

PURISIMO BUYCO, PETITIONER, VS. NELSON BARAQUIA, RESPONDENT.

G.R. No. 177486. December 21, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Nelson Baraquia (respondent) filed before the Regional Trial Court (RTC) of Iloilo City a complaint[1] against Dominico Buyco and Clemente Buyco (Buycos), for the establishment of a permanent right of way, injunction and damages with preliminary injunction and temporary restraining order, to enjoin the Buycos from closing off a private road within their property which he has been using to go to and from the public highway to access his poultry farm.

The Buycos died during the pendency of the case, and were substituted by Purisimo Buyco (petitioner) and his brother Gonzalo.

Branch 39 of the Iloilo RTC granted respondent's application for preliminary injunction.

By Decision[2] of February 14, 2007, the trial court dismissed respondent's complaint for failure to establish the concurrence of the essential requisites for the establishment of an easement of right of way under Articles 649 and 650 of the Civil Code.[3] It accordingly lifted the writ of preliminary injunction.

Respondent filed a notice of appeal of the trial court's decision. Petitioner filed too a notice of partial appeal bearing on to the non-award of prayer for damages.

Respondent later filed with the trial court a motion to cite petitioner and his brother Gonzalo in contempt, alleging that they had closed off the subject road, thus violating the writ of preliminary injunction. The trial court, by Resolution of March 13, 2007,[4] noting that respondent received on March 5, 2007 his copy of its decision while petitioner received his on February 21, 2007, held that the February 14, 2007 decision had not yet become final and executory, hence, the writ of preliminary injunction remained to be valid, efficacious and obligatory, rendering petitioner's act of closing the road on March 1, 2007 an indirect contempt of court. It thus declared petitioner and his brother in contempt of court.

Petitioner moved for reconsideration of the trial court's March 13, 2007 Resolution, contending that a preliminary injunction, once quashed, ceases to exist, and that he and his brother cannot be held guilty of indirect contempt by mere motion.

By Resolution[5] of April 18, 2007, the trial court set aside the March 13, 2007 Resolution and granted petitioner's motion for reconsideration, ruling that petitioner and his brother cannot be held in contempt of court by mere motion and not by verified petition.

On the lifetime of the writ of preliminary injunction, the trial court held that it is its "illuminated opinion that the matter of whether a writ of preliminary injunction remains valid until the decision annulling the same attains

finality is not firmly entrenched in jurisprudence, contrary to the position of the defendants." It thereupon quoted a portion of the ruling in the 2006 case of *Lee v. Court of Appeals*,^[6] to wit:

Furthermore, notwithstanding the stand of both parties, the fact remains that the Decision of the Court of Appeals annulling the grant of preliminary injunction in favor of petitioners has not yet become final on 14 December 2000. In fact, such Decision has not yet become final and executory even on the very date of this Decision, in view of petitioners' appeal with us under Rule 45 of the 1997 Rules of Civil Procedure. The preliminary injunction, therefore, issued by the trial court remains valid until the Decision of the Court of Appeals annulling the same attains finality, and violation thereof constitutes indirect contempt which, however, requires either a formal charge or a verified petition.^[7] (underscoring in the original decision)

Hence, this petition for review, raising a question of law - whether the lifting of a writ of preliminary injunction due to the dismissal of the complaint is immediately executory, even if the dismissal of the complaint is pending appeal.

The petition is meritorious.

A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.^[8] It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome.^[9] It is not a cause of action in itself.^[10] Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.^[11]

It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.^[12]

Indubitably, in the case at bar, the writ of preliminary injunction was granted by the lower court upon respondent's showing that he and his poultry business would be injured by the closure of the subject road. After trial, however, the lower court found that respondent was not entitled to the easement of right of way prayed for, having failed to prove the essential requisites for such entitlement, hence, the writ was lifted.

The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a provisional remedy having been served, the appeal therefrom notwithstanding.

Unionbank v. Court of Appeals^[13] enlightens:

"x x x a dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. The rationale therefor is that even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the dismissal of the action." (italics, emphasis and underscoring supplied)

The lower court's citation of *Lee v. Court of Appeals*[14] is misplaced. In *Lee*, unlike in the present case, the original complaint for specific performance and cancellation of real estate mortgage was not yet decided on the merits by the lower court. Thus, the preliminary injunction therein issued subsisted pending appeal of an incident.

There being no indication that the appellate court issued an injunction in respondent's favor, the writ of preliminary injunction issued on December 1, 1999 by the trial court was automatically dissolved upon the dismissal of Civil Case No. 26015.

WHEREFORE, the petition is GRANTED. The Resolution dated April 18, 2007 of the trial court is REVERSED. The writ of preliminary injunction which Branch 39 of the Iloilo Regional Trial Court issued on December 1, 1999 was automatically dissolved upon its dismissal by Decision of February 14, 2007 of Civil Case No. 26015.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Annex "D" of Petition; rollo, pp. 45- 49.

[2] Records, pp. 411-419. Penned by Presiding Judge J. Cedrick O. Ruiz.

[3] ART. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

ART. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

[4] Records, pp. 436-439.

[5] Annex "A" of Petition; rollo pp. 32-35. Penned by Presiding Judge J. Cedrick O. Ruiz.

[6] G.R. No. 147191, July 27, 2006, 496 SCRA 668.

[7] *Id.* at 686-687.

[8] Sec. 1, Rule 58, REVISED RULES OF COURT.

[9] *Vide Rualo v. Pitargue*, G.R. No. 140284, 21 January 2005, 449 SCRA 121, 141

[10] *Vide Batangas Laguna Tayabas Bus Co., Inc. v. Bitanga*, 415 Phil. 43, 56 (2001).

[11] *Vide Regalado*, REMEDIAL LAW COMPENDIUM, Vol. 1 (7th Ed.), p. 606.

[12] Rava Development Corporation v. Court of Appeals, G.R. No. 96825, 3 July 1992, 211 SCRA 144, 154.

[13] 370 Phil. 837 (1999) citing Santiago v. Vasquez, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 645-646, and Golez v. Leonidas, No. L-56587, August 31, 1981, 107 SCRA 187, 189.

[14] Supra note 6.

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