

**TAN GIN SAN, PETITIONER, VS. ROSALIA A. TAN CARPIZO
ADMINISTRATRIX OF THE INTESTATE OF TAN CUAN, DECEASED,
HON. LEOVIGILDO B. MIJARES, JUDGE OF THE COURT OF FIRST
INSTANCE OF ZA...**

G.R. No. 12567. May 30, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Three litigations are now pending before the court of first instance of Zamboanga City concerning two buildings of strong materials in the same city owned by Tan Cuan, deceased.

The first, Civil Case No. 608, is a suit wherein the administratrix of his intestate, his widow Rosalia A. Tan Carpizo, seeks the annulment of a chattel mortgage on the building reportedly executed by Tan Cuan during his lifetime in favor of Tan Gin San. She denies execution thereof by Tan Cuan, and alleges that in case it was duly executed it is illegal as to one-half, since the property belongs to their conjugal partnership, and she did not sign the mortgage deed.

In the second, Civil Case No. 610, Tan Gin San tries to obtain legal possession of the two buildings, which the administratrix refused to surrender, even after extra-judicial proceedings to foreclose the chattel mortgage had been duly carried out through the intervention of the Sheriff.

As the two buildings were leased to several tenants. the latter were subjected to conflicting claims regarding the rents of the occupied premises. Consequently, sixteen of them, Santiago Bernardo, et al. instituted the third Civil Case No. 648 for interpleader. Therein they made deposits of the monthly rentals when and as they become due. Therein also were issued the orders of the respondent judge dated February 16, 1957, April 29, 1957, May 7, 1957, etc. which gave rise to the institution of this petition for certiorari. Said orders authorized the administratrix to withdraw and receive from the Clerk of Court the amounts deposited as rents by the tenants of the aforesaid buildings.

Citing *Rivera vs. Ocampo*[1] wherein we held it impermissible, in interpleader cases, to deliver' to one party the money deposited in court even upon the filing of a bond, and alleging excess of jurisdiction or abuse of discretion, plus irreparable damages, petitioner asked for preliminary injunction, which was in due course granted after submission of a suitable bond.

The tenants, who were made respondents expressed, in their answer, their objection to the disputed orders. However, inasmuch as they may not be required again to pay the rentals they have already deposited, they have really no interest in the matter, their stand may be disregarded and the controversy may be limited to petitioner against Rosalia Tan.

The respondent judge is a mere nominal party. The respondent administratrix is actually the one called upon to defend. And she explains, in her answer, that the orders were necessary consequence of the court's directive in

Civil Case No. 610 on December 29, 1956, requiring the sheriff to return the possession of the two buildings to her; that possession was thus restored to her; that her possession necessarily entailed the right to collect rents from the tenants; that it was too late for petitioner to complain, since he did not appeal nor question in a higher court the order restoring possession, which has thereby become final; that anyway the rights of petitioner are amply secured by the bond of P140,000 the administratrix had filed in Civil Case No. 610.

Disputing this last proposition, petitioner denies the legal feasibility of extending the surety's liability-without its consent-under the bond in Civil Case No. 610 to the damages resulting from an order in another Civil Case No. 648. To settle this point it becomes necessary to describe the background and the terms of the bond filed in Civil Case No. 610, which as stated aimed to wrest possession of the buildings from the administratrix.

It seems clear from the pleadings and annexes thereto, that in said Civil Case No. 610, plaintiff Tan Gin San (secured, by an order of replevin the surrender to him of the two buildings which had been extra-judicially foreclosed; that subsequently, acting on a petition of Rosalia Tan which asserted nullity of said foreclosure in view of the ruling of this Court in *Manarang vs. Ofilada*[1] the judge impliedly annulling the foreclosure, declared the administratrix entitled to the return of the buildings "upon the posting of a bond of P140,000 to answer for the alleged unpaid loan and for any damage which plaintiff" (Tan Gin San) may suffer by virtue thereof. (November 16, 1956.) The bond was submitted, and the sheriff redelivered possession to the administratrix in January 1957.

Now, in ordering delivery of the rentals deposited in court in Civil Case No. 648 the Court expressly said it was giving effect to the orders in Civil Case No. 610 declaring the administratrix's right to possession of buildings and returning them to her. Therefore, it would not be erroneous to hold that if the deposited rentals should be lost, the damages, if any, suffered thereby is a mere consequence of the return of possession and is chargeable against the bond of P140,000.

The petitioner's credit, secured by the mortgage is P40,000 with interest at 6 per cent beginning February 28, 1958. At the time this petition was filed, such credit did not exceed P46,000. He has therefore no serious ground for concern because the bond is amply sufficient.

Turning to the issues of jurisdiction or discretion, the court undoubtedly had jurisdiction; the moneys were in court in a litigation properly within its competence. And no authority is cited to the contrary.

Was there abuse of discretion? We think not. The rentals accrued in and after December 1956. Yet in November 1956, the court had declared and upheld the possessory right over the buildings of the administratrix, thereby overruling the claims of Tan Gin San as mortgage creditor-temporarily of course.

The right to possession of the buildings includes the right to the use or the fruits thereof. Rentals, which are civil fruits (*Waite vs. Williams*, 5 Phil., 571) belong to the possessor in good faith (Art. 544 New Civil Code). Furthermore, and this is conclusive, Tan Gin San considers Tan Cuan the owner of the buildings. Therefore, Tan Cuan (or his estate represented by Rosalia Tan) is entitled to the rents, in the absence of better rights of Tan Gin San - which the latter has not shown.

And this brings us to *Rivera vs. Ocampo*, supra, on which rests the petitioner's contentions. There we held it was abuse of discretion, in interpleader cases, to allow one of the contestants to get the money deposited, even upon the filing of a bond. But that case is distinguishable from this in that the order permitting withdrawal was avowedly for the purpose of helping one of the claimants; whereas here it was permitted as a consequence of the court's previous order-final it seems-awarding to Rosalia Tan possession of the rented premises. A further distinction is that whereas in the *Rivera* case the right to the money was disputed among several interested parties, in this case the right of the owner and the possessor to rents is reasonably clear.

Everything considered, we perceive no grave abuse of discretion calling for the issuance of certiorari. Accordingly, the petition is denied, and the injunction heretofore issued is dissolved. Costs against petitioner.

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

[1]52 Off. Gaz., 3364; 93 Phil., 588.

[1]52 Off. Gaz., 3954, 99 Phil., 108

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