

EMILIANO ACUÑA, PETITIONER, VS. HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH V, QUEZON CITY; BENITO MACROHON, PROVINCIAL SHERIFF OF RIZAL & QUEZON ...

G.R. No. 20560. July 31, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

In this original petition for certiorari with pre-liminary injunction, filed with this Court on November 29, 1962, petitioner Emiliano Acuña seeks the nullifi-cation of the order of the respondent court, dated November 24, 1962, the dispositive portion of which is as follows:

"Finding the herein Ex-Parte and Urgent Motion, etc., dated November 23, 1962, filed by counsel for the defendants, to be well founded and in order, the same is hereby granted. Accordingly, the Philippine Tobacco Flue-Curing and Redrying Corporation is ordered to deliver to the sheriff of Quezon City all the properties, moneys and checks of the defendants that had been attached under the writ of preliminary attachment dated Aug-ust 15, 1962 in this case; and said sheriff is directed and ordered, in turn, to deliver said properties, moneys and checks to the defendants upon proper receipt therefor, in accordance with the pertinent provi-sions of the Rules of Court on the matter."

On December 5, 1962, this Court resolved to give due course to the petition and to require the respondents to file an answer within 10 days from notice, and the re-quisite bond of P50,000.00 having been filed by petitioner, a writ of preliminary injunction was issued.

On December 21, 1962, the private respondents, the Batac Producers Cooperative Marketing Association, Inc., to be called hereinafter as the Batac Procoma, Inc., and its Board of Directors, filed a motion to discharge the preliminary injunction, which the petitioner opposed. After consideration of the motion and opposition, and upon the posting of a counterbond of P50,000.00 by the private respondents, the writ of preliminary injunction was or-dered dissolved.

The pleadings and annexes thereto disclose that on August 9, 1962, Emiliano Acuña filed a complaint, amended four days later, against the Batac Procoma, Inc. or alter-natively against the other defendants named in the com-plaint, for the recovery of the sum of P300,000.00 repre-senting the value of services allegedly rendered by the plaintiff to the Batac Procoma, Inc., plus P31,000.00 for cash advances and P25,000.00 as and for attorney's fees and actual costs of litigation. In the complaint, dock-eted as civil case No. Q-6547 of the Court of First Instance of Rizal, Quezon City branch, the plaintiff prayed for a writ of preliminary attachment on the properties of the Batac Procoma, Inc.

On August 14, 1962, the court, ex-parte and without notice to the defendants, ordered the issuance of the writ prayed for, and upon the posting of the required bond in the amount of P356,000.00 by the plaintiff, the writ was issued.

On August 15, 1962, the sheriff of Quezon City served upon the Philippine Tobacco Flue-Curing and Redrying Corporation, hereinafter referred to as the PTFCRCO, a notice of garnishment -

"x x x on all the goods, effects, interests, money, shares and all debts owing by you to the defendant, Batac Producers Cooperative Marketing Association, Inc., x x x and any property under your control belonging to the said defendants, on this date, to cover the amount mentioned in said writ, and specially - THE AMOUNT OF THREE HUNDRED FIFTY SIX THOUSAND PESOS (P356,000.00), PLUS FEES AND OTHER LEGAL EXPENSES."

advising the PTFCRCo not to -

"x x x deliver, transfer, or otherwise dispose of the said goods, effects, interests, credits, money, shares and all debts owing by you to the defendant mentioned above - to any person except to the undersigned under penalty provided by law."

On August 16, 1962, the PTFCRCo made a return of the notice of garnishment stating that it had in its possession checks payable to Batac Procoma, Inc. amounting to P56,685.54 and unpaid shipments of Batac Procoma, Inc., numbering 26 in all, equivalent to P446,363.38, or a total of P503,048.92.

On August 22, 1962, the defendants filed a motion to dismiss the complaint on the ground that it stated no cause of action and to discharge the preliminary attachment for having been improperly and irregularly issued. The plaintiff opposed the motion.

On September 10, 1962, after a hearing on the motion and opposition, the court issued an order dismissing the amended complaint without costs and discharging the writ of preliminary attachment, but allowing the plaintiff to withdraw the amount of P20,400.00 which the defendants have deposited in court, "representing the amount of money invested by the plaintiff plus the corresponding interests thereon."

