

MARIANO VELASCO & CO., PLAINTIFF AND APPELLEE, VS. GOCHUICO & CO. ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 10173. September 18, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is a motion made in this court to appoint a receiver in a foreclosure action or, in case the court refuse to appoint a receiver, to issue an execution upon the judgment contained in the action or require the defendant to file a bond in the sum of P75,000 to guarantee the payment of the judgment in case it is affirmed by this court.

A proceeding for the appointment of a receiver should be by petition and not by motion. The petition should be verified and should have attached to it such affidavits as the petitioner may deem necessary for the substantiation of the allegations set forth in the petition. The present proceeding is by motion and the moving papers are not verified.

The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant. This being the case, the papers upon which the petition for the appointment of a receiver are based should be verified and should contain all the facts required to show a clear right to the relief.

The question has not been raised or discussed whether this court has authority to appoint a receiver in an action pending here on appeal. We do not, therefore, decide that question. A majority of the court believe that whether the court has that right or not, the result would be the same, as the motion could not prevail in either event.

We are of the opinion that, although the case has been appealed and the appeal perfected, the Court of First Instance still has the power to hear and decide an application for the appointment of a receiver. It may be contended against the jurisdiction of the Court of First Instance that no action was pending in that court to which the petition for the appointment of a receiver could become ancillary and that an appeal from the original judgment to this court had been perfected, the allowance of the bill of exceptions having the effect to stay all further proceedings in the case. In reply to such contention we might say that, although the cause has been appealed to the Supreme Court, it may be regarded as yet pending for the purpose of an application for a receiver and we are of the opinion that the court that rendered the decree appealed from is the proper court to hear and determine such an application. The office of a receiver is manifestly to aid, by the preservation of property, in making effective the court's decree.

It has always been regarded as an auxiliary or ancillary proceeding and rarely, if ever, as an independent one. If occurrences arise after decree which threaten the effectiveness of the decree, the court has the power then to make

the appointment. The questions raised on the appointment of a receiver do not involve any matter litigated by the appeal. (Brinkman vs. Ritzinger, 82 Ind., 358; Chicago & South-eastern Railway Co. vs. St. Clair, 144 Ind., 371; Moran vs. Johnston, 26 Grat., Va., 108; Adkins vs. Edwards, 83 Va., 316.)

Even though we held that this court has authority to appoint a receiver in an action pending on appeal, we should not exercise that authority under the facts and circumstances of this case. This court is not provided with adequate resources and machinery for dealing with the situation presented by the appointment of a receiver and all of the details connected therewith. It would impose upon us obligations and duties which we are not fully prepared to discharge and which we are not called upon to meet under the circumstances.

With respect to that portion of the motion asking for the issuance of an execution, should the court refuse to appoint a receiver, we have to say:

Section 144 of the Code of Civil Procedure provides:

"Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly."

In the case of Macke vs. Camps (5 Phil. Rep., 185), the court said: "Thus the legislator has placed the issuance of the order complained of in the discretion of the trial court, and this court will not interfere to modify, control, or inquire into the exercise of this discretion, which is thus conferred by statute, unless it be alleged and proven that there has been an abuse or excess of authority on the part of the trial judge, or unless it appears that since the issuance of the order conditions have so far changed as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not contemplated by the trial judge at the time of the issuance of the order. (Jerome vs. McCarter, 21 Wallace, 88 U. S., 17; Calvo vs. Gutierrez, 4 Phil. Rep., 203.)"

Therefore, even though this court has authority to issue an execution in an action pending on appeal, a question which we do not decide, we would not issue it in this case upon the showing made for the reasons expressed in the decision above cited. No change in condition or circumstance has been shown since the execution was stayed in the court below which would warrant our interference.

The reasons which lead to the denial of the motion to issue an execution also require the denial of the motion to require the defendant to give the bond mentioned in the moving papers.

The motion must be denied in all its parts.

Arellano, C. J., Torres, and Araullo, JJ., concur.

Johnson, J., concurs in the result.

CONCURRING

CARSON, J.

Understanding as I do that nothing said in this opinion is intended to be taken as a ruling that this court has not the power in an appropriate case to take such measures as may be necessary to conserve the subject matter in litigation pending the final disposition of such case, either by the appointment of a receiver, or the requirement of bond for the continued stay of execution or by granting such other remedy as the facts of the particular case may require, I concur.

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