

**LEONCIO BARRAMEDA, PETITIONER, VS. CARMEN GONTANG,
RODOLFO GENERAL AND THE HONORABLE JUDGE RAFAEL CRUZ
(PRESIDING JUDGE, BRANCH III, COURT OF FIRST INSTANCE OF
CAMARINES SUR), R...**

G.R. No. L-24110. February 18, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is a petition for certiorari and prohibition with Preliminary injunction filed by Leoncio Barrameda against Judge Rafael de la Cruz of the Court of First Instance of Camarines Sur, Carmen Gontang and Rodolfo General.

Leoncio Barrameda was the registered owner of three Parcels of land in Camarines Sur, covered by TCT 1414, which he mortgaged to the Development Bank of the Philippines (DBP) to secure the payment of an agricultural loan of P22,000. Because of his failure to pay the indebtedness when it became due, the DBP extra judicially foreclosed the mortgage. In the auction sale conducted on April 23, 1962, the DBP was the highest bidder. Barrameda failed to redeem the land. The DBP then consolidated its ownership thereon, and obtained TCT 5003. Soon thereafter the DBP sold the property to Carmen Gontang and Rodolfo General, which sale was annotated on TCT 5008.

In the meanwhile, Gontang and General requested the DBP to deliver to them the possession of the land. Pursuant to this request, the DBP filed an ex -parte petition in the Court of First Instance of Camarines Sur (Special Proceeding 1917), alleging that it acquired the land as mortgagee and highest bidder at the auction sale; that the period of one year from the date of the sale had expired; that the mortgagor had failed to redeem the property; and that it has already executed an affidavit of consolidation of ownership over the land. It, therefore, prayed for a writ of possession. A writ of possession was issued to install the DBP in possession of the property and to eject therefrom all adverse occupants, including Leoncio Barrameda and Fidela Terrero. The writ was not served for failure of the DBP to pay the sheriff's fee. An alias writ was subsequently issued and by virtue of this alias writ, the DBP, represented by its successors in-interest, Gontang and General, took possession of the land. But because of the repeated attempts of Leoncio Barrameda, through his armed men, to re-enter the land and get the landowner's share of the harvest, Gontang and General asked for the issuance of a preliminary injunction (Civil Case 5700 of the Court of First Instance of Camarines Sur) to enjoin Barrameda and his men from disturbing them in their possession of the land. After due hearing, the court issued a preliminary injunction against Barrameda. The latter's motion for reconsideration was subsequently denied.

Hence, this petition.

The petitioner maintains that the respondent Judge acted without or in excess of his jurisdiction in issuing the order complained of, upon the theory that it was predicated upon a writ of possession and an alias writ regarding which he was not made a party. This contention is without merit. When the DBP filed the ex parte petition for a writ of possession it was admittedly the owner of the property in question by virtue of the extra judicial

foreclosure sale of April 23, 1962. As the purchaser thereof, it was entitled, upon confirmation of the sale, to the possession of the premises, and to the aid of the court in effecting its delivery, the reason being that upon confirmation of the sale, the ownership of the property is transferred to the purchaser.

"In a foreclosure suit, where no third person not a party thereto intervenes and the debtor continues in the possession of the real property mortgaged, a writ of possession is a necessary remedy to put an end to the litigation, inasmuch as section 257 of the Code of Civil Procedure provides that the confirmation of the sale by a judicial decree operates to divest all the parties to the action of their respective rights and vests them in the purchaser. According to this legal provision, it is the duty of the competent court to issue a writ so that the purchaser may be placed in the possession of the property which he purchased at the public auction sale and became his by virtue of the final decree confirming the sale.

"For the foregoing considerations, we are of the opinion and so hold that the court *** also has jurisdiction to issue a writ of perty mortgage without the necessity of an independent action when the mortgagor continues in the possession thereof after confirmation of the sale by final decree" (Rivera vs. court of First Instance of nueva Ecija et al, 61 Phil. 201).

Moreover, the ex parte petition filed in this case actually included the petitioner as a party who is referred to in the petition as the one in possession of the land sought to be delivered to the DBF. And the alias writ states:

"NOW, THEREFORE, you are hereby commanded to place said petitioner in possession of the property hereinbefore described, and to eject therefrom all adverse occupants, including the following persons, to wit:

LEONCIO BARRAMEDA and

FIDELA TERRERO."

And in point of fact, according to the sheriff's return, the alias writ was served on the petitioner. In contemplation of lav/, the DBP? represented by the respondents herein, was placed in complete possession of the property. The petitioner's argument, resting on the DBF's failure to include him as party, is therefore untenable.

Anent the issuance of the order complained of, the petition below for preliminary injunction filed by Gontang or General (Civil Case 5700 of the Court of First Instance of Camarines Sur) alleges that despite their possession, the petitioner herein has repeatedly attempted to intrude into the premises; that through the aid of armed men he forcibly took the owner's share of the harvest; that he threatened to reenter the property and get the landowner's share of the coming harvest; and that the continuance of such illegal acts would work grave and irreparable damage and prejudice to the rights of the landowner. The trial court found these allegations well-founded, and, upon the filing of a written obligation by Gontang and General, issued the preliminary injunction in question-This action of the court is perfectly proper. In Rustia vs. Franco, 41 Phil. 280, this Court declared:

"In the American system of procedure, from which provisions of the Code of Civil Procedure, relative to injunction are taken, the injunction is recognized as a perfectly legitimate remedy to protect the owner of the land, being in possession, from illegitimate acts of repeated intrusion by a stranger, as where a person who has no right enters from time to time, cut wood or carry other products. The intermittent nature of such acts, and the probability, not to say certainty, of repetition in the future, makes the legal remedy by an independent action to try title inadequate and justifies the granting of the equitable remedy. (Pomeroy, Equity Jurisprudence, 3d ed.; Vol. 4, sec. 1357)".

Accordingly, the instant petition is dismissed, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanches, JJ., concur.

Petition dismiised.

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