

BASILIO AQUINO, PETITIONER, VS. HON. PABLO ANGELES DAVID, AD INTERIM JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, AND MARIA CORREA, RESPONDENTS.*G.R. No. L-375. August 27, 1946*

Ponente: PADILLA, J.

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In an ejectment suit "brought by the petitioner against the respondent Maria Correa in the Court of First Instance of Bulacan (Civil Case No. 60), the latter, after filing her answer claiming ownership of the land involved therein, prayed ex parte for the appointment of a receiver. The respondent court granted the petition, and appointed a receiver for the land as well as for the palay harvested therein. A motion for reconsideration of the order appointing the receiver was denied. Thereupon, the petitioner instituted this special civil action to have the order annulled for lack of jurisdiction or for grave abuse of discretion.

The parcel of land—the subject matter of litigation in the respondent court—forms part of the Buenavista Estate leased "by the Government with an option to purchase and was in the possession of the petitioner prior to 1940. For failure to pay the rental, his contract of lease was cancelled on April 1, 1940. Thereafter, the land was leased to Simeon de los Santos, husband of the respondent Maria Correa, who entered upon and took and enjoyed possession thereof until sometime in November 1944, when the petitioner regained possession of the land and since then has been in possession thereof. These facts are not disputed.

How the petitioner regained possession of the land is disputed. On the one hand, the petitioner pretends that sometime in November 1944, Simeon de los Santos willingly and spontaneously returned to him the possession of the land; on the other, the respondent Maria Correa claims that the petitioner availing himself of the prevailing lawlessness and with the aid of gangsters deprived her husband of the possession of the land. It may thus be seen that the petitioner, plaintiff in the ejectment suit brought in the respondent court, has been in possession of the land since November, 1944.

Who is the owner or the one entitled to possession of the land involved in the ejectment suit is yet to be determined by the respondent court. In the meantime, the possession of the actual occupant of the land should not be disturbed. It is a settled rule that a possessor of property should not be deprived of his possession by the issuance of a writ of injunction (*Devesa v. Arbes*, 13 Phil., 273; *Evangelista v. Pedreños*, 27 Phil., 648; *Gilchrist v. Cuddy*, 29 Phil., 542; *Asombra v. Dorado and Gesmundo*, 36 Phil., 883; *Golding v. Balatbat*, 36 Phil., 941; *Liongson v. Martinez*, 36 Phil., 948; *Gordillo and Martinez v. Del Rosario*, 39 Phil., 829; *Kabankalan Sugar Co. v. Rubin*, 54 Phil., 645; *Santos v. De Leon*, 60 Phil., 573; *Lacassagne v. Chapuis*, 144 U.S., 119, 36 L. ed., 368), or by the appointment of a receiver, which may "be made only in extreme cases and on clear showing of necessity therefor in order to save the plaintiff from grave and irreparable loss or damage." (*Mendoza v. Arellano and B. de Arellano*, 36 Phil., 59.) This is a salutary rule, for a possessor of property should not be deprived of such possession but only after trial or hearing and by virtue of a final judgment. Hence the appointment of a receiver

to take possession of the land involved in the ejectment suit brought in the respondent court constitutes a grave abuse of discretion and should be set aside. There is no adequate process to correct it except by this extraordinary legal remedy. Inasmuch as the order of February 21, 1946, denying the motion for reconsideration of the order of January 23, does not clearly discharge the receiver for the land involved in the litigation, the writ applied for must be granted. On the other hand, the appointment of a receiver for the palay reaped from the land does not constitute an abuse of discretion. It may stand.

Petition for a writ of certiorari is granted. The order appointing a receiver to take possession of the land involved in the litigation pending in the respondent court is annulled, without costs.

Moran, C.J., Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Hontiveros, and Feria, JJ., did not take part.

CONCURRING AND DISSENTING OPINION

PERFECTO and HILADO, JJ.:

Upon the facts in this case, as narrated in the decision, we deem it necessary to add petitioner's allegation that prior to 1940 he had been in an uninterrupted possession of the parcel of land in question, and that in 1940 he was ousted therefrom, not through regular judicial proceedings, but by arbitrary action of Jose Sanvictores, who had absolutely no legal authority to forcibly eject petitioner from the land by administrative ukase. That arbitrariness was never cured and continued to characterize the illegality of the dispossession of petitioner of the land in question and of its enjoyment. We concur in the granting of the writ of certiorari, as prayed for, and the setting aside of the lower court's order appointing a receiver to take possession of said land.

But we have to dissent from that part of the decision upholding the appointment of a receiver for the palay reaped from the land. Upon the agreed facts in this case, petitioner has been in actual possession of the land in question since November, 1944, and it is he who, by his work and expenses, produced the palay. The appointment of a receiver for said palay, as ordered by the lower court, is tantamount to depriving petitioner of his property without due process of law. As a matter of consistency, upon the very authorities mentioned in the decision, we do not see any reason why the receivership of the palay should not also be dissolved.

