

**GLORIA M. ESTIPONA AND MANUEL ESTIPONA, PETITIONERS, VS.
HON. MIGUEL R. NAVARRO, AS JUDGE OF THE CFI OF PILI,
CAMARINES SUR, BRANCH VI AND ROBERTO MIGUEL,
RESPONDENTS.**

G.R. No. L-41825. January 30, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

The spouses, Gloria M. Estipona and Manuel Estipona, in this special civil action of certiorari assail the order of injunction dated May 24, 1975 issued by the Court of First Instance of Camarines Sur, Pili Branch VI, in Land Registration Case No. P-15, LRC Record No. N-32154.

The antecedents of the case are as follows:

On February 2, 1967 Roberto Miguel filed in the lower court an application for the registration of nine lots with a total area of 249 hectares. The Estipona spouses filed an opposition dated August 16, 1967 with respect to two parcels with areas of 73 hectares and 23 hectares. There were allegedly thirty-two oppositors.

Applicant Miguel in his verified motion dated March 3, 1975 asked the lower court to issue a preliminary preventive and mandatory injunction to restrain the oppositors from disturbing his alleged possession of the land.

The motion was supported by Miguel's affidavit wherein it was averred that on February 11, 1975 Mrs. Estipona and a group of eight persons entered the land and destroyed Miguel's barbed wire fence, coconuts and fruit trees and started building shanties and that on the following day other persons, at the instigation of the oppositors, entered Lot 7 and built shanties.

It was alleged in the motion that the acts of dispossession were resorted to because the lower court in its order of January 23, 1975 had announced that a committee of four persons composed of a commissioner appointed by the court, applicant Miguel or his representative, the Provincial Fiscal, and the lawyer for the oppositors would make an ocular inspection of the land for the purpose of verifying the portions actually occupied by the oppositors.

Miguel insinuated that in anticipation of that ocular inspection and to show a semblance of possession the oppositors constructed shanties, made clearings and planted crops in the disputed land. He averred that on the occasion of the ocular inspection the Fiscal rebuked the intruders for disturbing the status quo.

The Estipona spouses opposed the motion on the ground of lack of jurisdiction. They contended that to maintain the status quo the oppositors' possession should be respected and that such possession could not be transferred to the applicant who had no clear title to the land.

The lower court, acting on another motion of Miguel, issued a restraining order dated March 19, 1975. It found that an armed confrontation and consequent loss of lives and limbs might occur in the disputed land due to the alleged acts of dispossession committed at the behest of Mrs. Estipona "consisting of the destruction of a hut built

more than one year ago by the applicant, the cutting of barbed wire fence, setting loose from the coral three (3) cows of one Eddie Acap, the overseer of the applicant, and the gathering and destruction of trees, plants and vegetables from the plantation of the applicant and his overseer". The lower court enjoined Mrs. Estipona, her agents or representatives "from further disturbing the status quo on the land".

The Estipona spouses filed a motion for the reconsideration of that order. They claimed that the order was issued before the receipt of their memorandum; that it was a prejudgment of the case and that no bond would answer for the damages to the oppositors.

As already stated, the lower court issued the order of injunction dated May 24, 1975. It ruled that the injunction was ancillary to its primary jurisdiction as a land registration court. It directed the issuance of a writ of preliminary injunction, restraining the Estipona spouses, as oppositors, their agents, representatives and all persons claiming under them, from disturbing the possession which the applicant, Roberto A. Miguel, has allegedly exercised over the disputed land and ordering those who had surreptitiously entered the land to vacate the same. A bond of ten thousand pesos was fixed for the issuance of the injunction.

The Estiponas' amended motion for the reconsideration of that order was denied by the lower court in its order of October 4, 1975. The instant certiorari petition was filed on November 7, 1975.

Miguel has not filed the bond. The hearing of the main case was already terminated. The case has been submitted for decision.

