

**RODOLFO YLARDE, FLOR DE VIDA YLARDE, REPRESENTED BY
MARIA CRUZ AS GUARDIAN AD LITEM, AND JULIA YLARDE,
PETITIONERS, VS. JUAN ENRIQUEZ, JUDGE OF FIRST INSTANCE OF
NUEVA ECIJA, BL...**

G.R. No. L-1401. June 25, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to vacate an appointment of a receiver by order of the Court of First Instance of Nueva Ecija. A preliminary injunction has been granted by us restraining the carrying out of the order. The appointment would authorize the receiver to take possession of a parcel of land and to "preserve and administer the crops or products thereon and to perform all acts necessary and incident thereto during the pendency of this case."

None of the pleadings filed in the main case are before us, except a copy of a supplemental complaint, and the reference to those pleadings in the proceeding at bar furnishes indefinite and scanty information on their contents. However, the application for certiorari, the answer, and the various court orders relative to the appointment of a receiver afford sufficient data to serve as basis for a decision.

It seems that Eugenia Ylarde was the legal or common-law wife of one Simplicio Rosario, now deceased. It would also seem that in his life time, during his marriage or cohabitation with Eugenia Ylarde, Rosario was granted a free patent to a homestead measuring fifteen hectares. This is the land or it is a part of this land that is involved in this litigation. According to the respondents' answer to the application for certiorari, in 1938, after Eugenia Ylarde's legal or common-law husband died, "an extrajudicial partition (was) executed" by Eugenia Ylarde "wherein she falsely declared under oath that she was the sole heiress of the estate in question." Following that so-called extrajudicial partition a transfer certificate of title was issued in Eugenia Ylarde's name cancelling the original document.

In September, 1945, Bienvenido Sabado, Magdalena Sabado and Apolinario Sabado, apparently Simplicio Rosario's collateral relatives, brought the present action against Eugenia Ylarde. The application for certiorari describes the action as one "relating to the ownership of a piece of property." The respondents in this proceeding brand this statement, in their answer, as incorrect, "the true fact being that the action refers (1) to the recovery of land * * *, and (2) for the recovery of damages in the amount of P50,000." It also appears that during the pendency of the action or before—there is uncertainty in the allegations as to the time and the parties—two or three other so-called extrajudicial partitions were made whereby a portion of three hectares out of the entire tract was allotted to the Sabados. These partitions are repudiated and sought to be annulled as fraudulent in a supplemental complaint filed by the respondents herein in the principal case.

On December 17, 1946, Eugenia Ylarde died, and she has been substituted as party defendant by Rodolfo Ylarde, Flor de Vida Ylarde through a guardian ad litem, and Julia Ylarde. The record does not reveal the degree of

relationship between these new defendants and the deceased Eugenia Ylarde.

The Ylarden, petitioners herein and defendants in the main case, allege that they are and have been in the possession of the part of the land which corresponded to them or to Eugenia Ylarde in the partition while the Sabados entered upon the possession of their share upon the signing of the settlements. The respondents' (the Sabados') attorney denies in a strong and improper language that the petitioners are in "physical" possession of the property in dispute. But from the use of the adjective "physical" we are to presume that the respondents admit that the Ylarden enjoy some kind of possession, say, possession through representatives, croppers or tenants. Be that as it may, from the very nature of the remedy of receivership which the Sabados applied for, from their claim of P50,000 damages, and from their allegations and arguments we cannot avoid the conclusion that their adversaries and their adversaries' predecessor in interest do have the possession. The opposite theory would be an incongruity.

Upon these facts we shall proceed to state our opinion.

"The appointment of a receiver, because of its drastic nature and of its character as a special remedy under our Code of Civil Procedure, is a power which should be exercised with great caution." (Philippine Motor Alcohol Corp. and Palanca vs. Mapa, 64 Phil., 714.) "Where the effect of the appointment of a receiver is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage." (Mendoza vs. Arellano and B. de Arellano, 36 Phil., 59.) Of equal application is "the rule that a court should not, by means of a preliminary injunction, transfer property in litigation from the possession of one party to another * * * where the legal title is in dispute and the party having possession asserts ownership in himself." (Gordillo and Martinez vs. Del Rosario, 39 Phil., 829; Evangelista vs. Pedreñas, 27 Phil., 648; Palafox vs. Madamba, 19 Phil., 444; Devesa vs. Arbes, 13 Phil., 273; 53 C. J., 26.) If, save in exceptional cases, a preliminary injunction is improper where real property is involved, receivership is even more so because it is harsher, more drastic and more costly than an injunction. It has been said that "of all the extraordinary remedies authorized by law, the appointment of a receiver is the most drastic and far-reaching in its effect." (Delcambre vs. Murphy, 5 S. W. [2d], 789-791. cited as a footnote in 53 C. J., 20.)

No special circumstances are present which would take this case out of the rule enunciated in the foregoing decisions.

Those decisions are rooted in a positive provision of the former Code of Civil Procedure which is now to be found in Section 1 (b), Rule 61, of the Rules of Court. According to this Section it is necessary in granting the relief of receivership that the "property or fund (be) in danger of being lost, removed or materially injured."

