

JOSE SILVESTRE, SERVILLANO DE LA CRUZ, JR., ELEODORO M. BENITEZ, JACINTA MEJIA DE REYES, AND LIBERATO LITTAUA, PETITIONERS, VS. CONRADO SANCHEZ, JUDGE, COURT OF FIRST INSTANCE O...

G.R. No. L-1828. February 26, 1948

Ponente: MORAN, C.J.

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MORAN, C.J.:

D.B. Ambrosio, one of the respondents herein, as registered owner of a vessel designated "International Trader" executed three mortgages thereon, the first in favor of Tomas del Rio in the amount of approximately P31,000, the second in favor of Teopisto S. Mirasol, in the amount of approximately P37,000, and the third in favor of Rafael Fernandez in the amount of P20,000 or more. Upon failure of D. B. Ambrosio to meet his obligations with the aforementioned mortgages, the latter moved for the extra-judicial sale of the vessel. However, before the holding of the sale, Jose Silvestre, Servillano de la Cruz, Jr., Eleodoro M. Benitez, Jacinta Mejia de Reyes, and Liberate Littaua, petitioners herein, in a letter dated November 10, 1947, addressed to the sheriff of the City of Manila, also a respondent in this petition, sought to stop the extra-judicial sale on the ground that they were in fact the true owners of said vessel, having the same in their absolute control and possession. On November 15, 1947, the herein petitioners filed two complaints with the Court of First Instance of Manila, alleging their ownership of the vessel and their non-participation in the execution of the mortgages, and prayed for the annulment of the mortgages in favor of Teopisto S. Mirasol and Tomas del Rio, for the cancellation of the registry of ownership over said vessel in the name of D. B. Ambrosio, and for the issuance of a permanent writ of injunction against the sheriff of the City of Manila, restraining him from consummating the extra-judicial sale of said vessel set for December 2, 1947. This writ of preliminary injunction as prayed for by the petitioners-plaintiffs was set for hearing. At this juncture, the Bureau of Labor, thru its legal counsel, moved to intervene in the case in behalf of the crew of said vessel, claiming for salaries and wages long overdue. Intervention was granted by, the trial court. Upon hearing, the trial court held as follows:

"Upon these considerations, the court declares that the court will be prepared to issue a writ of preliminary injunction to suspend the sale on foreclosure of the boat in question for a period of 45 days and upon such terms as it may deem just, on compliance of the following conditions, viz:

"1. Plaintiffs shall deposit with the clerk of this court before the close of office hours on December 1, 1947, the sum of P7,500.00, as part payment of the claim of the officers and crew and laborers for unpaid salaries and wages;

"2. In Civil Case No. 4062, plaintiffs, shall, before the close of office hours on December 1, 1947, file in court a bond satisfactory to the court in the total sum of P55,000.00 to cover (a) the claim of the Bureau of Customs, (b) the balance of the claim of the officers and crew and laborers of the boat, and (c) the claim of Tomas del Rio; and

"3. In Civil Case No. 4061, plaintiffs shall likewise file on or before the close of office hours on December 1, 1947, a bond in the sum of P25,000.00

"In the event a writ of injunction issue herein, before the expiration of 45 days during which the sale shall be suspended, any of the parties may make representations to the court for the purpose of dissolving, modifying or continuing the writ of injunction.

"It is hereby further ordered that in the event of failure on the part of plaintiffs to comply with any of the conditions required for the issuance of a writ of injunction, the sale at public auction scheduled by the Sheriff of Manila to take place at 10:00 a.m. on December 2, 1947, shall proceed.

"In the event of such foreclosure sale, the Sheriff shall forthwith deliver to the Bureau of Labor the sum of P10,000.00 for purposes of distribution to the officers and crew and laborers of the vessel in question by way of part payment of unpaid salaries and wages, and the balance shall be deposited with the Clerk of this court, subject to further orders from this court."

Petitioners come "before this Court for the reversal of the order of the trial court above quoted on the ground of grave abuse of discretion and excess of jurisdiction, alleging that the amounts of the cash deposit and the bonds required by said court are "excessive, unconscionable, prohibitive" and unwarranted by the provisions of the Rules of Court, and praying further for the issuance of a writ of preliminary injunction restraining the trial court from further proceeding in the case and the sheriff of Manila from consummating the extra-judicial sale, and for the reduction of the bonds to a nominal amount in the two cases of annulment.

Upon the facts of this case, the writ of certiorari prayed for does not lie. There has been no grave abuse of discretion nor excess of jurisdiction on the part of the trial court. On the contrary, its order of November 27, 1947, above quoted, is certainly reasonable. The question of ownership of the vessel is pending in the lower court and need not be settled here at all. Though it may be said in passing that no proof of ownership is shown by petitioners to be so conclusive as to warrant the risk of granting preliminary injunction at a nominal bond. This, with the circumstance that apparently one of the petitioners, Eleodoro M. Benitez, was present when one of the mortgages was executed, he having acted as the notary public before whom the deed was ratified, as shown by Exhibit 2, is more than sufficient justification for the trial court to take the necessary precautions for the protection of all the creditors. It must be noted that two of the obligations to which the vessel is subject are superior and preferred, namely, approximately P7,000 due the Bureau of Customs for duty compensation tax and approximately P30,000 for salaries and wages due the crew, which latter obligation is obviously urgent. And, as tabulated in the order appealed from, and substantiated by evidence, the lower court found that the vessel must answer for all of the following obligations:

"Claim of the Bureau of Customs for duty, compensation tax, etc. (approximately)

P7,000.00

Officers and crew and laborers of the boat for unpaid salaries and wages from Jan. 9, 1947, to Dec. 2, 1947 (approximately)

30,000.00

Claim of Tomas del Rio in Civ. Case No. 4062 by way of first mortgage up to Dec. 2, 1947 (approximately)

31,000.00

Claim of Teopisto S. Mirasol in Civ. Case No. 4061 on a second mortgage to Dec. 2, 1947 (approximately)

37,000.00

Claim by way of third mortgage in favor of one Rafael Fernandez, who is not a party hereto, up to Dec. 2, 1947
(more than)

20,000.00

125,000.00 "

In view of these urgent and preferred obligations, and of the circumstance that the insurance on said vessel has already lapsed, and considering that the steady increase of the financial obligation to which the vessel is subject rises in inverse proportion to the steady depreciation of the vessel in its present state of neglect, and which chattel remains as the sole guarantee for the fulfillment of the multiple obligations involved in the litigation, this Court finds that the conditions required by the trial court for the issuance of the writ of preliminary injunction to restrain the extra-judicial sale of the vessel to satisfy the aforementioned obligations, are, far from being abusive or excessive, but proper and just for the protection of the interests of all the parties concerned. The petition is dismissed with costs against petitioners.

Paras, Feria, Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

PERFECTO, J., dissenting:

Petitioners complain that the cash deposit and the bond required by respondent judge in his order of November 27, 1947, are excessive, unconscionable, prohibited and unwarranted by the provisions of the Rules of Court.

We found that, under the facts, the amounts set in the order are disproportionately large and unjustified, Our conclusion is that the order has been issued in grave abuse of discretion and that petitioners are entitled to relief.

We vote to grant the prayers of the petition.

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