

JOSE RUEDA, PETITIONER, VS. COURT OF AGRARIAN RELATIONS, AND FELIX S. DAVID, RESPONDENTS.

G. R. No. 13014. September 30, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

In a petition filed on March 21, 1957, with the Court of Agrarian Relations, Third District, sitting at San Fernando, Pampanga (CAR Case No. 276-Pampanga), Felix S. David sought ejectment of his tenant Jose Rueda from his (David's) 5-hectare piece of land located in Magumbali, Candaba, Pampanga, being worked on by said tenant, alleging that the tenant, despite having received from the landowner 4 cavanes of palay for seedling and the sum of P160.00 for transplanting expenses, neglected to plant on more than 1 hectare of the land to the damage and prejudice of the landowner. Thus, it was prayed that Rueda be dispossessed of his landholding and ejected therefrom.

In his answer, Rueda claimed that his failure to plant 1 hectare of the land was attributable to causes beyond his control, specifically, destruction of the seedlings by rats and worms and for lack of water; that although he reported the matter to David's overseer, the latter did nothing about it; and that despite his efforts, he was not able to secure enough seedlings to replace those destroyed. Rueda, therefore, prayed that the petition be dismissed.

The issues having been joined, the case was first set for hearing on April 26, 1957, whereat the landowner and two of his witnesses testified. For lack of material time, the trial was continued for May 20, 1957, on which date the landowner presented one more witness and then rested his case. The hearing, however, was continued for May 27, 1957, upon motion of the tenant's counsel. On May 27, 1957, said counsel again moved for postponement of the hearing on account of his illness, which motion was granted on the same day by the court and the reception of the tenant's evidence was re-set for June 4, 1957, with warning that "no other motion for postponement will be entertained by this Court under any ground, otherwise the case will be submitted for decision". At the hearing of June 4, 1957, neither the tenant nor his counsel of record appeared, but the latter sent another attorney to request a further postponement in view of counsel's inability to inform his client of the trial for lack of material time, claiming that copy of the order setting the hearing for June 4 was received only on June 3 at 1:00 in the afternoon. On opposition of the landowner, the court denied the motion and instead ordered the parties to submit their respective memoranda in 10 days after which period the case would be considered submitted for decision.

Counsel for the tenant petitioned to have this order reconsidered contending that such denial of his motion for postponement amounted to a deprivation of his day in court, but the petition was denied by the court in its order of June 22, 1957.

On July 2, 1957, the court rendered judgment finding tenant Rueda guilty of negligence in not plowing and preparing 1-½ hectares of his landholding for planting despite the fact that he had already received the transplanting expenses therefor thus giving rise to serious injury to the land which would impair its productive capacity. Consequently, the complainant Felix S. David was given authority to eject Rueda from his landholding

and place thereon another tenant or tenants.

The decision having become final and executory, the court, at the instance of the landowner, issued a writ of execution dated August 12, 1957, directing the JAGO Tenancy Officer at San Fernando, Pampanga, to eject the tenant from the land.

Two months later or on October 15, 1957, Jose Rueda filed the present original action for certiorari with preliminary injunction, alleging that the Agrarian Court, in denying his motion for postponement of the hearings of June 4, 1957, acted in excess of jurisdiction or with grave abuse of discretion, because in so doing he was deprived of his right to a day in court. Thus, he prayed that a writ of preliminary injunction be issued enjoining the respondents landowner and court from ejecting petitioner from his landholding, and that the aforesaid order of June 4 be set aside and all proceedings arising therefrom, including the decision and its execution, be declared null and void. It is further prayed that the case be re-set for hearing in the lower court for the reception of petitioner's evidence.

The petition is devoid of merit.

As stated, this is a special civil action for certiorari with preliminary injunction originally. filed with this Court. Hence, the only question presented is whether the Court of Agrarian Relations has, as alleged, acted in excess of its jurisdiction or with grave abuse of discretion in denying petitioner's motion for postponement of hearing scheduled on June 4, 1957 and in considering the case submitted for decision. That the Court of Agrarian Relations has jurisdiction of the subject matter which relates to the ejectment of a tenant by the landowner is beyond question. That it acquired jurisdiction over the parties is likewise undisputed. Where, as in this case, there is jurisdiction both of the subject-matter and of the parties, the decision of all other questions arising in the case is but an exercise of that jurisdiction (*Herrera vs. Barretto, et al.*, 25 Phil., 245, 251). And certainly, the granting or denial of a motion to postpone the hearing of a case clearly within the jurisdiction of the court even if irregular or erroneous, is not overstepping such jurisdiction as to constitute an act "in excess of jurisdiction". Such an error would be not an error of jurisdiction, but merely an error of judgment which can not be corrected by the special civil action of certiorari.

