

VICENTE SABADO ET AL., PETITIONERS, VS. CRISTINA GONZALEZ, INC., FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF PANGASINAN, AND NICOMEDES T. RUPISAN, RESPONDENTS.

G.R. No. 28890, February 02, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of certiorari, the petitioners alleging that the respondent judge has exceeded his jurisdiction in issuing a preliminary injunction prohibiting the petitioners from entering upon certain lands and in appointing a receiver for the rice produced upon the land, pending the determination of the conflicting claims of the parties. The case is now before the court upon a demurrer to the answer of the respondent Cristina Gonzalez, Inc. The answer reads as follows:

"Comes now the respondent Cristina Gonzalez, Inc., in the above entitled cause, thru the undersigned attorneys, and in answer to the petition filed herein, respectfully alleges:

"1. That it denies each and every allegation contained in each and every paragraph of said petition, except such as are expressly or impliedly admitted in the following special defenses:

"FIRST SPECIAL DEFENSE

'1. That on December 29, 1923, the respondent Cristina Gonzalez, Inc., filed an Insular Government property lease application (No. 36) of the land subject of this present controversy.

"2. That said land was acquired by the Government of the Philippine Islands from its owner, Cristina Gonzalez, on November 28, 1922, as a result of the foreclosure of a mortgage executed by said Cristina Gonzalez in favor of the defunct Agricultural Bank of the Philippine Islands.

"3. That prior to the expiration of the period granted by law for the exercise of the right of redemption of the said Cristina Gonzalez, that is, on March 24, 1923, she applied for a provisional permit to occupy and cultivate the land in question, which application was granted by the Director of Lands on April 14, 1924, the permit thus issued having been renewed and extended up to December 31, 1924.

"4. That on June 20, 1924, Cristina Gonzalez, assigned all her rights to, and interests in, said property, as a lease applicant, to the respondent Cristina Gonzalez, Inc.

"5. That acting on this assignment, the Director of Lands, on June 20, 1924, issued an order to the effect that lease application No. 36 of Cristina Gonzalez, Inc., be given due course, and consequently said corporation was granted a provisional permit to occupy the, land in question, which permit has been renewed annually up to the present time.

"SECOND SPECIAL DEFENSE

"1. That the Government of the Philippine Islands, acting thru the Director of Lands, advertised the land in question for lease and set a date (August 31, 1925) for the opening of the bids for the lease of said land.

"2. That pursuant to the provisions of the Public Land Law, and to the rules and regulations of the Bureau of Lands, Cristina Gonzalez, Inc., thru its duly authorized representatives, was granted the privilege to raise its original bid of P4,000 to P8,040, so as to equal that of the petitioners herein as highest bidders.

"3. That upon raising its bid, Cristina Gonzalez, Inc., was declared by the Director of Lands to be the one entitled to the award of the lease of said land.

"4. That the petitioners filed a protest against the award made in favor of the respondent corporation, which was dismissed by the Director of Lands by his decision dated April 13, 1926, a copy of which is hereto attached, marked as Exhibit A, and made a part hereof.

"5. That the petitioners herein appealed from said decision of the Director of Lands to the Honorable Secretary of Agriculture and Natural Resources who affirmed the decision of the former as shown by the attached copy of the decision marked Exhibit B, and made a part hereof.

"6. That the petitioners herein have never been in lawful possession of the land in question, especially since said land was acquired by the Government of the Philippine Islands, inasmuch as no permission whatever was granted them by the latter to occupy the same.

"THIRD SPECIAL DEFENSE

"1. That in a case now pending in the Court of First Instance of Pangasinan (Civil case No. 4644, entitled Cristina Gonzalez, Inc. vs. Gregorio Torres et al.), the respondent Cristina Gonzalez, Inc., as plaintiff therein obtained, on May 27, 1927, a writ of injunction against the leaders of the herein petitioners, namely, Gregorio Torres, Bias Bajo and Isidro Dingle.

"2. That on November 21, 1927, the herein respondent Cristina Gonzalez, Inc., as plaintiff in said case No. 4644, amended its complaint so as to include all the herein petitioners who are mere followers of the said Gregorio Torres, Bias Bajo and Isidro Dingle; and petitioned the court that they be enjoined in the same manner as their leaders.

"3. That the said court, acting upon said petition issued an order modifying the preliminary injunction previously granted so as to include all of the herein petitioners.