In due time, the plaintiff perfected an appeal to the Supreme Court, the only issue involved in the appeal being one of law, where the case was docketed as G. R. No. L--20333.

Prior to the approval of the record on appeal, however, or on September 19, 1962, the defendants filed a "MOTION FOR EXECUTION PENDING APPEAL", alleging as special reasons that -

"x x x the farmer-members of the Batac Procoma will be greatly prejudiced if the proceeds of the sale of their tobacco will be held up, by virtue of the preliminary writ of attachment of the plaintiff, while they await the result of the appeal of the plaintiff to the Supreme Court."

and contending that since the complaint has been dismissed, there is no longer any reason why the writ of preliminary injunction should not be ordered discharged.

On September 21, 1962, pending consideration by the court of the approval of the record on appeal and the motion for execution, the sheriff of Quezon City sent a letter to the PTFCRCo, enclosing therewith a true copy of the order dated September 10, 1962, and inviting its attention to the last paragraph of the said order which reads:

"Consequently, the writ of preliminary attachment issued therein is ordered discharged."

At the hearing on September 22, 1962, on the motion for immediate execution and for the approval of the record on appeal, the court was informed "that the sheriff had already implemented the order of the court of September 10, 1962" (paragraph XII, Petition) in the manner as stated in his letter to the PTFCRCo. In view of this information, counsel for the defendants withdrew the motion for execution.

On September 22, 1962, the court issued an order approving the record on appeal in civil case Q-6547 and directing the clerk of court to certify the case to the Supreme Court. The order further states:

"Upon petition of counsel for the de-fendants for the withdrawal of the here-in motion for execution pending appeal filed by counsel for the defendants dated September 19, 1962, for the reason that the sheriff of Quezon City has al-ready implemented the order of this court of September 10, 1962, which the court finds to be well founded, the said petition of counsel is hereby granted and the aforesaid motion for execution pending appeal is, therefore, considered withdrawn."

On November 23, 1962, defendants through counsel filed an "Ex-Parte and urgent motion for the release of funds held by Philippine Tobacco Flue-Curing and Redrying Corpo-ration under preliminary writ of attachment already dis-charged by this court", alleging amongst others:

"5. That upon the promulgation of the decision in this case on September 10, 1962, dismissing the amended com-plaint of the plaintiff and discharg-ing the writ of preliminary attachment, the defendants asked the Philippine To-bacco Flue-Curing and Redrying Corpora-tion to deliver over all the moneys, checks and other properties that may be held upon the order of the Honorable Court and under the writ of preliminary attachment as above-described; the re-presentatives of the Philippine Tobacco Flue-Curing and Redrying Corporation offered to deliver to the Sheriff all the said properties originally under attachment;

"6. However, the sheriff for the pro-vince of Rizal and Quezon City refused to receive said properties and has con-tinued to refuse to receive such proper-ties for delivery to the defendants on the ground that there is no specific order of the court addressed to him directly requiring him to so receive such properties and to deliver them to the defendants."

As the caption of the foregoing motion indicates, and as it occurred in fact, the same was not set for hearing and no copy thereof was served on the plaintiff.

On November 24, 1962, the court issued the order sub-ject of the instant petition for certiorari with injunc-tion, granting the ex-parte and urgent motion of November 23, 1962 filed by the defendants, and making the directives which have been quoted at the beginning of this opinion.

On November 27, 1962, the plaintiff filed an "Ex-Parte Petition to Suspend Effectivity of Order of November 24th, 1962, Pending Motion for Reconsideration", alleging amongst others:

"That considering that the imple-mentation of this Court's order of November 24th, practically renders moot one of the precise questions raised in the appeal and would ren-der ineffective any decision which might eventually be made by the Supreme Court, it is only fair that plaintiff should be given an oppor-tunity to be heard on the matter;"

Plaintiff announced in his ex-parte petition that the mo-tion for reconsideration would be filed on December 21, 1962. Instead of filing such motion, however, plaintiff filed the instant petition on November 29, 1962.

