the duly registered owners and holders of Torrens titles to the land are null and void." (Alabang Development v. Valenzuela, supra.)

Moreover, petitioners filed a motion to cancel the reconstituted certificates of title in the cadastral case. Said motion was in the nature of a petition for relief from judgment. The relief sought in the said motion of petitioners is the nullification of the final order for reconstitution. One way to set aside a final and executory judgment is by a petition for relief from judgment as provided for by Rule 38, as when the judgment has been entered against a party thru fraud, accident, mistake or excusable negligence, and the petition is filed within 60 days after the petitioner learns of the judgment and not more than 6 months, after such judgment or order was entered (Rule 38, Sec. 3, Rules of Court). When the judgment sought to be annulled is rendered by the Court of First Instance (now Regional Trial Court); the petition may be filed in the same case and in the same court which rendered the judgment (Servicewide Specialists, Inc. v. Sheriff of Manila et al., G.R. No. 74586, October 17, 1986). The order for the reconstitution in Cadastral Case No. 17 was issued on April 6, 1968. The final entry of the order was on May 6, 1968. The motion for cancellation of the reconstituted certificates of titles was filed on November 4, 1968, upon petitioners' knowledge of the existence of the reconstituted titles. The filing of the motion was well within the period prescribed by the Rules.

In G.R. No. L-34693, We do not believe that respondent Judge Alampay abused his discretion or acted without jurisdiction when he lifted the writ of preliminary injunction issued by then Judge Kintanar enjoining SONEDCO from issuing and delivering sugar quedans in the name of the private respondents. Private respondents, by virtue of the lifting of the writ of preliminary injunction in CA G.R. SP-00139 by the Court of Appeals, took possession over the subject properties. It was not until September 29, 1971 when We issued the writ of preliminary prohibitory injunction against private respondents ordering them to desist from committing further acts of dispossession against petitioners. It did not cover already consummated acts of possession by private respondents such as the cutting and hauling of sugar cane and the delivery thereof to SONEDCO before September 30, 1971, the date of receipt by private respondent's counsel of the writ of injunction in G.R. L-34080. There was also no order yet from Us in G.R. 34090 commanding the return of whatever the private respondents may have received by virtue of their possession of the premises. We agree with Judge Alampay's conclusion that:

"The writ issued in G.R. No. L-34080 has reference only to and enjoins further acts of dispossession of the subject lots, obviously to maintain the status quo with respect to said lands between the petitioners Serra and private respondents, Hernaezes, pending ultimate and final determination of their ownership rights over such properties. On the other hand, the writ issued in the present case is restricted to the defendant SONEDCO directing it to refrain from issuing to defendant Felipe Garaygay the sugar quedans corresponding to the sugar cane(s) delivered by and milled for the latter.

"A reading of the writ issued in G.R. L-34080 (Exh. 5-Garaygay) persuades this Court to conclude that the same was not intended to affect or relate to the sugar crops on the quedans that would be issued for the value thereof, for it is there unequivocally stated

'x x x. Within fifteen (15) days from notice of this order. The private respondents are required to show cause, within the same period, why a mandatory injunction should not be issued requiring said respondents to immediately return to petitioners whatever private respondents might have received in the implementation of the writ of possession issued by Judge Carlos Abiera on 31 December, 1970 in Cad. Case No. 17, G.L.R.O. Rec. No. 163, etc.' (Exh. 5-A, Garaygay).'

“In effect the return to the plaintiffs of whatsoever the private respondents Hernaezes or for that matter their representatives (defendant herein, Felipe Garaygay) received or would receive, has yet to be resolved by the Supreme Court in said case. Perhaps the application for the provisional remedy herein sought directed against herein defendant and SONEDCO, should be presented likewise in the Supreme Court in G.R. L-34080. x x x (p.74-75, Rollo of G.R. No. L-34693).

Thus, it became necessary for Us to issue on February 15, 1972, a mandatory injunction ordering Garaygay to return to petitioners the value of the sugarcanes cut from the lots involved herein.

But respondent judge committed grave abuse of discretion when he issued the writ of preliminary injunction dated December 29, 1971. Civil Case No. 10040 was a complaint for recovery of personal property (sugar cane) and damages. Possession was never put in issue by the parties. The issuance of the writ enjoining petitioners from harvesting, hauling and selling sugar cane produced from the lots subject of G.R. No. L-34080 was beyond the jurisdiction of the trial court. It should be noted that the issue of possession was then pending in the Court of Appeals in CA-G.R. No. SP-00139. The issue of possession of the disputed properties should have been presented in the said case and not in the Civil Case No. 10040. Moreover, in G.R. L-34080, this Court already issued a writ of preliminary prohibitory injunction in G.R. L-34080 enjoining the private respondents from further dispossessing the petitioners of the subject premises. The issuance of the questioned writ by respondent Judge enjoining petitioners from harvesting, hauling and selling sugarcane produced from the subject premises directly contravened the injunction of this Court.

ACCORDINGLY, the petitions are GRANTED. The questioned order of the respondent Court of Appeals lifting the writ of preliminary injunction is SET ASIDE. The writ of possession issued in Cadastral Case No. 17, GLRO Records No. 163 is declared NULL and VOID. The records of this case and of CA-G.R. No. 00139 are remanded to the trial court for hearing of the motion for cancellation of the reconstituted titles. Private respondents are ordered to return to petitioners the possession of the properties in question. The temporary restraining order issued by this Court on February 15, 1972, enjoining private respondents from interfering in any manner, with petitioners’ right of possession of the properties in question, shall remain effective until the issue of ownership and/or possession of the properties is finally settled by a competent court.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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