"4. That immediately thereafter, that is on November 22, 1927, the respondents herein, as defendants in said case No. 4644, moved the Court of First Instance of Pangasinan to reconsider and set aside said order granting a preliminary injunction; whereupon the court ordered the Provincial Fiscal of Pangasinan to make a personal investigation of the land in controversy.

"5. That thereafter, the Provincial Fiscal of Pangasinan made a report to the court recommending that a receiver be appointed to take charge of the rice crop now being harvested on said land, so as to avoid further conflict between the opposing parties.

"6. That acting on the recommendation of the Provincial Fiscal, the court issued an order modifying that of November 21, 1927, to the effect that the preliminary injunction already issued against the petitioners be maintained and that a receiver be appointed to take charge of the rice crop.

"7. That the action thus taken by the respondent judge was proper and justified in view of the fact that the petitioners are insolvent, and that they are continually executing acts of trespass on the land in question, harvesting and carrying away the rice crop now growing on the land to the damage and prejudice of the respondent corporation.

"Wherefore, it is respectfully prayed that the petition be dismissed with costs against the petitioners."

The demurrer is taken upon the ground that the answer does not state facts sufficient to constitute a defense. It

will be noted that the respondent denies all allegation of the petition which are not expressly or impliedly admitted in the answer; and it is too clear for argument that the demurrer cannot possibly be sustained merely upon the facts admitted or alleged in said answer. But in their argument in support of the demurrer, the petitioners go beyond the answer and rely largely on facts appearing elsewhere in the record. Though this procedure is somewhat irregular, it may perhaps lead to a final determination of the issues involved without further hearings, and we shall therefore follow in the footsteps of counsel for the petitioners and take into consideration all of the facts clearly established by the pleadings and the accompanying documents.

It appears from the record that in May, 1927, Cristina Gonzalez, Inc., brought an action against Gregorio Torres, Bias Bajo and Isidro Dingle for an injunction to restrain the defendants from entering upon the land in question and from harvesting and carrying away certain products of the land. The case was designated civil cause No. 4644 of the Court of First Instance of Pangasinan and assigned to Branch No. 2 of that court, Judge Francisco Zandueta presiding, and on the 27th of the same month a preliminary injunction was issued by that judge in accordance with the prayer of the complaint.

Subsequently, on June 30, 1927, an action was brought by the herein petitioners against Cristina Gonzalez, Inc., Jorge Vargas as Director of Lands, and Silverio Apostol as Secretary of Agriculture and Natural Resources, for the annulment of a lease granted Cristina Gonzalez, Inc., for the land in question. This case was given the number 4969 and was assigned to Branch No. 1 of the aforesaid court in charge of Judge Ceferino Villareal. On September 20, 1927, Jose A. Santos, as attorney for Cristina Gonzalez, Inc., filed a petition in case No. 4969 in which he prayed for a preliminary injunction, prohibiting all of the plaintiffs in that case from entering upon the land in question and from disturbing and molesting in any manner Cristina Gonzalez, Inc., and her tenants and agents in the possession of the land. This petition was denied by Judge Villareal on October 3, 1927, and seven weeks later, on November 21, 1927, Cristina Gonzalez, Inc., filed an amended complaint in case No. 4644 in which amended complaint all of the petitioners in the present case were joined as parties defendants. The prayer of said complaint reads as follows in translation:

"For the reasons stated, the plaintiff respectfully prays that the honorable court, upon admission and approval of the corresponding bond, immediately issue a preliminary injunction ex parte against the defendants, their agents, and other persons who cooperate with them and assist them, to the effect that from now on they abstain from disturbing the plaintiff's possession of the aforesaid rice lands described and mentioned in the second paragraph of this complaint, and that they abstain from entering said lands, and that they immediately desist from cutting, harvesting, taking possession of and using the corn, tobacco, buyo leaves, and other plantings on said land and that upon trial, judgment be rendered against the defendants (a) declaring the preliminary injunction permanent, prohibiting forever the execution of the acts referred to; (b) that the defendants jointly and severally pay the plaintiffs the sum of P15,000; and (c) that they pay the costs, and that the plaintiffs be given the benefit of any other just and equitable remedy."