Pending final determination of the merits of the appeal in G. R. No. L-20333 of this Court, petitioner seeks:

(a) to restrain the respondent court "from Further proceeding with the implementation and execu-tion of its order of November 24th, 1962, and from further entertaining in the future any other motion similar to the "ex-parte and ur-gent motion", annex H, or the effect of which is to obtain a relief similar thereto, and thereafter from issuing any of its order the effect of which is to release or authorize the release of the remaining sum of P223,840.81, or any part thereof, still garnished in the possession of the respondent PTFCRCo";

(b) to restrain the respondent sheriff "from fur-ther acting in pursuance of and from execu-ting and implementing in any manner the said order of the respondent court dated November 24th, 1962, and from delivering to the Batac Procoma and its Directors or general manager, or anyone of them, the seven (7) checks

drawn by the PTFCRCo against the respondent Philippine National Bank in the total sum of P132, 159.19, and in the future from releasing and delivering to said respondents, Batac Procoma and its Directors and general manager, the remaining sum of P223,840.19, or any part thereof, which may come into his possession or custody";

(c) to restrain "the respondent PTFCRCo from re-leasing, delivering and paying over in the future the remaining amount of P223,840.19 still garnished in its possession, or any part thereof";

(d) to restrain "the respondents Batac Procoma and its Directors from collecting and depositing the proceeds of the seven (7) checks totalling P132,159.19 adverted to above, and in the future from filing with the respondent court any other motion similar to that filed on November 23rd, 1962, and from taking any steps the effect of which is to obtain the release, delivery and payment to them or to anyone of them, of the remaining sum of P223,840.81 still under garnishment in the possession of the respondent PTFCRCo"; and

(e) to restrain "the respondent Philippine National Bank and its branch office in Laoag, Ilocos Norte, from cashing and in anyway crediting the said respondents with the proceeds of the said seven (7) checks upon presentment of the same to said respondent Bank".

INTERVENTION of MEMBERS-STOCKHOLDERS of BATAAC PROCOMA, INC.-

On January 10, 1963, Atty. Ferdinand E. Marcos, with prior leave of court to appear as amicus curiae, which appearance was later changed to that of counsel de parte, filed a petition for and in behalf of fifty-four (54) persons to intervene in the case, alleging in the petition and also in the answer in intervention that the intervenors "are farmers-stockholders of the Batac Producers Cooperative Marketing Association"; that they "have sold their tobacco for the harvest of 1962 to the Batac Procoma, but until now they have not as yet received the proceeds of the sale of their tobacco, because they came to learn that there was a preliminary writ of attachment issued by the Court of First Instance of Quezon City in civil case No. Q-6547....."; that "these properties that were attached which consist of the monies that are in the possession of the respondent PTFCRCo, payment or the release of which has been restrained by the writ of preliminary injunction, belong to the herein petitioners and not to the Batac Procoma". The answer in intervention was admitted by this Court over the objection of petitioner Acuña.

ANSWER OF THE PHILIPPINE NATIONAL BANK -

Answering the petition, respondent Philippine National Bank alleged that "the seven (7) checks were all negotiated with the Laoag (Ilocos Norte) branch of answering respondent since November 28, 1962, and long before said respondent was served on December 5, 1962 with the writ of preliminary injunction issued by this Honorable Supreme Court."

ANSWER OF THE PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION -

Respondent PTFCRCo admitted in its answer that it had received a notice of garnishment from the sheriff of Quezon City (served on it on August 15, 1962, supra); that aside from the letter-notification from the sheriff, it also received a letter of similar import from the attorneys of the Batac Procoma, informing it that the court had discharged the writ of preliminary attachment; that the Batac Procoma, on the one hand, demanded the release to it of the "then available and collectible amount" in the custody of the PTFCRCo, while the attorney for the petitioner, on the other, threatened to hold the PTFCRCo liable for failing to deliver the amount of P356,000.00 to the clerk of court, sheriff or other judicial officer; that to avoid being involved in the case, it "forwarded and delivered to the respondent sheriff (on November 27, 1962), specifically in accordance with the provisions of the notice of garnishment dated August 15, 1962, the checks issued in the name of the respondent Batac Procoma, Inc., aggregating to P132,150.19 which was the amount then available and collectible"; that the delivery of the checks to the sheriff was precisely in accordance with the provisions of Section 8, Rule 59 of the Rules of Court,

hence, the PTFCRCo has no liability to the petitioner.

