

DOMINADOR S. PONGOS, PETITIONER, VS. HIDALGO ENTERPRISES, INC., BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (RIZAL CITY BRANCH) AND THE SHERIFF OF RIZAL, RE...

G.R. No. L-3226. August 30, 1949

Ponente: FERIA, J.

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FERIA, J.:

This is a special civil action of certiorari filed this Court by the petitioner against the respondent Judge Bienvenido A. Tan to set aside an order of the respondent judge for the delivery by the petitioner of the machineries, equipments, and appurtenances of the Pasay Ice Plant and Cold Storage to the other respondent.

According to the facts alleged in the petition, the petitioner instituted an action against the respondent Hidalgo Enterprises Inc., civil case No. 472 of the Court of First Instance of Rizal, to cancel or rescind the contract between them by which the petitioner turned over and delivered to the respondent the full management, operation, possession and control of the Pasay Ice Plant and Storage, and conveyed to said respondent, by way of chattel mortgage, all the machineries, equipment, accessories and the certificate of public convenience of the said plant, as security for the payment of the advances of money made by the respondent to pay the outstanding debts and obligation due from the petitioner to other person on account of said Ice Plant and Cold Storage.

The defendant Hidalgo Enterprises Inc., during the pendency of the suit, secured first a writ of mandatory injunction directing the plaintiff, now petitioner, to surrender the possession of the said Pasay Ice Plant and Cold Storage to the said defendant and afterwards, upon a motion for reconsideration filed by the plaintiff, the respondent judge reconsidered its order and appointed a receiver, who qualified as such and took possession of said properties on March 30, 1948, and died in February, 1949.

On or about June 25, 1945, before another receiver had been appointed, the defendant Hidalgo Enterprises Inc. amended its answer and set up a counterclaim for the recovery of money due from the plaintiff-petitioner to the defendant-respondent and the foreclosure of the chattel mortgage above mentioned, and as a necessary step for the foreclosure asked the court to order the plaintiff who was in possession of the machineries, equipment, and appurtenances of the Pasay Ice Plant and Cold Storage, to deliver them to the defendant, which was granted by the court, and hence the filing of the present action of certiorari.

The petitioner contends that the respondent judge exceeded in the exercise of his jurisdiction in ordering the delivery of the personal property mortgaged to the respondent, on two grounds: First, because said properties were in custodia legis and the respondent judge had no authority to order their delivery to the defendant; and second, because the respondent Hidalgo Enterprises being a defendant in the civil action No. 472, cannot ask for the delivery of personal property, since such order may be secured only by the plaintiff according to Rule 62 of the Rules of Court.

Petitioner's contentions are untenable. As to the first ground, "The appointment of a receiver vests in the court no absolute control over the property and no general authority to displace vested contract liens, and while a receiver will be appointed only on the application of one who appears to have an interest in the subject-matter, yet when the appointment is made the receiver is a mere officer of the court, and the appointment creates no lien in favor of any of the parties applying for it and gives no advantage or preference to such parties over other claimants to the property; it does not determine the rights of the parties," * * * (Cyclopedia of Law and Procedure, Vol. 34, p. 180).

And as to the second ground, it is obvious that the defendant Hidalgo Enterprises Inc. with respect to the plaintiff's complaint, is the plaintiff in the counterclaim filed by him against the plaintiff. "A counterclaim is termed a mutual petition, because both parties sue each other mutually in the same action, each of them assuming the double role of plaintiff and defendant, before the trial judge, and the two suits are brought under a single proceeding where both actions are tried at the same time and finally determined in one and the same judgment" (De la Peña vs. Hidalgo, 20 Phil., 323). If a counterclaim was considered a counter suit filed by the defendant against the plaintiff, the counterclaim of the defendant respondent Hidalgo Enterprises Inc. may a fortiori be considered a complaint against the plaintiff-petitioner, for it is rather in the nature of a cross complaint than of a counterclaim under the old Code of Civil Procedure. Therefore, the respondent Hidalgo Enterprises Inc. as counterclaimant or plaintiff in the counterclaim may obtain from the respondent judge an order for delivery to it of the personal properties he seeks to recover in its counterclaim from the plaintiff.

Wherefore the petition for certiorari is dismissed.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

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