

TOMAS DELGADO, PLAINTIFF AND APPELLEE, VS. ADRIANO CARAEL ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 13409. November 17, 1917*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13409/>**PER CURIAM:**

This case, No. 13409, has come before us for hearing, together with the written motion filed by counsel for the defendants, in which, among other petitions, it is asked that the writ of final injunction decreed by the Court of First Instance be dissolved and that the land, with its plantations, as well as its products harvested by the plaintiff on his taking possession of said land be restored to the defendants the mover offering for the purpose to put up a bond, the amount of which to be fixed by the Supreme Court. In support of his motion said counsel alleged that in the final judgment rendered the plaintiff was declared to be the owner of said land, and the defendants were ordered to restore it to him; that, after the restitution had been made, a final injunction issued against the defendants, enjoining them not to hinder the plaintiff from performing upon the land in litigation the acts of possession, ownership, and usufruct which he was entitled to perform as the lawful owner of the property; that, notwithstanding that the defendants had appealed from said judgment, counsel for the plaintiff, without prior notification to the defendants, succeeded in having the judge of the Court of First Instance order the execution of the dispositive part of the judgment, relative to the injunction, in compliance with which order the sheriff proceeded to deliver the land with its plantations to the plaintiff, notwithstanding the appeal. Therefore said counsel petitioned that the injunction be dissolved and that the land, of which the defendants had been deprived of possession, be returned to them.

Counsel for the plaintiff-appellee opposed said motion on the ground that it should have been made prior to the approval of the bill of exceptions. He invited the attention of this court to the fact that the trial court, on issuing the injunction, based its action on the provisions of section 171, in connection with section 144, of the Code of Civil Procedure, and that, if any error were committed by the lower court, the appellants could avail themselves of their right by the prosecution of the proceedings prescribed by law.

The action brought by the plaintiff, by means of the special remedy of final injunction, is denominated in law ejectment. In pursuance thereof, on September 17 of the present year, the plaintiff, by a final judgment, was declared to be the owner of the disputed land. It was ordered in the judgment that the property be restored to the defendants (plaintiff), and, when this was done, said writ of final injunction issued against the defendants.

On the fourth day after judgment had been notified to both parties, the motion made for a new trial had been overruled and counsel for the defendants had excepted thereto and announced his intention to appeal therefrom and file the proper bill of exceptions, counsel for the plaintiff requested the issuance of the final injunction against the defendants in conformity with the judgment, and the court, recognizing that the plaintiff was entitled to the immediate issuance of said final injunction, as ordered in the judgment, granted said petition and, on October 5, the injunction issued. The record shows that on the fourth day thereafter, on the 9th of the same month of October, the bill of exceptions filed by the defendants was approved.

Act No. 190, section 144, treating of stay of execution, prescribes as follows:

"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."

Before the filing and approval of the bill of exceptions, on petition by counsel for the plaintiff, the court issued said order directing the issuance of the final injunction in accordance with his previous judgment and compliance with this order was not limited to a notification of the parties, but preceded the restitution and delivery of the land in litigation to the plaintiff, whereby the defendants were deprived of the possession they had been enjoying of the property and the second mandate of the final judgment was carried into execution without the fulfillment of which the final injunction could not issue. A mere perusal of the dispositive part of the judgment rendered in the case clearly shows that the part of the judgment relative to the final injunction was put into execution without first having effected the restitution or delivery of the land in litigation to the plaintiff-appellee, for the record does not disclose that said restitution was made prior to the order of October 3 and the writ of the 5th of the same month, and the executor of the prohibitory order, perhaps seeing this irregularity in the procedure, made delivery of the land in question to the plaintiff, dispossessing the defendants thereof and fulfilling prematurely and untimely the second mandate of the judgment, in spite of the fact that an appeal had been filed before the Supreme Court, and that the trial judge had not issued any special order for the execution of the judgment.

A final injunction is virtually a process for the protection and aid of the holder of a title as owner, declared to be such by the final order or judgment of a court. The judgment of the trial court, recognizing the plaintiff to be the owner of the property in question and ordering its restitution to him, still continues to be subject to examination until the pending appeal is finally decided.

The order of October 3, directing the issuance of the injunction, contains no provision whatever for the fulfillment of the mandate of the judgment, relative to the restitution and delivery of the disputed land to the plaintiff, with the defendants' consequent dispossession; and although it may be indispensable to make record of the special reasons that determine the fulfillment of the mandate of the judgment relative to the delivery or restitution of the property to the appellee even before finally disposing of the appeal filed by the defendants, who in fact were prematurely deprived of the possession they were enjoying, it is nevertheless true that, in order to comply with the final injunction—one of the mandates of the judgment appealed from—another mandate thereof was executed which was not the subject of any special decree of the court and does not appear to be comprised in the order directing the issuance of said injunction. Therefore justice requires that the defendants be restored to the possession of the property of which they were unduly dispossessed, and that said final injunction be dissolved, leaving them in the same status in which they were at the time of the rendition of the judgment appealed from, inasmuch as in that same judgment it is ordered that after the land in litigation has been restored to the plaintiff, declared to be its owner, a final injunction shall issue such as shall efficaciously protect him in his rights. If the restitution of the land was not duly made and if no special order of the court directed it to be effected beforehand, out of the regular course of procedure, there is no warrant in law for the issuance of the final injunction, for the time to order such prohibition had not yet arrived, inasmuch as the plaintiff was not in lawful possession of the land by virtue of a final judgment.

If the plaintiff is now in possession of the property, it is due to a mistaken compliance with an order dictated by the court for another purpose certainly different from that of the delivery or restitution of the land, and this delivery or restitution continues to be the subject of the judicial pleadings on the pending appeal.

For the foregoing considerations, and taking into account the provisions of the preinserted section 144 of the Code of Civil Procedure, we set aside as improper the restitution of possession made in the plaintiff's behalf without it having been ordered by a special decree of the court. We likewise set aside the final injunction issued, inasmuch as, pursuant to the judgment itself, this writ should issue only after the possession of the land has been restored to the plaintiff-appellee. For the purpose of the fulfillment of this resolution, a mandatory letter shall issue to the judge of the Court of First Instance of Cebu, with a transcript of this order, so that, after the filing of the bond offered by counsel for the defendants, in the sum of P1,000, and its due and formal approval, the trial court may proceed in accordance with law by immediately ordering that the defendants be placed in possession of the land in question and its plantations. So ordered.

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

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