ANSWER OF BATAAC PROCOMA, INC. and ITS DIRECTORS -

These respondents aver in their answer that the re-lease by the sheriff of all the monies and checks in his possession to the Batac Procoma, Inc. was preceded by the dismissal of the complaint and discharge of the writ of preliminary attachment and by the sheriff's notification to that effect to the PTFCRCo, with an advice to be guided accordingly; that "the counsel for the petitioner was in the sheriff's office before the delivery of the checks, and was informed of the order of November 24, 1962, direct-ing the PTFCRCo to deliver to the sheriff all properties, moneys and checks of the Batac Procoma, garnished under the writ of attachment, and the sheriff was, in turn, to deliver to Batac Procoma the said checks and properties", nevertheless the said counsel "did not take steps to in-form the respondent trial court of any supposed errors committed by it in relation to the order before said pro-perties were actually transferred to the Batac Procoma"; that the monies and properties attached do not belong to the Batac Procoma, Inc. but to the members-stockholders thereof; and that the petitioner's failure to file a mo-tion for reconsideration of the order dated November 24, 1962, constitutes a fatal defect warranting dismissal of the petition.

As stated hereinabove, from the lower court's order of September 10, 1962, dismissing the complaint and dis-charging the writ of preliminary attachment, petitioner had appealed to the Supreme Court where the case was docketed as G. R. No. L-20333. On June 30, 1967, this Court decided the appeal thus:

"Wherefore, the order appealed from is set aside and the case is remanded to the court a quo for further proceedings, without prejudice to the right of plain-tiff-appellant to ask for another writ of attachment in said court, as the cir-cumstances may warrant."

The question posed in this petition for certiorari with injunction is whether or not the respondent court acted without or in excess of jurisdiction, or with gross abuse of discretion, in issuing its order dated November 24, 1962, by which it directed the release of the properties, monies and checks held by the PTFCRCo unto defendants in civil case Q--6547.

The authority of a court to dissolve a writ of preli-minary attachment, either upon a counterbond or on the ground that it was improperly or irregularly issued, can hardly be debated. In the instant case, the dissolution of the writ of preliminary attachment was based on the court's finding of a lack of a cause of action, and the fact that the order of dismissal of the complaint was set aside by this Court on appeal does not imply that the dissolution of the writ was done without or in excess of the respondent court's jurisdiction or with grave abuse of discretion. On the contrary, from the statement in the dispositive portion of the decision in G. R. No. L-20333 - that the disposition of the appeal is without prejudice to the right of plaintiff-appellant "to ask for another writ of preliminary attachment in said court" - the logical inference is that the dissolution of the writ of preliminary attachment was within the respondent court's jurisdiction to order.

The legal effect of the discharge of the writ of pre-liminary attachment as directed in the order of September 10, 1962 is the extinguishment of the lien on the attached properties, rendering them free of such encumbrance. (Hi Caifi vs. Phil. Sugar Development Co., 50 Phil. 592) Petitioner contends, however, that the respondent court acted without jurisdiction in ordering on November 24, 1962, the release of the attached properties to the defendants in civil case Q-6547, claiming that said court lost jurisdiction over the case after the approval of the record on appeal on September 22, 1962. The error in petitioner's contention lies in the assumption that the order of November 24, 1962 is disparate from the order of September 10, 1962 by which the writ of preliminary attachment was discharged. The directive of November 24 "is but a part, a continuation, and an implementation" of the order of September 10, to paraphrase the ruling of this Court in National City Bank of New York vs. Jose M. Tiaoqui, et

al., G. R. No. L-9770, March 29, 1957. To change the expression, the order of November 24 was practically a ministerial auto, intended to carry out the pre-existing order of September 10. It is a settled rule that trial courts have jurisdiction to issue orders of this nature. (Naredo vs. Yatco, 80 Phil. 220; Alliance Insurance & Surety Co., Inc., vs. Tan, 52 O. G. No. 18, p. 7634) As the order of September 10 was issued within the respondent court's jurisdiction, petitioner cannot validly complain that the order of November 24 was issued outside or in excess of the court's jurisdiction.

WHEREFORE, the instant petition is hereby dismissed with costs against petitioner.

Reyes, JBL, Acting C.J., Makalintal, Bengzon, JP, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., are on official leave.

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