

BENITO GOLDING, PLAINTIFF AND APPELLEE, VS. HIPOLITO BALATBAT, SERAPIA BALATBAT AND ESTEFANIA BALATBAT, DEFENDANTS. HIPOLITO BALATBAT, APPELLANT.

G.R. No. 11130. October 08, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Pampanga on the 10th day of October, 1910. The petitioner alleged that he was the owner of a piece or parcel of land which is particularly described in paragraph 2 of the complaint; that the defendants, without right or justification, were illegally and maliciously interfering with the petitioner's possession of said land and would undoubtedly continue to molest him and interfere with his peaceful enjoyment of said property unless they were enjoined from so doing. The petitioner prayed for both a preliminary and perpetual injunction. A bond was given by the plaintiff in the sum of P1,500 and a preliminary injunction was issued. Each of the defendants were served with a copy of the complaint on the 27th day of October, 1910, together with a copy of the preliminary injunction issued.

On the 10th day of November, 1910, the defendant Hipolito Balatbat entered an appearance in said case. For the reason that none of the said defendants answered the petition within the time fixed by law, the petitioner presented a motion for a judgment by default, which was granted by the Hon. Julio Llorente upon the 26th day of November, 1910. The case was finally set down for hearing and was heard upon the 4th day of January, 1911. After hearing the proof adduced by the plaintiff, a judgment was rendered on the same day ordering and enjoining the defendants, their agents and representatives, and all other persons acting in their behalf, to desist in their acts of whatever character which molested or tended to molest the plaintiff in the peaceful enjoyment of the possession of his property. A copy of said final injunction was served upon the defendants.

Later, on the 15th day of June, 1914, the plaintiff presented an affidavit in the court below, alleging that the defendant Hipolito Balatbat, his agents and representatives had maliciously and illegally and by means of violence committed acts in violation of the terms of said injunction, and prayed that said defendant and his representatives should be cited to appear to show why they should not be punished for a violation of the injunction theretofore granted. In accordance with said citation or order the defendant Hipolito Balatbat and others appeared. Hipolito Balatbat confessed that he was guilty of a violation of said injunction, but attempted to excuse his acts upon the theory that he was the owner of the parcel of land in question. The same confession and the same defense were presented by the other persons who had been cited to appear and explain why they had violated said injunction. After hearing the confession of the defendant Hipolito Balatbat, the Hon. Julio Llorente found that he was guilty of a violation of said final injunction and imposed a fine upon him in the sum of P50, with subsidiary imprisonment in case of insolvency. From that sentence he appealed to this Court. The other persons cited to show why they should not be punished for contempt were not punished.

In his first assignment of error, the appellant alleges that the lower court committed an error in sentencing him to

a fine without having first presented a complaint in due form in accordance with the provisions of General Orders No. 58, and in declaring that he had not been duly notified of the injunction therefor rendered. The appellant, in his argument in support of said error, makes no reference to the provisions of General Orders No. 58, but alleges that the procedure followed in the lower court was not in accordance with the provisions of articles Nos. 231 and 232 of Act No. 190. The record shows that the appellant had been ordered not to do certain particular acts described in the injunction, and that he had notice of said injunction; that after the lapse of more than three years, after being cited to show cause why he had violated said injunction, and after due hearing was given him, he confessed that he had violated said order but attempted to justify his acts. The record shows that a complaint had been presented in writing and filed with the clerk, and that he had been given an opportunity to be heard in accordance with the provisions of article 233 of Act No. 190. The procedure in the court below was entirely regular and in accordance with the provisions of the law.

In his second assignment of error he alleges that the lower court committed an error in hearing the case and condemning the appellant. The only argument in support of said error is that, inasmuch as the lower court had issued the injunction, it is not just for it to consider the questions presented for a violation of the same. In reply to that argument it may be noted first that no objection was presented or challenge made to the hearing of the question relating to the violation of said injunction by the lower court; and second the record does not show any reason why the Hon. Julio Llorente was not fully competent to inquire into the question whether or not his order of injunction had been violated. The judge who grants an injunction may punish those who violate its mandates.

In his third assignment of error the appellant alleges that the lower court committed an error in condemning the defendant for "desacato;" and in support of that assignment alleges that there was no proof showing that the defendant had violated the terms of said injunction. In reply to that argument it is sufficient to say that the defendant and appellant himself admitted that he had violated the terms of said injunction; and the only excuse offered therefor was the fact that he claimed to be the owner of the lands in question.

While, we find nothing in the record which would justify a reversal of the penalty imposed by the lower court for the violation of the terms of the injunction, yet, considering the apparent ignorance of the defendant and appellant, we are of the opinion that every purpose of the plaintiff in justice and equity may be conserved by a modification of said fine. Therefore, the judgment of the lower court is hereby modified; and it is hereby ordered and decreed that a fine of P5 only be imposed upon the defendant, and the costs. So ordered.

