

THE MUNICIPALITY OF CAMILING, PETITIONER, VS. HON. BERNABE DE AQUINO, JUDGE OF THE COURT OF FIRST INSTANCE OF TARLAC, AND HILARIO SIMBRE, RESPONDENTS.*G.R. No. 11476. February 28, 1958*

Ponente: PADILLA, J.

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This is a petition for a writ of certiorari to set aside the appointment of a receiver made by the respondent Court.

It appears that on 30 August 1952, Hilario Simbre brought an action in the Court of First Instance of Tarlac (civil case No. 732) to recover from Candido Cruz and Felipe Domingo the sums of P10,000, the value of the fishes caught by them from fishponds, claimed to be his own, P6,000 as damages, and P1,000 for litigation expenses, and at the same time prayed for a writ of preliminary injunction of the fishponds and from disturbing his possession of the fishponds and from installing fishtraps therein (Annex E). On 6 September 1952 the prayer for the writ was granted and the writ issued. Answering the complaint, the defendants aver that the Municipality of Camiling leased to them the fishponds, they having been the highest bidders at a public bidding held on 12 June 1952 for that purpose, and that they, as the highest bidders thereat, entered upon and took possession of the fishponds and installed the fishtraps therein; and that by reason of the writ of preliminary injunction issued by the Court enjoining them from entering upon and coming to the fishponds and restraining them from installing fishtraps therein, they have lost interest in entering formally into a contract of lease with the Municipality of Camiling. They prayed for the dismissal of the complaint (Annex F). The leave of court having been secured, on 27 September 1952 the Municipality of Camiling filed an answer-in-intervention setting up the defense of extraordinary prescription, asserting ownership of the fishponds pursuant to sections 2321, 2323 and 2324 of the Revised Administrative Code, as amended by Act No. 4003 and Commonwealth Act No. 471, and denying the plaintiff's claim of ownership of the fishponds, and prayed that the writ of preliminary injunction theretofore issued on 6 September 1952 be dissolved; that a writ of mandatory injunction be issued ordering the plaintiff, his agents, attorneys and representatives, to vacate the fishponds, to remove all the fishing apparatus set up therein, to desist from exercising any act of ownership and possession in the fishponds and from disturbing the peaceful possession of the defendant-intervenor; that the plaintiff be ordered to pay damages to the defendant-intervenor in such amount as the Court may determine and fix; that the complaint be dismissed; and that the defendant-intervenor be granted such other relief as may be proper, just and equitable (Annex H). A separate motion reiterating the prayer for dissolution of the writ of preliminary injunction also was filed (Annex I). With leave of court, likewise the Director of Lands filed an answer-in-intervention restating the facts alleged by, and reiterating the prayer of, the first defendant-intervenor (Annex K). On 5 February 1953 the Court dissolved the writ of preliminary injunction theretofore issued (Annex L).

On 15 March 1955 the plaintiff filed an unverified petition for the appointment of a receiver and suggested that Felix Salvador be appointed as such, on the ground that the defendants who did not have funds or own properties to pay the sums sought to be recovered were appropriating for themselves the proceeds realized from the sale of

the fishes caught in the fishponds and that such proceeds were in danger of being wasted or lost (Annex M). The Director of Lands objected to the petition on the ground that the appointment of a receiver was but a subterfuge resorted to by the plaintiff to recover possession of the fishponds, already in possession of the Municipality of Camiling, after the dissolution of the writ of preliminary injunction (Annex N). After hearing, on 23 March 1955 the Court granted the petition and appointed Felix Salvador receiver upon the filing of a bond in the sum of P30,000 (Annex A). Motion for reconsideration (Annex O) was denied. However, the previous order was amended by the appointment of the Clerk of Court as receiver in lieu of Felix Salvador (Annex B). The intervenor Municipality of Camiling moved that it be allowed to file a counterbond to discharge the receivership (Annex S) but the Court denied the motion (Annex C). The petitioner reiterated its petition to be allowed to file a counterbond to discharge the receiver (Annex T), but this also was denied (Annex D).

Petitioner contends that in issuing the orders (1) of 23 March 1955, granting the plaintiff's petition for the appointment of a receiver (Annex A) ; (2) of 29 March 1955, denying the motion for reconsideration of the previous order (Annex B) ; (3) of 29 September 1955, denying the petition for the intervenor Municipality of Camiling to be allowed to file a counterbond to discharge the receiver (Annex C) ; and (4) of 19 October 1955, denying the petition of the same intervenor that reiterated its petition to be permitted to file a counterbond to discharge the receiver (Annex D), the respondent Court exceeded its jurisdiction or committed a grave abuse of discretion, and that there being no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, the orders complained of should be annulled and set aside.

Just as a writ of preliminary injunction should not be issued to put a party in possession of the property in litigation and to deprive another party who is in possession thereof, except in a very clear case of evident usurpation, so also a receiver should not be appointed to deprive a party who is in possession of the property in litigation. There can be no doubt that the Municipality of Camiling, the petitioner, was in possession of the fishponds when the writ of preliminary injunction was issued, which was later on dissolved, for that possession of the petitioner had been passed upon and determined in its favor by the Justice of the Peace Court of Camiling in civil case No. 35 for detainer (Hilario Simbre vs. The Municipality of Camiling), where it was found and decided that the Municipality of Camiling was in actual, physical and legal possession of all the lands and fisheries involved therein, the same lands and fishponds involved in civil case No. 732 of the respondent Court, because from such judgment the herein respondent Hilario Simbre did not appeal. This is the same ground and reason relied upon by the respondent Court when it dissolved the writ of preliminary injunction theretofore issued.

The writ prayed for is granted. The orders complained of by which a receiver was appointed are annulled, with costs against the respondent Hilario Simbre.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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