

CIRILA EMILIA, PLAINTIFF-APPELLANT, VS. EPIFANIO BADO (ALIAS PAÑO), ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-23685. April 25, 1968*

Ponente: SANCHEZ, J.

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The relief prayed for but denied in an order of the court below, now the subject of the present appeal, is that injunction issue to restrain defendants from continuing with the construction of a house of light materials on a 48-square meter area on the northern border of plain-tiff's land.

The suit started on December 12, 1963 with the complaint, as amended,[1] that on or about December 1, 1962, defendants, confederating and helping one another, entered plaintiff's land and commenced the construction of a house of light materials on the northern boundary of her Lot 1131 in Iligan City bordering the bank of Salabao Creek, covered by her Torrens Title 0-267; that the continuance of such act against the will of plaintiff would cause great and irreparable damage and injury and injustice to her; and that there is no other plain, speedy and adequate remedy in the ordinary course of law. Whereupon, she prayed for preliminary and final injunction and damages. Preliminary injunction was issued ex-parte.

Plaintiff's said complaint was met by defendants' motion to dismiss upon the ground of lack of cause of action. They attached to their motion the sketch of a private land surveyor, Flordelito Aragon, and his affidavit, both of which were intended to convey the alleged fact that the new house being constructed was inside defendant Glicerio Bado's Lot 2894 (covered by his Torrens Title 9-275) being held by him. They averred, too, that the house did not encroach upon the boundaries of plaintiff's adjoining property (Lot 1131).

Obviously of the belief that procedural niceties should not bar consideration of the equities of the case,[2] the trial court, on the face of the conflicting assertions of fact, called for a summary hearing.

On February 27, 1964, the trial court came out with an order sustaining the motion to dismiss. The court gave credence to the testimony of surveyor Flordelito Aragon (also a deputy public land surveyor) that the house under construction was within Glicerio Bado's Lot 2894 (Torrens Title 0-275) and not on plaintiff's Lot 1131 (Torrens Title 0-267). The trial court took the position that to stop defendants from building a house within Glicerio Bado's lot "would be tantamount to depriving" the owner of the enjoyment of his lawful dominical rights; that even on the assumption that defendant Glicerio Bado's title to Lot 2894 was obtained through fraud, as plaintiff avers, nonetheless, said title subsists until declared null and void by a competent court; and that these circumstances would tie up the hands of the court from granting the relief prayed for. Whereupon, the court dissolved the preliminary injunction theretofore issued, and dismissed the complaint.

1. The procedural question presented asks of us a ruling as to whether injunction is the proper remedy in the premises.

Whether defendant Glicerio Bado's lot is registrable or not, because, as plaintiff avers, that land registered in the

name of defendant Glicerio Bado is a creek - Salabao Creek - is beside the point here. Unless and until plaintiff succeeds in annulling the decree of registration in defendant's favor which she has sought in the cadastral proceedings, that title subsists.[3] It is to be presumed that the judicial proceedings leading to the issuance of the decree are valid.

The pivotal facts that the record discloses may thus be summarized this way: Plaintiff claims that the house being built is on her land; defendants, on the other hand, say that that house is on the land of Glicerio Bado. Both hold Torrens titles. The lower court, prima facie at least, believes that there is factual support for defendants' averment.

The remedy of injunction has been the subject of numerous judicial pronouncements. The court cannot now afford to depart from the well-ingrained precept that injunctions are not available to take property out of possession or control of one party and place it into that of another whose title has not clearly been established. Instructive in this respect is the early 1909 decision in *Devesa vs. Arbes*, 13 Phil. 273, where injunction was sought to recover possession of real property. Mr. Justice Carson there pithily summed up[4] the limited concept of injunction which may not be availed of "'while the rights between the parties are undetermined, except in extraordinary cases where material and irreparable injury will be done', which cannot be compensated in damages." To hold otherwise, Mr. Justice Carson continued to say, "would be to render practically of no effect the various provisions of the code (of civil procedure) touching many if not most of the ordinary actions, and the enforcement of judgment in such actions; for it may well be supposed that if a complainant could secure relief by injunction in every case where 'the defendant is doing or threatens or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights' and could enforce the judgment granting the injunction by the summary contempt proceedings authorized in section 172 of the code to punish violations of injunctions, he would seldom elect to enforce his rights in such cases by the ordinary remedies, involving as they do the difficult and oftentimes fruitless labor of enforcing judgments obtained therein by execution." [5]

Long divorced from doubt is the doctrine that where legal title is disputed and the possessor asserts ownership over the land in controversy, no injunction can issue to dispossess him.[6] Reason for this is that before the issue of ownership is determined by evidence, justice and equity demand that the parties be maintained in their status quo so that no advantage may be given to one to the prejudice of the other.[7]

Given the fact that there is the debatable question of where the house was being erected, we say that adherence to the precept just enunciated is a forbidding obstacle to the grant of injunction.

2. To be sure, there are recognized exceptions to the rule, as where defendant is clearly a mere intruder,[8] or where the action seeks to prevent a purchaser at an auction sale from molesting the debtor's co-owners whose rights have not been affected by the sale.[9] But these, generally upon hearing and not upon ex-parte application for injunction.[10]

3. Upon well-entrenched jurisprudence, plaintiff's principal suit for injunction cannot, at bottom, prosper because there is an adequate remedy in law open to her. It is elementary to the point of triteness that the special remedy of injunction may not issue where there is a plain, speedy and adequate remedy in the ordinary course of law.

