

MARTA VDA. DE DE LA CRUZ, PETITIONER, VS. HON. JUDGE GENARO TAN TORRES, JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, AND ROSALINDA Z. TIONGCO, RESPONDENTS.*G.R. No. 14925. April 30, 1960*

Ponente: REYES, J.B.L., J.

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In a complaint dated October 22, 1958, filed with the Court of First Instance of Nueva Ecija and docketed therein as Civil Case No. 3016, plaintiff Rosalinda Z. Tiongco alleged that she is the owner in fee simple and in actual and material possession of Lot No. 1856 of the Sta. Rosa Cadastre (therein described by metes and bounds); that she has introduced improvements on the land, and has, in fact, ready for harvest the palay she planted thereon; that on October 19, 1958, defendant Marta de la Cruz, accompanied by her children and several armed men, entered the said lot and destroyed plaintiff's barbed wire fences; that once in the land, they destroyed the house of the plaintiff's tenant erected thereon, and manifested that "they shall be back and shall harvest the palay of the plaintiff thru force and intimidation"; that again, in the morning of October 22, 1958, defendant intimated that by noon of the same day, she would, with the aid of armed men, enter upon the land and harvest the palay thru force; and that, unless the defendant and other persons, acting for and in her behalf, be enjoined from doing so, she (plaintiff) would suffer irreparable injury and damage. Wherefore, plaintiff prayed that after due hearing and the giving of a bond in the sum as the court may fix, a writ of preliminary injunction be issued prohibiting the defendant and her agents from entering the land and further molesting her in her possession; that after trial on the merits, said restraining order be made permanent; and finally, that defendant be ordered to pay to the plaintiff the sum of P5,000.00 as damages and P2,000.00 as attorney's fees.

In its order of November 5, 1958, the lower court caused the issuance of a writ of preliminary injunction; and as the instant petition revolves on the propriety of this order, it is hereunder quoted in full:

"When this case was called for hearing on October 28, 1958, in connection with the issuance of a writ of preliminary injunction, Atty. Alfonso G. Espinosa appeared for the defendant, and asked for five days within which to submit his opposition to the petition for the issuance of a writ of preliminary injunction, which was granted. On November 4, 1958, when this case was called again for hearing, Atty. Pedro Maldia, counsel for the plaintiff, and Atty. Alfonso G. Espinosa, counsel for the defendant, appeared and asked the court that they be given until today to file an amicable settlement regarding the issuance of the writ of preliminary injunction. The Court granted the said petition, and accordingly, a written manifestation, dated November 4, 1958, signed by the attorney for the defendant was filed wherein, among other things it is stated that the defendant is agreeable to the issuance of the writ of preliminary injunction provided that she be allowed to file a counter-bond in order to preserve her possession and preservation of the palay in question.

WHEREFORE, the Court orders the issuance of a writ of preliminary Injunction against the defendant Marta Vda. de de la Cruz, her children, agents, or any person acting in her behalf, from entering Lot No. 1856 of the Sta. Rosa Cadastre, the land under litigation, and from harvesting the palay growing thereon, until further orders of this Court. If and when the defendant wants to lift the writ of preliminary injunction by filing a

counterbond or for any justifiable reason, she should file the corresponding petition.

SO ORDERED."

Against this order and from another order denying his motion to dissolve the writ of preliminary injunction, the defendant filed the present petition for certiorari and mandamus, wherein, contending that the issuance of the said writ was improper, he urges (a) that injunction, being merely a provisional remedy, cannot stand alone as the main action; (b) that the allegations in the complaint are insufficient to warrant the issuance of the provisional writ; (c) that the issuance thereof was improper in that there is no showing that he was ever served a copy of plaintiff's bond; and lastly, (d) that the lower court should have considered his readiness to file a counterbond for the purpose of quashing the writ already issued.

We find no merit in petitioner's contentions. Section 1 of Rule 60 of the Rules of Court provides for two classes of injunction, to wit: (a) the preliminary injunction, and (b) the final injunction. The first is essentially a provisional remedy which may be granted at any stage of an action prior to final judgment, while the second is the one included in the judgment as the relief or part of the relief prayed for in the complaint. What may not stand alone as an independent suit by itself is one which exclusively seeks the issuance of a writ of preliminary injunction, a remedy that must be ancillary to a principal case. There can be no serious question, however, on the propriety of issuing such a provisional remedy in an action for injunction, wherein the entirety of the relief sought consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually. This, in fact, is authorized under section 8, paragraph (a), of Rule 60 of the Rules (see also *Calo vs. Roldan*, 76 Phil., 445).

In this instance, the plaintiff-respondent alleges ownership and peaceful possession over the parcel of land in dispute, but that the defendant threatens to commit and, some time previously had actually committed, acts of dispossession and destruction that have resulted, and will continue to result, in serious and irreparable damage and injury to the plaintiff unless the defendant is enjoined from further carrying out her threats. Upon the foregoing bases, we are not prepared to rule, in the absence of a contrary showing, that the lower court abused its discretion in issuing the writ complained of.

As to the assertion that the defendant was not served with a copy of the plaintiff's bond, we believe that such fact is merely a formal defect which does not adversely affect the writ already issued and is, certainly, not a reversible error of the lower court. As held in *Rodolfa vs. Alfonso, et al.*, 76 Phil. 232, this formal defect may be cured by subsequent notice to or knowledge of the defendant. Indeed, it may be considered waived where, as in this case, the defendant seeks to file a counterbond. At most, the defendant herein may ask the court, if no notice has yet been given, to order the plaintiff to serve her a copy of the bond.

Coming to the last question, it would appear that the writ of preliminary injunction was issued mainly upon the manifestation of the parties, which, among other things, expressed that "the defendant is agreeable to the issuance of the writ * * * provided she be allowed to file a counterbond", so that, accordingly, the court stated that "if and "when the defendant wants to lift the writ of preliminary injunction by filing a counterbond or for any justifiable reason, she should file the corresponding petition." From this, petitioner apparently concludes that the mere offer to file a counterbond is sufficient to quash the writ complained of. This is erroneous. It is incorrect and improper to assume that the manifestation of the parties was the only factor that moved the court to grant the provisional remedy. For one thing, the order itself requires that the necessary petition be first filed, and for another, the lower court's discretion in that regard cannot be controlled by the mere agreement of the parties. As already intimated, the writ may be granted or dissolved only upon good and valid grounds, the determination and sufficiency of which rest within the sound discretion of the court. It follows, also, that, in the absence of grounds such as the

insufficiency of the allegations of the complaint or that the continuance of the writ already granted would cause great damage to the defendant, while the plaintiff may be fully compensated for such damages as he may suffer (Sec. 6 Rule 60, Rules of Court), the mere offer of a counterbond does not suffice to warrant the dissolution of the preliminary writ of injunction. Certainly, a threatened destruction of property may not be countenanced even if the party against whom the writ is directed is willing to pay for all damages he may cause thereby.

In passing, it may be noted that this petition should have been addressed to the Court of Appeals, being a case involving a remedy in aid of its appellate jurisdiction; but since no serious question of fact is here involved, and in order to save time, we prefer to have it disposed of here and now.

Wherefore, the petition is dismissed with costs against the petitioner.

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

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