

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY LT. GEN. JOSE M. CALIMLIM, IN HIS CAPACITY AS FORMER CHIEF OF THE INTELLIGENCE SERVICE, ARMED FORCES OF THE PHILIPPINES (ISAFP), AND ...

G.R. NO. 156015. August 11, 2005

Ponente: PUNO, J.

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PUNO, J.:

The case at bar stems from a complaint for damages, with prayer for the issuance of a writ of preliminary injunction, filed by private respondent Dante Legaspi, through his attorney-in-fact Paul Gutierrez, against petitioners Gen. Jose M. Calimlim, Ciriaco Reyes and Maj. David Diciano before the Regional Trial Court (RTC) of Quezon City.[1]

The Complaint alleged that private respondent Legaspi is the owner of a land located in Bigte, Norzagaray, Bulacan. In November 1999, petitioner Calimlim, representing the Republic of the Philippines, and as then head of the Intelligence Service of the Armed Forces of the Philippines and the Presidential Security Group, entered into a Memorandum of Agreement (MOA) with one Ciriaco Reyes. The MOA granted Reyes a permit to hunt for treasure in a land in Bigte, Norzagaray, Bulacan. Petitioner Diciano signed the MOA as a witness.[2] It was further alleged that thereafter, Reyes, together with petitioners, started, digging, tunneling and blasting works on the said land of Legaspi. The complaint also alleged that petitioner Calimlim assigned about 80 military personnel to guard the area and encamp thereon to intimidate Legaspi and other occupants of the area from going near the subject land.

On February 15, 2000, Legaspi executed a special power of attorney (SPA) appointing his nephew, private respondent Gutierrez, as his attorney-in-fact. Gutierrez was given the power to deal with the treasure hunting activities on Legaspi's land and to file charges against those who may enter it without the latter's authority.[3] Legaspi agreed to give Gutierrez 40% of the treasure that may be found in the land.

On February 29, 2000, Gutierrez filed a case for damages and injunction against petitioners for illegally entering Legaspi's land. He hired the legal services of Atty. Homobono Adaza. Their contract provided that as legal fees, Atty. Adaza shall be entitled to 30% of Legaspi's share in whatever treasure may be found in the land. In addition, Gutierrez agreed to pay Atty. Adaza P5,000.00 as appearance fee per court hearing and defray all expenses for the cost of the litigation.[4] Upon the filing of the complaint, then Executive Judge Perlita J. Tria Tirona issued a 72-hour temporary restraining order (TRO) against petitioners.

The case[5] was subsequently raffled to the RTC of Quezon City, Branch 223, then presided by public respondent Judge Victorino P. Evangelista. On March 2, 2000, respondent judge issued another 72-hour TRO and a summary hearing for its extension was set on March 7, 2000.

On March 14, 2000, petitioners filed a Motion to Dismiss[6] contending: first, there is no real party-in-interest as

the SPA of Gutierrez to bring the suit was already revoked by Legaspi on March 7, 2000, as evidenced by a Deed of Revocation,[7] and, second, Gutierrez failed to establish that the alleged armed men guarding the area were acting on orders of petitioners. On March 17, 2000, petitioners also filed a Motion for Inhibition[8] of the respondent judge on the ground of alleged partiality in favor of private respondent.

On March 23, 2000, the trial court granted private respondent's application for a writ of preliminary injunction on the following grounds: (1) the diggings and blastings appear to have been made on the land of Legaspi, hence, there is an urgent need to maintain the status quo to prevent serious damage to Legaspi's land; and, (2) the SPA granted to Gutierrez continues to be valid.[9] The trial court ordered thus:

WHEREFORE, in view of all the foregoing, the Court hereby resolves to GRANT plaintiff's application for a writ of preliminary injunction. Upon plaintiff's filing of an injunction bond in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), let a Writ of Preliminary Injunction issue enjoining the defendants as well as their associates, agents or representatives from continuing to occupy and encamp on the land of the plaintiff LEGASPI as well as the vicinity thereof; from digging, tunneling and blasting the said land of plaintiff LEGASPI; from removing whatever treasure may be found on the said land; from preventing and threatening the plaintiffs and their representatives from entering the said land and performing acts of ownership; from threatening the plaintiffs and their representatives as well as plaintiffs' lawyer.