Immediately upon the filing of the amended complaint in said case No. 4644, Judge Zandueta granted the prayer for a preliminary injunction ex parte. The defendants in the case, the herein petitioners, at once filed a motion for the dissolution of the preliminary injunction, but before ruling on the motion, His Honor commissioned the assistant fiscal of the province to inspect the lands in question and to investigate the situation. Upon such investigation, the fiscal rendered a report to the court in which he recommended that a receiver be appointed to take care of the rice produced on the land pending the final determination of the case. Upon receiving the report, Judge Zandueta, on December 1, 1927, modified the preliminary injunction by limiting its effect to the rice fields on the land in question and appointed a receiver, as recommended by the fiscal, upon the filing of a bond of ₱4,000. The present action was thereupon brought.

The petitioners' contention is that the respondent judge exceeded his jurisdiction (1) in granting a petition for a

preliminary injunction after a similar petition presented by the same parties had been denied by another judge, and (2) in appointing a receiver upon the unverified report of the fiscal, without a formal petition for such appointment and without any allegation in the complaint that the plaintiffs had an interest in the property placed under receivership.

In regard to the first proposition, counsel for the petitioners argue that in the circumstances, the issuance of a preliminary injunction constituted an encroachment upon the jurisdiction of a coordinate branch of the court and amounted to a violation of the well established general rule that a court has no power to interfere with the judgments, orders, or decrees of a court of concurrent or coordinate jurisdiction.

There is, as far as we can see, no merit in this argument. The injunction was granted in a case pending in the sala or branch of which the respondent judge was in charge; the case was hot under the control or jurisdiction of the judge presiding over the other branch of the court below, and the issuance of the preliminary injunction did not interfere with the execution of any positive "decision, order, or decree" of the latter judge. It may further be observed that the denial of a motion or petition for a preliminary injunction is no final determination of the matter and is no obstacle to the subsequent granting of a renewed petition for the issuance of such injunction upon fuller information and consideration.

The second point raised by counsel for the petitioner may at first blush seem to rest on a more solid foundation but this impression disappears upon closer examination. In the case of *Mariano Velasco & Co. vs. Gochuico & Co.* (28 Phil., 39), this court, speaking through Justice Moreland, said: "A proceeding for the appointment of a receiver should be by petition and not by motion. The petition should be verified and should have attached to it such affidavits as the petitioner may deem necessary for the substantiation of the allegations set forth in the petition."

That this is a sound rule of procedure will not be disputed. and its non-observation by the interested party may well serve as sufficient justification for refusing to appoint & receiver. It should therefore be generally followed and the failure to do so may be regarded as an error. But this error does not necessarily go to the jurisdiction of the court and, if so, a writ of certiorari will not lie to set aside an appointment of a receiver, made without the observation of the procedure indicated, unless there has been such a gross abuse of discretion on the part of the court as to virtually amount to a failure of jurisdiction.

In the exercise of their equity jurisdiction, the courts are granted extensive powers in regard to appointment of receivers. Section 174 of the Code of Civil Procedure, after enumerating certain specific cases, provides in its subsection 4 that a receiver may be appointed "Whenever in other cases it shall be made to appear to the court that the appointment of a receiver is the most convenient and feasible means of preserving and administering the property which is the subject of litigation during the pendency of the action."

As will be seen, the appointment of receivers for the conservation of the property in litigation rests largely in the discretion of the court. This discretion must, of course, be sound and cannot be exercised arbitrarily, and the remedy being an equitable one, it can only be resorted to in cases where there is no other adequate remedy. But in the absence of clear abuse of such discretion, the higher courts will not interfere in any manner (*High on Receivers*, 4th ed., par. 7). And, as we have already indicated, a writ of certiorari will not issue unless the abuse of discretion is so gross, or the irregularity in the proceedings so fundamental, as to directly or indirectly affect the jurisdiction of the court below. A mere technical error in procedure in the original case is not sufficient to justify the issuance of the writ.

The petitioners' contention that the amended complaint in civil case No. 4644 did not show that the therein plaintiff had any interest in the property placed under receivership, is not borne out by the record. It is true that

there is no direct and specific allegation that the rice produced on the land in question is the property of the plaintiff, but the very ample allegations as to the lease and the plaintiff's possession raise the presumption that said plaintiff had an interest in all of the products of the land.

The demurrer to the answer of the respondent Cristina Gonzalez, Inc., must be overruled and it clearly appearing from the record that the petitioners cannot show sufficient grounds for the granting of their petition, said petition is hereby dismissed with the costs against the petitioners.

So ordered.

Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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