The injunction order is assailed on the grounds (1) that because the notice of hearing in the motion for the issuance of an injunction was not addressed to the oppositors or their lawyers, that motion was a mere scrap of paper and (2) that the lower court, as a land registration court with limited jurisdiction, is devoid of any power to issue an injunction.

Rule 15 of the Rules of Court provides that "notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it" (Sec. 4). "The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion" (Sec. 5).

The notice of hearing is an integral component of procedural due process. It is intended to afford the adverse parties a chance to be heard before the motion is resolved by the court.

We hold that if a definite time and place for the hearing of the motion were indicated in the notice and if the parties concerned were duly apprised thereof at least three days before the hearing and were served with a copy of the motion, there would be a substantial compliance with the requirements of due process.

Failure to address the notice of hearing to the parties concerned or to their lawyers would not be a denial of due process of law. Asking the Clerk of Court to place the motion in the calendar at the time and place specified in the notice (instead of directing the notice to the parties concerned) could not possibly prejudice the adverse parties or their lawyers nor deprive them of a chance to be heard. What matters is that the adverse parties are served with a copy of the motion and that they are seasonably informed of the time and place of hearing.

A literal observance of the requirement in Section 5 that "the notice shall be directed to the parties concerned" is not necessary. That provision is not mandatory. It is merely directory. Service of a copy of the motion on the opposing lawyers and indicating the time and place of hearing are the mandatory requirements. They are vital elements of procedural due process.

It may seem trivial or inconsequential but the fact is that practising lawyers find it more convenient to address the

notice of hearing to the Clerk of Court, rather than to the lawyers of the parties concerned because if the notice of hearing were to be addressed to the opposing counsels, their names would have to be indicated twice in the notice; at the beginning of the notice and then at the end in the space showing the names of the persons who should be served copies of the motion.

On the other hand, to insist on a rigoristic enforcement of the requirement that the notice should be directed to the parties concerned is to give undue importance to a formalistic requisite the nonobservance of which does not impair any substantial right of the adverse parties. It would make a technicality a hindrance and chief enemy, not an aid, to the attainment of justice (*Alonso vs. Villamor*, 16 Phil. 315, 321).

In the instant case the following notice was contained in Roberto Miguel's motion dated March 3, 1975 for the issuance of an injunction:

"NOTIFICATION

"Greetings:

"Please take notice that on March 12, 1975, at 2:00 p.m., or soon thereafter as counsel may be heard, the undersigned counsel will submit the foregoing motion for the consideration to this Honorable Court.

"Manila, for Pili, C. Sur, Philippines, March 3, 1975."

The notice was signed by movant's counsel. Following the name of movant's counsel was a notation that copies of the motion were to be served personally on the five lawyers of the oppositors listed therein with their respective office addresses.

That notice, although not directed to the different oppositors or their respective lawyers, is a sufficient compliance with sections 4 and 5 of Rule 15. The notice shows the time and place of hearing. The adverse parties were served copies of the motion with the notice of hearing more than three days before the hearing. The Estipona spouses received a copy of that motion with that notice of hearing. They were able to file their opposition dated March 10, 1975. They were heard before the motion was resolved. They were not denied due process of law.

A notice of hearing, which was addressed to the Clerk of Court and not to the party concerned and which stated the time and place of hearing and was served by registered mail on the opposing counsel seven days before the date of hearing was held to be a valid notice. What was considered decisive was that the adverse party had sufficient notice of the time and place of the hearing of the motion (*Omico Mining and Industrial Corporation vs. Vallejos*, L-38974, March 25, 1975, 63 SCRA 285, 297).