Has the lower court committed a grave abuse of its discretion in denying the verbal motion for postponement? In order to warrant the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction[1] or so despotic or arbitrary or so patent and gross as to amount to an evasion of positive duty as to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law,[2] In the case at bar, counsel for petitioner, before the hearing on June 4, had already requested and obtained from the trial court two postponements, on May 20 and 27, 1957. In the order granting the motion for postponement and dictated in open court on May 27, the court a quo after re-setting the case for hearing on June 4 gave the warning that no further postponement would be granted "under any ground, otherwise the case will be submitted for decision of the court". This evidently was in compliance with Section 10 of Republic Act No. 1267, as amended, which provides:

* * * * *

"Immediately after the defendant has filed his answer to the complaint or immediately after the expiration of the time limit for the filing of an answer, the Court shall set the case for hearing and not more than two postponements, not exceeding a week each, shall be allowed for any party: Provided, however, that subsequent postponement shall be granted only upon any of the following special or similar reasons:

- When a party involves twenty or more persons and there is no common cause of action or community of defense;

- When it appears upon affidavit that the presence of a party or witness at the trial is indispensable and the character of his illness is such as to render his non-attendance excusable;
- When upon affidavit the materiality of evidence expected to be obtained from a party or witness is shown, and that due diligence has been used to procure it.

(Italics supplied).

* * * * *

As stated previously, on June 4 neither the petitioner nor his attorney of record appeared. Only a representative of the latter came to court to ask for another postponement on the ground that counsel was unable to notify his client having received copy of the order allegedly only the day previous. Not satisfied with this explanation and there being no compliance with any of the three special or similar reasons provided in the above-quoted provision of law, the lower court denied the petition. Now it appears in the motion for reconsideration filed on June 20, 1957, that since April 26, 1957, counsel had been sending letters by registered mail to his client, the herein petitioner, but all of them had been returned undelivered. Counsel therefore knew that he could not depend on the mails for reaching his client who was residing at barrio Salapungan, municipality of Candaba, a town only 18 kilometers from San Fernando, Pampanga, where counsel-holds his office. If his client did not appear on May 20 and May 27, dates previously set for the trial of the case, for which reason, among others, counsel had to ask for postponement, he should have taken the only logical step called for under the circumstances, and that is to send a messenger to contact his client. On the other hand, the client, herein petitioner, if he had interest in prosecuting his case, should have taken pains to communicate with his lawyer to find out the status and progress of his case and not stay away from him.

As it is, considering that as early as May 20, when the respondent landowner rested his case, the tenant's turn to present his evidence became due, and further considering that two postponements extending for over two weeks, the maximum permissible under the law, had already been obtained, with warning that no further request for postponement on any ground would be entertained, counsel had no reason to rely on the liberality of the judge to allow another postponement, and his failure or inability to promptly notify his client to appear in court on the date of trial is inexcusable. (Bufete vs. Victoriano, G. R. No. L-10103, prom. March 28, 1957.) In the circumstances of the case, we find no justification to declare that the lower court acted arbitrarily or abusively in the exercise of its discretion so as to warrant the issuance of a writ of certiorari.

There is another reason why the writ of certiorari does not lie in this case. It is because petitioner could have availed himself of an appeal or a petition for relief under Rule 38 of the Rules of Court for the correction of the error complained of, and both remedies are adequate. Petitioner, nevertheless, failed to take appropriate action in due time and when the petition for certiorari was filed on October 15, 1957, the respective periods for the two remedies had already elapsed. Inasmuch as the lower court has, as we already stated, jurisdiction over the case and the right to appeal has been lost by the negligence of the party, certiorari will not lie. Again, certiorari will be denied if petitioner is guilty of laches and the judgment is being attacked merely on the ground of lack of notice. (Melocotones vs. Court of First Instance, 57 Phil., 144.).

For all the foregoing, the petition for certiorari with preliminary injunction is hereby dismissed, with costs against the petitioner. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concur.

[1] Abad Santos vs. Province of Tarlac, 67 Phil. 480.

[2] Moran, Comments on the Rules of Court (Vol. II, 1950 Ed., p. 139, and cases cited therein.)

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