On even date, the trial court issued another Order[10] denying petitioners' motion to dismiss and requiring petitioners to answer the complaint. On April 4, 2000, it likewise denied petitioners' motion for inhibition.[11]

On appeal, the Court of Appeals affirmed the decision of the trial court.[12]

Hence this petition, with the following assigned errors:

I

WHETHER THE CONTRACT OF AGENCY BETWEEN LEGASPI AND PRIVATE RESPONDENT GUTIERREZ HAS BEEN EFFECTIVELY REVOKED BY LEGASPI.

II

WHETHER THE COMPLAINT AGAINST PETITIONERS SHOULD BE DISMISSED.

III

WHETHER RESPONDENT JUDGE OUGHT TO HAVE INHIBITED HIMSELF FROM FURTHER PROCEEDING WITH THE CASE.

We find no merit in the petition.

On the first issue, petitioners claim that the special power of attorney of Gutierrez to represent Legaspi has already been revoked by the latter. Private respondent Gutierrez, however, contends that the unilateral revocation is invalid as his agency is coupled with interest.

We agree with private respondent.

Art. 1868 of the Civil Code provides that by the contract of agency, an agent binds himself to render some service or do something in representation or on behalf of another, known as the principal, with the consent or authority of the latter.[13]

A contract of agency is generally revocable as it is a personal contract of representation based on trust and confidence reposed by the principal on his agent. As the power of the agent to act depends on the will and license of the principal he represents, the power of the agent ceases when the will or permission is withdrawn by the

principal. Thus, generally, the agency may be revoked by the principal at will.[14]

However, an exception to the revocability of a contract of agency is when it is coupled with interest, i.e., if a bilateral contract depends upon the agency.[15] The reason for its irrevocability is because the agency becomes part of another obligation or agreement. It is not solely the rights of the principal but also that of the agent and third persons which are affected. Hence, the law provides that in such cases, the agency cannot be revoked at the sole will of the principal.

In the case at bar, we agree with the finding of the trial and appellate courts that the agency granted by Legaspi to Gutierrez is coupled with interest as a bilateral contract depends on it. It is clear from the records that Gutierrez was given by Legaspi, inter alia, the power to manage the treasure hunting activities in the subject land; to file any case against anyone who enters the land without authority from Legaspi; to engage the services of lawyers to carry out the agency; and, to dig for any treasure within the land and enter into agreements relative thereto. It was likewise agreed upon that Gutierrez shall be entitled to 40% of whatever treasure may be found in the land. Pursuant to this authority and to protect Legaspi's land from the alleged illegal entry of petitioners, agent Gutierrez hired the services of Atty. Adaza to prosecute the case for damages and injunction against petitioners. As payment for legal services, Gutierrez agreed to assign to Atty. Adaza 30% of Legaspi's share in whatever treasure may be recovered in the subject land. It is clear that the treasure that may be found in the land is the subject matter of the agency; that under the SPA, Gutierrez can enter into contract for the legal services of Atty. Adaza; and, thus Gutierrez and Atty. Adaza have an interest in the subject matter of the agency, i.e., in the treasures that may be found in the land. This bilateral contract depends on the agency and thus renders it as one coupled with interest, irrevocable at the sole will of the principal Legaspi.[16] When an agency is constituted as a clause in a bilateral contract, that is, when the agency is inserted in another agreement, the agency ceases to be revocable at the pleasure of the principal as the agency shall now follow the condition of the bilateral agreement.[17] Consequently, the Deed of Revocation executed by Legaspi has no effect. The authority of Gutierrez to file and continue with the prosecution of the case at bar is unaffected.

On the second issue, we hold that the issuance of the writ of preliminary injunction is justified. A writ of preliminary injunction is an ancillary or preventive remedy that is resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action.[18] It is issued by the court to prevent threatened or continuous irreparable injury to the applicant before his claim can be thoroughly studied and adjudicated.[19] Its aim is to preserve the status quo ante until the merits of the case can be heard fully, upon the applicant's showing of two important conditions, viz.: (1) the right to be protected prima facie exists; and, (2) the acts sought to be enjoined are violative of that right.[20]

Section 3, Rule 58 of the 1997 Rules of Civil Procedure provides that a writ of preliminary injunction may be issued when it is established:

(a)

that the applicant is entitled to the relief demanded, the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b)

that the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c)

that a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, mere prima facie evidence is needed to establish the applicant's rights or interests in the subject matter of the main action.[21] It is not required that the applicant should conclusively show that there was a violation of his rights as this issue will still be fully litigated in the main case.[22] Thus, an applicant for a writ is required only to show that he has an ostensible right to the final relief prayed for in his complaint.[23]

In the case at bar, we find that respondent judge had sufficient basis to issue the writ of preliminary injunction. It was established, prima facie, that Legaspi has a right to peaceful possession of his land, pendente lite. Legaspi had title to the subject land. It was likewise established that the diggings were conducted by petitioners in the enclosed area of Legaspi's land. Whether the land fenced by Gutierrez and claimed to be included in the land of Legaspi covered an area beyond that which is included in the title of Legaspi is a factual issue still subject to litigation and proof by the parties in the main case for damages. It was necessary for the trial court to issue the writ of preliminary injunction during the pendency of the main case in order to preserve the rights and interests of private respondents Legaspi and Gutierrez.