The land which is the subject matter of the suit here is not in any danger of disappearing or being wasted. There is no pretense that it has any permanent improvements or fixtures which produce income, rents or profits to be collected or preserved. At the most a bond with sufficient sureties would be adequate to protect the plaintiffs from any possible injury consequent upon being deprived of the possession of the property.

The fact that there are harvested or standing crops to which the plaintiffs lay claim does not improve their position. If anything, the existence of such crops adds to the inequity and injustice of the measure. Section 1 (b) of Rule 61 requires that the party applying for the appointment of receiver should have "an interest in the property which is the subject of the action." We take this rule to envision actual, existing interest. Except for the plaintiffs' alleged title to the land, (which, as we have pointed out, may not be taken away from the defendants), the plaintiffs' relation to the products is that of complete strangers. These products are short-time crops which have been planted and raised exclusively by the defendants personally or through others. They cost painstaking care and diligent industry to raise and, it is said, have exacted an investment of P1,000 per hectare. There is no

partnership or anything of the sort formed between the plaintiffs and the defendants by contract or by operation of law in their production. Independent of their pretended ownership of the land, the plaintiffs have no title to a single onion or cabbage planted on or harvested from it, or to any part of the proceeds of the crops, or to the management of the enterprise. Their title to the crops is contingent upon their success in proving their asserted title to the soil, which is still to be decided. And even if they should ultimately succeed in that, their rights to the products would still be dependent upon many factors yet undetermined.

These observations bring to mind another well-recognized principle in matters of receivership which has been overlooked. A receiver, it has been repeatedly held, should not be granted where the injury resulting therefrom would probably be greater than the injury ensuing from leaving the possession of the property undisturbed. (53 C. J., 37.)

This doctrine fits into the case at bar. The court would place in the hands of a receiver to administer, crops to plant and raise which, as we have seen, the defendants have spent considerable money and attention with the plaintiffs contributing nothing beyond their allegation that they own the ground. The receivership would have the defendants replaced in working or looking after the working of the land by a man who is said to live in Manila and whose ability and experience in farming is, to say the least, has not been demonstrated. The court has not apparently given thought to where the receiver, if he continued the planting and raising of onions and other crops, would get the wherewithal. Would he sell the crops and use the money realized therefrom to finance the enterprise? If that money be insufficient would he borrow—if he could? And the Court has not made any provision—if indeed it would be practical to make such provision at this stage of the litigation—regarding the distribution of profits—or losses which would be the more probable outcome of the intended arrangement.

The allegations in the application for an appointment of a receiver reveals, in our opinion, additional reasons for denying it. As we have said, we gather from these allegations that Eugenia Ylarde had been in possession of the land and had been cultivating it and applying its products to her own use to the exclusion of the plaintiffs. Judging by the amount of damages asked by the plaintiffs, that possession and the enjoyment of the products by Eugenia Ylarde must have lasted a long time. If Eugenia Ylarde's possession was tolerated so long as to make possible the accumulation of P50,000 damages, we see no special reason why the status quo should not be maintained now that the cause, as we gather from the pleadings, has entered the trial stage.

It would seem that the application for receivership was motivated by Eugenia Ylarde's death; and the burden of the application is that the present defendants are not Eugenia's lawful heirs, besides the plaintiffs' claim for enormous damages. But receivership is not a legal or proper substitute for an appointment of a judicial administrator or for a relief to secure the payment of damages. Other remedies are indicated to protect rights based on these considerations. And the allegation that the present defendants are not entitled to succeed to Eugenia Ylarde's rights and interests in the property in litigation is a matter with which the plaintiffs have little to do. Juridically, it concerns Eugenia Ylarde's relatives, devisees or legatees alone. The plaintiffs have to rely on the strength of their case and not on the weakness of their adversaries'. Procedurally, the way is open to the plaintiffs to move for the appointment of an administrator of Eugenia Ylarde's estate, or to amend their complaint by bringing in as defendants those who, according to them, have a better right to inherit from the decedent. As a matter of fact, if the defendants' allegation in their application for certiorari is correct—that they have been substituted for Eugenia Ylarde—the change must have been accomplished by an amendment of the complaint by the plaintiffs themselves. If this be the case, the plaintiffs are assuming two inconsistent positions which they are not allowed to do.

Other objections of legal, practical and equitable character might be adduced against the receivership in question. What has been said is enough to show that the court's discretion, in our opinion, has not been exercised in

accordance with law and with established principles and practice. It has apparently not given a careful and full consideration to all the facts of the case and the harmful and serious consequences of its order in contrast to the possible less injurious effects on the plaintiffs of a decision to leave matters as they are.

The objection that the petitioners have a remedy by appeal is not well taken. An appointment of a receiver is an interlocutory matter, and an appeal from an order making such appointment can be interposed only after final judgment is rendered. In this case an appeal would be of no avail to prevent the enforcement of the order before damage which the petitioners seek to avoid had been done. (See II Comments on the Rules of Court by Moran, p. 18, and cases cited.)

Upon the foregoing considerations, we hold that the court below abused its discretion in appointing a receiver. The appointment is revoked, with costs against the respondents other than the respondent Judge.

Moran, C.J., Pablo, Perfecto, Hontiveros, and Padilla, JJ., concur.

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