So much for the procedural issue. With respect to the jurisdictional issue, Act No. 496 in its section 17, quoted below, empowers the Court of Land Registration to issue injunctions:

"SEC. 17. The Court of Land Registration, in all matters over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, including a writ of possession directing the governor or sheriff of any province, or the sheriff of the city of Manila, to place the applicant in possession of the property covered by a decree of the court in his favor; and, upon the request of the judge of the Court of Land Registration, the governor or sheriff of any province, or the sheriff of the city of Manila, as the case may be, shall assign a deputy to attend the sittings of the court in that province or city; and for the purpose of attending the sessions of the court and enforcing good order in and about the court room, the provincial governor is hereby authorized to designate a provincial guard or a member of the municipal police of the town in which the court is held; or if none such is available, to appoint a bailiff, at a salary not to exceed twenty-five pesos per month, to be paid from the provincial treasury, for such time as the court may be in session in said province.

"The Court of Land Registration, in all matters over which it has jurisdiction, may issue an injunction for the protection of either or any of the parties in interest, in the following cases:

"(1) When it appears by the application, by verified petition, or by affidavits that the commission or continuance of some act during the proceedings for registration of title would produce waste or great or irreparable injury to the subject-matter of the registration proceedings.

"(2) When it appears during the pendency of the proceedings that either or any of the parties in interest is doing, or is about to do, or is threatening to do, or is procuring or suffering to be done, some act in violation or to the prejudice of the rights of another party to the action respecting the subject-matter of the proceedings and tending to render the judgment ineffectual.

"Except as herein provided, preliminary and permanent injunctions shall be obtained, enforced, dissolved or modified in the same manner as such injunctions are obtained, enforced, dissolved or modified under the provisions of the Code of Civil Procedure." (As amended by sec. 5, Act No. 1108; sec. 4, Act No. 1648 and sec. 3, Act No. 1680).[*]

Section 17 was modified by Act No. 2347 which abolished the Court of Land Registration and transferred its functions to the different Courts of First Instance, including its power to issue injunctions.

Therefore, the contention of the Estipona spouses that the Court of First Instance, sitting as a land registration court, cannot issue injunctions appears to be manifestly untenable in the light of section 17.

However, section 17 was expressly repealed by Act No. 2711. It might be argued that the repeal abrogated the power of the Court of First Instance to issue injunctions in land registration cases. That point had already been resolved by this Court.

In three cases this Court held that Act No. 2711 repealed section 17 in its original form (see footnote), which did not contain any grant of power to issue injunctions, but did not repeal the amendatory laws, Acts Nos. 1108, 1648 and 1680 which empowered land registration courts to issue injunctions and writs of possession.

"Injunction; Authority of the Court of First Instance in land registration cases.— Section 17 of Act No. 496, as amended by section 3 of Act No. 1680, confers upon Courts of First Instance authority to issue injunctions in registration cases. The latter Act (meaning Act No. 1680) has not been entirely repealed by the final section (b) of Act No. 2711 and its amendments (Revised Administrative Code)." (Syllabus, Wagan and Garcia vs. Sideco and Natividad, 60 Phil. 685).

"Powers of the Court of Land Registration.- While section 17 of Act No. 496, in its original form, has been repealed by the Administrative Code, section 5 of Act No. 1108 amending the former by including in the power of the Court of Land Registration to compel obedience to its judgments and decrees the issuance of writs of possession, and section 3 of Act No. 1680, which has reamended by substitution said section 17 of Act No. 496, have not been repealed and are, therefore, in force, on the principle of statutory construction that 'an amendment to a section or statute is not necessarily repealed by a repeal of the section or statute amended' " (Syllabus, Romasanta vs. Platon, 62 Phil. 855).

