GETULIO ALMAREZ AND JUANITA AVILA, PETITIONERS, VS. MARIANO FLORENTINO, JUSTICE OF THE PEACE OF VIGAN, ILOCOS SUR, ET AL., RESPONDENTS.

G.R. No. 22667. October 11, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari. It appears from the record that in the month of March of the present year, the respondents Cipriana Alvarez, Maria Alvarez, Vicente de Leon and Estefania Morales brought an action against the petitioners in the Court of First Instance of the Province of Ilocos Sur for the recovery of the possession of seventeen parcels of land; that on April 5, 1924, the defendants, herein petitioners, entered a general denial to the complaint and that on May 31, 1924, the respondent justice of the peace, acting as Judge of the Court of First Instance of the Province of Ilocos Sur, on motion of the plaintiffs and over the objections of the defendants in said case, appointed a receiver of the property in litigation on the ground that the said defendants were committing waste on the property and were insolvent.

The petitioners maintain: (1) That inasmuch as there was a vacation judge of the Court of First Instance designated for the district, the respondent justice of the peace had no authority to act as Judge of the Court of First Instance at the time the appointment of a receiver was made; and (2) that even considering that said respondent had authority to so act he, nevertheless, exceeded his jurisdiction in appointing a receiver of the property in question, it not appearing that it was in danger of being lost, removed or materially injured. They therefore ask that a writ of certiorari issue ordering the clerk of the Court of First Instance of Ilocos Sur to certify the record of the aforesaid proceedings to this court and that thereupon the appointment of the receiver be declared null and void and set aside.

The petitioners' first contention that the respondent justice of the peace had no authority to act as Judge of the Court of First Instance at the time the receiver was appointed, cannot be sustained. It appears that the vacation judge of the Court of First Instance was absent from the province at that time and that the respondent justice of the peace was exercising the functions of justice of the peace of the provincial capital and, as such, he had power to exercise interlocutory jurisdiction within the province to the same extent as the Judge of the Court of First Instance. (Act No. 136, sec. 68.)

Neither can we agree with the petitioners that the respondent justice, in appointing the receiver in this case, exceeded his jurisdiction. In an action in ejectment, not only the soil but everything thereon growing is in litigation and it may sometimes be found necessary, in such cases, to appoint a receiver to conserve the fruits of the land and to prevent waste. The power to make such appointments should be sparingly used, but it is not beyond the jurisdiction of the Court of First Instance and the exercise of the court's discretion in that respect will not be reviewed by certiorari. (Napa vs. Weissenhagen, 29 Phil., 180.)

The petition is denied with the costs against the petitioners. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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