Moreover, in view of the constant practice which we have observed in certain of the judicial districts of the Courts of First Instance in granting injunctions for the purpose of obtaining possession of land, we deem it proper to make the following observations:

- That injunction should not be granted to take property out of the possession and control of one party and to place it in the hands of another whose title has not been clearly established by law. Another adequate, summary and speedy remedy exists for almost every case. (Devesa vs. Arbes, 13 Phil. Rep., 273; Palafox vs. Madamba, 19 Phil. Rep., 444; Evangelista vs. Pedreños, 27 Phil. Rep., 648; Gilchrist vs. Cuddy, 29 Phil. Rep., 542.)
- The writ of injunction is one of the special remedies provided by the Code of Civil Procedure (Act No. 190). It should not be issued except upon condition that no other ordinary, speedy and adequate remedy is available to avoid or repair the damage done, or which may be done by a new violation of the plaintiff's rights. (Palafox vs. Madamba, 19 Phil. Rep., 444; Gilchrist vs. Cuddy, 29 Phil. Rep., 542.)
- That an injunction for the issuance of which provision is made in the Code of Civil Procedure, while it resemble the interdictal actions of the Spanish procedural law in some respect, is wholly distinct therefrom and, as a rule, the circumstances under which, in accordance with the Spanish law, "interdictos de adquirir, de retener, de

recobrar, o de despojo" were properly issued would not justify nor sustain the issuance of an injunction as defined in said Code. (*Devesa vs. Arbes*, 13 Phil. Rep., 273.)

- While the writ of injunction may be issued to restrain acts of trespass and the illegal interference with the possession of land, the cases are very few when said writ should issue ex parte and before the defendant is given a hearing; and it should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused. (*Western Union Telegraph Co. vs. Judkins*, 75 Ala., 428; *High on Injunctions*, section 697; *Clark vs. Jeffersonville R. R. Co.*, 44 Ind., 248; *Poughkeepsie Gas Co. vs. Citizens' Gas Co.*, 89 N. Y., 493.)

- Injunctions to prevent trespass and the illegal interference with the possession of land should not be granted, when the plaintiff's title is in dispute and has not been established at law, until the question of title is settled in a proper proceeding brought for that purpose. (*Maloon vs. White*, 57 N. H., 152; *Greasap vs. Kemble*, 26 W. Va., 603.)

- There are cases, however, where an injunction may be granted in order to preserve the statu quo of property until the title can be determined in a proper action. (*Clayton vs. Shoemaker and Newcomer*, 67 Md., 216.) But even then it should not be granted ex parte. The defendant should be given an opportunity to be heard.

- The remedy by injunction is never the proper remedy to deprive a person of the possession of property. If the person in possession is in possession illegally there exist other adequate, speedy and summary remedies—forcible entry and detainer and ejectment. These remedies are adequate. (*Devesa vs. Arbes*, 13 Phil. Rep., 273; *Palafox vs. Madamba*, 19 Phil. Rep., 444.)

In the present action had the defendants appeared when they were cited so to do and alleged and showed that they were in possession of the land in question as owners thereof, the action would have resolved itself into one of desahucio or ejectment, and a motion properly presented and properly supported to dissolve the temporary injunction would have been denied. Of course, upon the theory of the plaintiff, as presented in the record, that he was the owner of the land in question and in possession thereof—and that fact not having been denied—and that the defendants were mere trespassers thereon and were illegally and maliciously interfering and molesting the plaintiff in his quiet and peaceable enjoyment of the possession of his property, then injunction was the proper remedy for the purpose of preventing a repetition of said illegal acts. (*Maloon vs. White*, 57 N. H., 152.)

The remedy by injunction is the proper remedy to prevent repeated trespasses upon real property. (*Merced Mining Co. vs. Fremont*, 7 Cal., 130; *Anderson vs. Harvey's Heirs*, 10 Grattan [Va.], 386; *Jerome vs. Ross*, 7 Johnson's Ch. Rep., 315.) But the trespass which will be enjoined must be of such a nature that an action for damages will not adequately compensate the loss occasioned thereby. (*Smith vs. Pettingill*, 15 Vt. 82; *Norton vs. Snyder*, 4 Thomp. & C, 330.) So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur.

CARSON, J., dissenting:

I dissent.

I am convinced that the grant of the preliminary injunction in this case was clearly unauthorized by law, illegal and voidable if not absolutely void.

It is very evident that the court below wholly misapprehended the nature of the writ, and granted it improvidently in the erroneous belief that the circumstances under which the special remedy of injunction furnished by the new Code of Civil Procedure may be invoked are substantially the same as those under which the interdictal actions of the Spanish law were maintained, and under which interdictos de adquirir, de retener and de recobrar or de despojo issued under that system. (Devesa vs. Arbes, 13 Phil. Rep., 273.)

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