It is in line with the principle just enunciated that in affirming *Devesa vs. Arbes*, supra, *Palafox vs. Madamba*, 19 Phil. 444, 446, declared in no uncertain terms that injunction is not the appropriate remedy where "there exists the ordinary remedy of action for property of possession, which may be either plenary or summary, according to the method by which she may have been deprived of her alleged possession." A long line of cases has since then stabilized the principle.[11]

Under the present state of the law, there are three kinds of actions available to recover possession of real property: (a) the summary action for forcible entry (where preliminary mandatory injunction may be sought within ten days from the filing of the complaint under Article 539 of the Civil Code) or illegal detainer, which seeks the recovery of physical possession only and is brought within one year in the municipal court; (b) the acción publiciana, which is for the recovery of the right to possess and is a plenary action in an ordinary civil proceeding in a Court of First Instance; and (c) acción de reivindicación, which seeks the recovery of ownership, which includes the jus utendi and the "jus fruendi, also brought in the Court of First Instance.[12]

Plaintiff Cirila Emilia claims ownership of a 48-square meter portion of land, which she avers is covered by Torrens title in her name. Defendant Glicerio Bado, on the other hand, also professes ownership over the same portion of land backed up, too, by a Torrens title in his name. From these two directly opposing positions, a legitimate issue of ownership emerges. This guides us to no other conclusion than that plaintiff Cirila Emilia should have brought suit for ownership (acción de reivindicación). Correctly did the trial judge dissolve the preliminary injunction wrongfully issued and refuse the grant of a perpetual injunction sought by her.

4. In a situation like the present, it was suggested in *Devesa vs. Arbes*, supra, that it would not be improper if the record were to be returned to the court of origin with instructions to further amend the complaint,[13] such that the question of ownership and possession (acción reivindicatoria) may bring about a head-on contest between plaintiff and Glicerio Bado in the same injunction case. As we make an appraisal of the record before us, however, we are constrained to say that confusion may arise because of the so many pleadings filed and court actions taken before this decision. With the voluminous record, difficulty may arise in pinpointing the exact issue between the parties. Administration of justice could suffer thereby. And then, there is the continued pendency of this case which has been started since nearly five years ago. A final decision on the validity of Glicerio Bado's title in the cadastral proceeding could yet prevent further controversy between the parties.

Upon the view we take of this case, we vote to affirm the order of February 27, 1964, dismissing the complaint.

With costs against plaintiff-appellant.

SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case 751, Court of First Instance of Lanao del Norte, entitled "Cirila Emilia, Plaintiff, vs. Epifanio Bado (alias Paño), Roque Marianas, Simplicio Marianas and Mario Marianas, Primitivo Aranas, Eustiquio Sabihon, Alfredo Salim and Glicerio Bado, Defendants."

[2] The procedural rule, it is to be recalled, is that where a motion to dismiss is grounded on lack of cause of action, resolution of said motion should be determined on the basis only of the facts alleged in the complaint, and on no others. 1 Moran, Comments on the Rules of Court, 1963 ed., p. 429, citing *Asejo vs. Leoncio*, 78 Phil. 467.

[3] See: Plaintiff's petition for review and/or to cancel Glicerio Bado's Certificate of Title No. 0-275 filed on November 21, 1963 in Cadastral Case N-4 (LRC Cadastral Record N-267), Court of First Instance of Lanao del Norte, and the answer thereto of defendant Glicerio Bado. Record on Appeal, pp. 55-60, 82-84.

[4] At p. 278.

[5] At p. 279.

[6] Gordillo vs. Del Rosario, 39 Phil. 829, 835, citing Devesa vs. Arbes, supra; Golding vs. Balatbat, infra; Rodulfa vs. Alfonso, 76 Phil. 229. See also: Asombra vs. Dorado, 36 Phil. 883, 885; Tiongson vs. Martinez, 36 Phil. 948, 952; Rustia vs. Franco, 41 Phil. 280, 283; Santos vs. De Leon, 60 Phil. 573, 575.

[7] 3 Moran, Comments on the Rules of Court, 1963 ed., p. 68, citing Calo vs. Ortega, L-4673 and L-4675, January 25, 1952.

[8] Rustia vs. Franco, supra; Rodulfa vs. Alfonso, supra; De Garcia vs. Santos, 79 Phil. 365, 369-370; Barrameda vs. Gontang, L-24110, February 18, 1967.

[9] Cabuhat vs. Ansay, 42 Phil. 170, 176.

[10] Golding vs. Balatbat, 36 Phil. 941, 946; Liongson vs. Martinez, supra, at p. 952; De Leon vs. Director of Lands, 60 Phil. 203, 205. Section 5, Rule 58, Rules of Court, categorically provides that "[n]o preliminary injunction shall be granted without notice to the defendant unless it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. x x x."

[11] Evangelista vs. Pedreños, 27 Phil. 648, 650-651; Gilchrist vs. Cuddy, 29 Phil. 542, 550-551; Asombra vs. Dorado, supra, at pp. 885-886; Golding vs. Balatbat, supra, at pp. 945-947; Liongson vs. Martinez, supra, at pp. 951-953; Rustia vs. Franco, supra; Kabankalan Sugar Co. vs. Rubin, 54 Phil. 645, 654; Piit vs. De Lara, 58 Phil. 765, 767; De Leon vs. Director of Lands, supra, at p. 205; Santos vs. De Leon, supra, at pp. 574-575; Wagan vs. Sideco, 60 Phil. 685, 688; Coronado vs. Tan, 96 Phil. 729, 732.

[12] See: 3 Moran, op. cit., p. 272, citing cases.

[13] Affirmed in Evangelista vs. Pedreños, supra, at p. 651, where the complaint therein was considered amended.

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