On the third issue, petitioners charge that the respondent judge lacked the neutrality of an impartial judge. They fault the respondent judge for not giving credence to the testimony of their surveyor that the diggings were conducted outside the land of Legaspi. They also claim that respondent judge's rulings on objections raised by the parties were biased against them.

We have carefully examined the records and we find no sufficient basis to hold that respondent judge should have recused himself from hearing the case. There is no discernible pattern of bias on the rulings of the respondent judge. Bias and partiality can never be presumed. Bare allegations of partiality will not suffice in an absence of a clear showing that will overcome the presumption that the judge dispensed justice without fear or favor.[24] It bears to stress again that a judge's appreciation or misappreciation of the sufficiency of evidence adduced by the parties, or the correctness of a judge's orders or rulings on the objections of counsels during the hearing, without proof of malice on the part of respondent judge, is not sufficient to show bias or partiality. As we held in the case of *Webb vs. People*,[25] the adverse and erroneous rulings of a judge on the various motions of a party do not sufficiently prove bias and prejudice to disqualify him. To be disqualifying, it must be shown that the bias and prejudice stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as based on the evidence adduced, do not prove bias or prejudice. We also emphasized that repeated rulings against a litigant, no matter how erroneously, vigorously and consistently expressed, do not amount to bias and prejudice which can be a bases for the disqualification of a judge.

Finally, the inhibition of respondent judge in hearing the case for damages has become moot and academic in view of the latter's death during the pendency of the case. The main case for damages shall now be heard and tried before another judge.

IN VIEW WHEREOF, the impugned Orders of the trial court in Civil Case No. Q-00-40115, dated March 23 and April 4, 2000, are AFFIRMED. The presiding judge of the Regional Trial Court of Quezon City to whom Civil Case No. Q-00-40115 was assigned is directed to proceed with dispatch in hearing the main case for damages. No pronouncement as to costs.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

- [1] Complaint, dated February 29, 2000; Rollo, pp. 84-90.
- [2] Petitioners have since retired from government service.
- [3] Rollo, p. 91.
- [4] Rollo, p. 177.
- [5] Docketed as Civil Case No. Q-00-40115.
- [6] Rollo, pp. 95-103.
- [7] Revocation of SPA, Rollo, p. 92.
- [8] Rollo, pp. 105-122.
- [9] Order, dated March 23, 2000, Rollo, pp. 124-127.
- [10] Order, dated March 23, 2000, Rollo, pp. 128-130.
- [11] Rollo, pp. 131-132.
- [12] Decision, dated November 8, 2000, penned by Associate Justice Eubulo G. Verzola and concurred in by Associate Justices Marina L. Buzon and Perlita J. Tria Tirona; Rollo, pp. 72-80.
- [13] *Saums v. Parfet*, 270 Mich. 165, 258 N.W. 235.
- [14] Agency, Vicente J. Francisco, p. 353.
- [15] Art. 1927, Civil Code.
- [16] *Cox v. Freeman*, 1951 OK 16, 204 Okla. 138, 227 P. 2d 670.
- [17] Civil Code of the Philippines Annotated, Ambrosio Padilla, 1987 ed., Vol. VI, p. 447.
- [18] *Philippine National Bank v. Ritratto Group, Inc.*, 362 SCRA 216 (2001).
- [19] *Republic of the Philippines v. Silerio*, 272 SCRA 280 (1997).
- [20] *Heirs of Joaquin Asuncion v. Commission on Audit*, 304 SCRA 322 (1999).
- [21] *Buayan Cattle Co., Inc. v. Quintillan*, 128 SCRA 276 (1984).
- [22] *Developers Group of Companies, Inc. v. Court of Appeals*, 219 SCRA 715 (1993).
- [23] *Saulog v. Court of Appeals*, 262 SCRA 51 (1996).
- [24] *Spouses Causin v. Judge Demecillo*, A.M. No. RTJ-04-1860, September 8, 2004.

[25] 276 SCRA 243 (1997).

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