"El artículo 17 de la Ley No. 496 autoriza al tribunal en los expedientes de registro expedir mandamiento de ejecucion de sus decisiones. Esta Ley fué después anmendada por la No. 1108. y por la No. 1680 en cuanto a detalles, pero manteniendo expresamente la autoridad del tribunal a expedir mandamiento de ejecucion de sus sentencias. Mas, vino el C?digo Administrativo en el año 1917, derogando el articulo 17 de la Ley No. 496. Se sostiene que, en virtud de esta derogacin, el tribunal, en un expediente de registro, carece ya de autoridad para expedir mandamientos de ejecucin de sus sentencias. Las Leyes Nos. 1108 y 1680 no han sido, sin embargo, derogadas. * * *. No estando derogada la Ley No. 1680, hemos declarado en aquella decisi?n (referring to Romasanta case) que la autoridad del tribunal, en un asunto de registro, para expedir mandamiento de

ejecucion de su sentencia, subsiste, no obstante la vigencia del Código Administrativo." (El Director de Terrenos contra Abingayan, 71 Phil. 112).

In *R. Kagahastian & Co. vs. Carag*, 61 Phil. 132, the second paragraph of section 17, as amended by Act No. 1680, was quoted. It was observed in that case "that the power to issue writs of injunction in registration cases may be exercised only by the Court of Land Registration (now Courts of First Instance) during the pendency of the registration proceedings". It was assumed that section 17 as amended is still in force.

Since the lower court acted within its jurisdiction in issuing the injunction order, certiorari does not lie to annul that order. Appeal would be the proper remedy in the event that Miguel's application for registration is granted and the opposition of the Estipona spouses is overruled. (*Nocon vs. Geronimo*, 101 Phil. 735).

Wherefore, the petition is dismissed with costs against the petitioners. So ordered.

Fernando (Chairman), Barredo, Antonio and Concepcion Jr., JJ., concur.

[*] Historical note on section 17 of Act 496:

In its original form section 17 reads:

"SEC. 17. The Court of Land Registration, in all matters over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, and, upon the request of the judge of the Court of Land Registration, the governor or sheriff of any province or of the city of Manila, as the case may be, shall assign a deputy to attend the sittings of the court in that province or city."

Section 5 of Act No. 1108 amended section 17 of Act No. 496 in this wise:

"SEC. 5. Section seventeen of said Act (496) is hereby amended by inserting in the fourth line, after the words 'in the Courts of First Instance' and before the words 'and, upon the request of the judge of Court of Land Registration,' the following words: 'including a writ of possession directing the governor or sheriff of any province or of the city of Manila to place the applicant in possession of the property covered by a decree of the court in his favor;' and by adding at the end of said section the following words:

"The governor or sheriff of the province who shall, in person or by his deputy, attend the sittings of the court in any province outside the city of Manila, in accordance with the provisions of this section, shall be allowed three dollars per day, in money of the United States, for each day the court is in session in his province for attendance by himself and necessary deputies. This allowance shall be in addition to the fees for service of process, and shall be paid from the provincial treasury."

Section 4 of Act No. 1648, which was enacted on May 16, 1907 and took effect on July 1, 1907, amended section 17 of Act No. 496 by empowering it to issue injunctions. It added a second paragraph to section 17. The amendment reads:

"SEC. 4. Section seventeen of said Act (496), as amended is hereby further amended by adding at the end thereof the following:

"The Court of Land Registration, in all matters over which it has jurisdiction, may issue an injunction for the protection of either or any of the parties in interest, in the following cases:

"(1) When it appears by the application, by verified petition, or by affidavits that the commission or continuance of some act during the proceedings for registration of title would produce waste or great or irreparable injury to the subject-matter of the registration proceeding.

‘(2) When it appears during the pendency of the proceedings that either or any of the parties in interest is doing, or is about to do, or is threatening to do, or is procuring or suffering to be done, some act in violation or to the prejudice of the rights of another party to the action respecting the subject-matter of the proceedings and tending to render the judgment ineffectual.

‘Except as herein provided, preliminary and permanent injunctions shall be obtained, enforced, dissolved, or modified in the same manner as such injunctions are obtained, enforced, dissolved, or modified under the provisions of the Code of Civil Procedure.’

Then section 3 of Act No. 1680, which was enacted on August 12, 1907 and took effect on October 1, 1907, further amended section 17 in the form quoted in the body of the decision.

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