

CATALINO BALBECINO, ET AL., PETITIONERS, VS. HON. WENCESLAO M. ORTEGA, ETC., ET AL., RESPONDENTS.*G.R. No. L-14231. April 28, 1962*

Ponente: BAUTISTA ANGELO, J.

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On July 22, 1948, Paulino Acosta filed a complaint to quiet title and for recovery of possession against Justo Balbecino before the Court of First Instance of Ilocos Norte over a parcel of land (Civil Case No. 758). Acosta alleged that he bought the land on August 16, 1926 from Estefania Guerrero and immediately thereafter he constituted Justo Balbecino as his tenant who delivered to him his share in the harvest until the crop year 1941-1942 when Balbecino, taking advantage of the confusion that prevailed during the Japanese occupation, refused to give his share of the crop alleging to be the owner of the land. On August 10, 1948, Balbecino filed his answer alleging that the land was owned and possessed by spouses Raymundo Balbecino and Cipriana Sanchez since they had acquired it from its former owner Estefania Guerrero de Taylan by virtue of a deed of sale executed on April 1, 1924. After trial, the court rendered decision on August 6, 1956 declaring Acosta the owner of the land and ordering Balbecino to turn over its possession to Acosta besides indemnifying him for his share of the crop from 1942 up to 1955.

Balbecino filed a motion for reconsideration, and when the same was denied, he took the matter on certiorari to the Court of Appeals, which on June 14, 1956 rendered decision dismissing the petition. When the decision became final and executory, the trial court issued a writ of execution upon the request of Acosta with the result that the latter was placed in the possession of the land, as shown by the return of the sheriff dated December 21, 1956.

It was after Balbecino's several attempts to recover possession of the land have failed, which culminated in several contempt proceedings filed against him, that his brothers and sisters commenced this case before the same court against Paulino Acosta praying that they be declared owners of the land and that the writ of possession issued in favor of the latter be declared null and void. In their complaint, plaintiffs prayed, among others, that a preliminary injunction be issued to restrain Acosta from occupying, cultivating and collecting the produce of the land pending termination of the case on the merits.

Defendant alleged in his answer that he is the owner and possessor of the land, his ownership and possession thereof having been settled, recognized and adjudicated by the same court in its decision in Civil Case No. 758, which was affirmed by the Court of Appeals; that plaintiffs are the brothers and sisters of Justo Balbecino who was the defendant in the former case, and because of his defeat therein he is now utilizing said plaintiffs as tools to circumvent and defeat the force and effect of the decision rendered in said case; and he prayed that, pending decision on the merits, a writ of preliminary injunction be issued against the plaintiffs so that they may be prevented from occupying, and harassing the defendant in connection with the possession of the land.

On July 10, 1958, the trial court issued an order denying the petition of plaintiffs for preliminary injunction, but

granting that of defendant, it having found after an examination of the pleadings that defendant obtained a favorable decision in Civil Case No. 758 and was placed in possession of the land by the sheriff, and so that possession should be respected pending termination of the case on the merits. It ordered that the injunction be issued upon filing by defendant of a bond in the amount of P500.00. It is because of the issuance of this writ that plaintiffs interposed the present petition for certiorari alleging that the court a quo committed a grave abuse of discretion in issuing said writ in disregard of the claim of possession of the plaintiffs which they intimated in their complaint.

It appears that Paulino Acosta filed a complaint against Justo Balbecino to quiet title and recover the possession of the land in litigation. In his answer Balbecino claimed that the land belonged to spouses Raymundo Balbecino and Cipriana Sanchez who acquired it from Estefania Guerrero de Taylan by virtue of a deed of sale executed on April 1, 1924. In that answer he did not state the interest he had in the land although later he executed an affidavit stating that he is absolute owner thereof in connection with the motion for reconsideration asking for the setting aside of the judgment rendered against him. This judgment became final and executory, and when the writ of execution was issued, the sheriff placed Acosta in possession of the land. And although several attempts were made by Balbecino to recover possession thereof by defying the writ the same failed because Acosta filed contempt proceedings against him during which he pleaded to be spared from disciplinary action upon the promise that he will never encroach again upon the land. And it was after these attempts had failed that petitioners, who are brothers and sisters of Justo Balbecino, commenced the present action. Under the foregoing facts, which appear undisputed in the pleadings, the court a quo found no other alternative than to grant the petition for preliminary injunction filed by respondent Acosta, for it really appears that at the time of the filing of the second action he was in actual possession of the land, and it is but fair that for the time being that possession be respected until the case is decided on the merits.

It is true that petitioners have filed with the sheriff an opposition protesting against the order placing Paulino Acosta in possession of the land, but the same came late, and so it was properly disregarded by the sheriff. This protest is a clear proof that Acosta was really in possession of the land when this case was started by petitioners. Considering that Justo Balbecino averred in the affidavit he attached to his motion for reconsideration that he is the absolute owner of the land and that after all his hope to regain it has vanished petitioners, who are his brothers and sisters, commenced the present action, there is reason to believe that the same is but an eleventh hour attempt to circumvent the decision rendered in Civil Case No. 758. This is enough reason that justifies the action taken by the court a quo.

Wherefore, petition is denied. The order of the court a quo dated July 10, 1958 is affirmed. Costs against petitioners.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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