

**AUGUSTO R, VILLABOSA AND AUGUSTO VILLAROSA, JR.,
PETITIONERS, VS. HON. JOSE TEODORO, SR., PRESIDING JUDGE,
COURT OF FIRST INSTANCE OF OCCIDENTAL NEGROS, BRANCH II,
AND AMADO S. ...**

G.R. No. L-9204. September 29, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

In civil case No. 3316 of the Court of First Instance of Occidental Negros, Augusto Villarosa et al., plaintiffs vs. Amado P. Jalandoni et al., defendants, for recovery of possession and ownership of two parcels of land (ejectment), upon motion of the plaintiffs, the Court issued a writ of preliminary injunction restraining the defendant Amado B. Parreno, in his capacity as judicial administrator of the estate of the late spouses Wenceslao B. Parreno and Virginia Villanueva, from continuing with the construction of a house on one of the lots (Lot No. 983 of the Cadastral Survey of Bago) involved in the litigation and from exercising acts of possession over said lot during the pendency of the case, upon the filing of a bond in the sum of P3,000 with sufficient sureties (Annex F). A bond for such amount filed by the plaintiffs was approved by the Court (Annex G). Seven days after, or on 30 May 1955, the defendant Amado B. Parreno, in his capacity aforesaid, filed a motion to dissolve the writ thus issued, on the ground that the plaintiffs failed to serve upon him a copy of the bond; that the amount of the bond filed by them was insufficient to answer for all the damage that the defendant may sustain by reason of the writ should the Court finally decide that they are not entitled to the issuance thereof, not only because the sureties have not shown or proved their solvency but also because they have not stated and described the properties that would guarantee the fulfillment of their undertaking. The defendant moving for the dissolution of the writ offered to file a bond in the amount of P10,000 or in such amount as the Court may fix with sufficient sureties, conditioned that the moving defendant will pay all damages that the plaintiffs may suffer by reason of the continuance during the action of the acts complained of. The plaintiffs objected to the defendant's motion to dissolve the injunction on the ground that by refusing to receive a copy of the bond, he waived his right to question its sufficiency and the solvency of the sureties and cannot claim that he was not furnished with a copy thereof, and that there is no valid reason why the writ of preliminary injunction should be dissolved. On 4 June 1955 the Court dissolved the writ of preliminary injunction theretofore issued and approved the bond for P10,000 filed by the defendant Amado B. Parreño.

Claiming that the Court acted with grave abuse of discretion in dissolving the writ of preliminary injunction and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, the petitioners, plaintiffs in the court below, filed this petition for a writ of certiorari to set aside the order of 4 June 1955 that dissolved the writ of preliminary injunction theretofore issued and prayed for a writ of preliminary injunction to restrain the respondent court from carrying out or giving effect to the order dissolving the writ of injunction. On 20 June 1955 this Court issued the writ of preliminary injunction as prayed for.

The facts pleaded in the amended complaint filed by the petitioners in the respondent court, if established by

admissible, competent and credible evidence, would affect only the title of the defendants Amado P. Jalandoni and Ramon O. Matti who, it is alleged, knew or had knowledge of the defective title of Amado P. Jalandoni, his predecessor-in-interest, but there is nothing alleged in the amended complaint that would place the defendant Amado B. Parrefio, in his capacity as administrator of the estate of the late spouses Wenceslao B. Parrefio and Virginia Villanueva, upon the same level as his co-defendants Amado P. Jalandoni and Ramon O. Matti. The only allegation affecting him is that in purchasing the lots from Ramon O. Matti he "acted with negligence amounting to bad faith de jure in failing to take the necessary steps so that he would have come to know positively of the claim of ownership and actual possession which the plaintiffs have over Lot 983 aforesaid, as alleged in paragraphs IV, V and VI hereof." (Annex B.) From this allegation it may be inferred that after acquiring the two lots for the estate of the late spouses Wenceslao B. Parreño and Virginia Villanueva and once in possession of the Torrens transfer certificate of title No. 16897 for Lot No. 983 of the Cadastral Survey of Bago issued in the name of the estate of the late spouses, the respondent Amado B. Parreño, in 'his capacity as administrator of the estate of the late spouses, took possession of the two lots and started to build a house on Lot No. 983. Even granting that petitioners have been in possession of the two lots, the Torrens "title."give" 'the owner the right io take possession of the property registered in his name.

The petitioners further contend that the writ of preliminary injunction should not issue to deprive a person of the possession of a parcels of land. They claim that they have been in possession of the two parcels of land. The writ issued by the respondent court protected the possession of the petitioners if they were in possession of Lot No. 983. If they were not but the respondent Amado B. Parreño, the latter was deprived thereof by the writ. The dissolution of the writ did not give or deprive anyone of the possession of the land but restored the status quo before the issuance of the writ.

A writ of preliminary injunction is an interlocutory order and is under the control of the Court before final judgment in the case. The writ issued may be dissolved for reasons stated in the rule.[1]

Considering that the bond filed by the petitioners, as found fey the respondent court, is merely a character bond and does not state and describe the properties that will answer for the payment of aU the damage that the defendant may suffer by reason of the issuance of the writ; that had the respondent court been apprised of the defect it Would not have approved the bond; and it appearing, on the other, hand, that the respondent Amado B. Parreño, in his capacity aforesaid, was willing and ready to file a bond with sufficient sureties to answer and pay for all damages that the plaintiffs, petitioners herein, may suffer by reason of the continuance during the action of the acts complained of [2] —a bond for P10,000 was filed by the respondent Amado B. Parreño and approved by the respondent court—we cannot say that the respondent court abused its discretion in dissolving the writ of preliminary injunction theretofore issued.

Petition denied and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioners.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J, B. L., Endenda, and Felix, JJ., concur.

[1] Section 8, Rule 60; Calaya vs. Alamos, 45 Off. Gaz. 2075, citing Manila Electric Co. vs. Artiaga and Green, 50 Phil. 144, 147.

[2] Section 6, Rule 60.

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