The petition being verified and the answer being without verification, and no evidence having been adduced by one or the other party, we believe that under the law we must hold that petitioner recovered possession of the land in the manner that he states in his verified petition—at any rate, legality and good faith are always presumed until the contrary is satisfactorily proven*. This being so, he must be held to have sown the palay in question in good faith, therefore becoming its legitimate owner. (Articles 434, 436, 451, Civil Code).

DISSENTING OPINION

PARAS, J.:

The complaint for ejectment filed in the Court of First Instance of Bulacan by the petitioner, Basilio Aquino, against the respondent Maria Correa states:

"5.0 Que desde entonces (1940) la demandada y su marido poseyeron de mala fe el terreno no obstante haber

cesado en la administracion de la Hacienda de Buenavista Jose G. Sanvictores; y, cuando el Gobierno adquirio la Hacienda y lo adjudico en parcelas a sus legltimos poseedores, la aqui demandada y su marido en vida, prevaliendose de su situacion entonces y de las circunstancias del desorden general en el pals por la guerra, quisieron apropiarse ya para s£ y fueron los que pagaron a su nocibre el precio al Gobierno en papel moneda militar del Ejercito japones de invasion.

"6.0 Que uon posterioridad, el 15 de Julio de 1944, la demandada y su marido, que reconocieron su errorly mala fe y demostraron estar arrepentidos de su conducta pasada, devolvieron voluntariamente la posesion del terreno allaqui demandante reconociendo a este comolsu unico dueñõ, cuyo acto se formalizo en el edificio municipal de San Ildefonso, Bulacan, por el marido de la demandada en presencia de los entonces Alcalde y Jefe de Policia del referido municipio, prometiendo otorgar despu^s el documento correspondiente, que en aquella ocasion no se pudo hacer por la premura del tiempo, por encima de los deseos y peticion del aqui demandante.

POR TANTO, al Hon. Juzgado respetuosamente pide el demandante que, previos los tramites legales, dicte sentencia declarando al aqui demandante el dueñõ unico y exclusivo del terreno en cuestion; condene a la demandada a otorgar a favor del demandante los documentos correspondientes y necesarios de Iraspaso, renuncia o cancelacion, segun sea el caso, del terreno en cuestion, dentro ael plazo perentorio de diez (10) dias de haber quedado firme la sentencia; le condene Lambien a indemnizar al demandante en la suma de P6,600.00 por cosechas percibidas de mala fe, y en las costas del juicio. Pide tambien qualquier otro remedio favorable que en justicia y equidad proceda."

On the other hand, the answer to the complaint reads in part:

"4. Defendant denies par. 4, the true facts being; sometime in 1940, the Government of one Commonwealth acquired by leased with option to purchase from San Juan de Dios Hospital, the original owner, the Hacienda Buenavista; the land here in question being a part thereof the plaintiff, then a lessee of said ±and on yearly basis steadfastly refused to pay his yearly rent or annual value of the lease to the Government; so, in April 17, 1940, Mr. Jose G. Sanvictores, then the Government Manager ofitho Estate, upon instruction of the President of the Commonwealth, notified the plaintiff of the cancellation and termination of his lease contract due to his refusal to pay, which notification was received, acknowledged and agreed to by said plaintiff .Thereafter in 1940, the land in litigation was sub-leased by the Government to herein defendant and her husband Simeon de los Santos who died on January 17, 1945, and they paid all rents in arrears and religiously complied with their contractual obligations; possessed and cultivated the land, first as sub-lessees and then as owners afterwards, same having been sold to them by the Government on November 27, 1944; then in 1944 plaintiff, availing himself of the prevailing lawlessness, by force, threats, intimidation, in bad faith and with the aid of gangsters forcibly and illegally ejected the defendant and her husband from their possession of the land in question depriving thereby of the products of the same during the agricultural years 19441945 and 1945-1946;

"5. Defendant denies par. 5 and states that she and her husband have always possessed the land legally and in good faith, and when the Government acquired the Hacienda by purchase, the land in question was sold to her and her husband and the sale was made in a public instrument;

"6. .Defendant denies par. 6, specially her alleged promise to return the land to plaintiff in the presence of the

mayor and the chief of police, the true facts being as follows; plaintiff, in utter bad faith, ay force, intimidation and with the aid of gangsters, forcibly took possession of the land in question and when the defendant protested this illegal seizure, plaintiff threatened to do her and her husband bodily harm;"

It is clear that the plaintiff-petitioner recognizes certain rights of the respondent-defendant over the land. We need only invoke the prayer in which the latter is asked to convey or execute a document of transfer of the land in favor of the plaintiff, and the allegation that defendant had been in continuous possession of the land since 1940, as purchaser of the lot from an agency of the Government, until about the end of 1944 when plaintiff took possession. The transfer of possession had been voluntary, according to the plaintiff. It was thru intimidation and force, according to the defendant. Taking into account the prevailing conditions in the locality at or about the time of the change of actual possession, I am inclined to believe that the contention of the defendant is more worthy of belief.

Hence, the appointment of a receiver should not be considered as a grave abuse of authority amounting to excess of jurisdiction.

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