

PANAY MUNICIPAL CADASTRE, INC., ET AL., PETITIONERS, VS. L. GARDUÑO, JUDGE OF FIRST INSTANCE OF CAPIZ, AND JOSUE SONCUYA, RESPONDENTS.

G. R. No. 33303. January 22, 1931

Ponente: STREET, J.

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STREET, J.:

This is an original application for the writ of certiorari wherein the petitioners seek an order annulling a preliminary injunction issued by the respondent judge in civil case No. 2643, of the Court of First Instance of Capiz; and the cause is now before us upon answer of the respondents and proof submitted by the parties before the clerk of this court, as commissioner.

On January 28, 1929, the respondent Josue Soncuya filed an original complaint in the Court of First Instance of Capiz (civil case No. 2541) against six individuals of the surname Azarraga, with whom was joined the husband of the defendant Rosario. The purpose of said action is to recover damages from the Azarragas for an alleged mifeasance in procuring a Torrens title to certain property claimed by Sonouya, and for various acts of waste committed by them in connection with the misappropriation of the property mentioned, said alleged damages amounting all together to the sum of more than P125,000. The land out of which the cause of action is supposed to have arisen consists of four parcels, constituting a portion of the larger of the two lots described in the original certificate of title No. 9785, of the registry of Capia. In connection with said complaint, the plaintiff Soncuya asked for the inscription of a notice of lis pendens on certificate of title No. 9785, and also for a writ of attachment against two other parcels of land belonging to the defendants and covered by certificates of title Nos. 9804 and 10351. In response to this application an attachment was issued upon the filing of a bond by Soncuya in the amount of P1,000; and the same was levied on the properties covered by the two certificates last mentioned. On September 7, 1929, upon motion of the Azarragas, said attachment was discharged by order of the respondent judge, upon the filing by the Azarragas of a bond in the amount of P12,500. Upon the filing of said bond the respondent judge also canceled the notice of lis pendens with respect to the land included in certificate No. 9785.

Prior to the incident above mentioned a corporation had been organized in Capiz known as the Panay Municipal Cadastre, Inc., for the purpose of effecting a cadastral survey of lands in the municipality of Kalifoo; and the Azarragas had obligated themselves to said corporation to supply money for the purpose of effecting the contemplated survey. Furthermore, at the time with which we are dealing, the Azarragas found themselves without the ready funds to meet said obligation. They therefore applied to the partnership Hijos de I. de la Rama, one of the plaintiffs in the present petition, for a loan of P25,000 to be used for the purpose mentioned. This amount the partnership, hereinafter referred to as the De la Rama firm, agreed to advance the required loan in monthly instalments, at the rate of P3,000 a month. In order to secure the money thus to be advanced, the Azarragas executed a mortgage in favor of the De la Rama firm on the land covered by certificates of title Nos. 9785, 9804, and 10351. The credit thus procured was intended exclusively for financing the expenses of the cadastral survey to be undertaken by the Panay Municipal Cadastre, Inc.; and it was expressly provided in

paragraph 5 of the mortgage that the sums drawn from the De la Rama firm against the credit mentioned were to be applied exclusively to this purpose.

After the mortgage had been made, and while the original damage suit (case No. 2541) was pending trial, as it still is, Josue Soncuya, the plaintiff in said action, began, on October 17, 1929, a second civil action in the Court of First Instance of Capiz against the Azarragas and the De la Rama firm. By referring to the petitory part of the complaint in this second action (case No. 2643), it is apparent that the purpose of the action was to obtain a preliminary injunction to prevent the Azarragas and the De la Rama firm from carrying into effect the contract secured by the mortgage mentioned. Nevertheless the Panay Municipal Cadastre, Inc., was not made a party in case No. 2643, although it was directly interested in the performance of the contract which was sought to be enjoined. For a more complete elucidation of this point we here transcribe the prayer of the complaint in case No. 2643, which is as follows:

"For all the foregoing, the plaintiff respectfully prays this court to render judgment against the defendants, and to immediately issue a writ of injunction against the same:

"1st, restraining the defendants Azarraga from asking from their codefendant Hijos de I. de la Rama more money from their credit than that which corresponds to the first month, if it had already been delivered to them, according to the mortgage contract aforementioned;

"2nd, restraining at the same time the defendant Hijos de I. de la Rama from delivering to its codefendants any sum on account of the said credit beyond the amount already delivered;

"3rd, equally restraining all the defendants from rescinding the mortgage contract aforementioned until further order of the court;

"4th, the plaintiff also prays that a copy of the injunction be remitted to the register of deeds with instructions to annotate it in the registry and in the certificates of title Nos. 9785, 9804, and 10351, and to abstain from registering any annotation relative to transactions with respect to said properties until further order of the court, and

"5th, likewise prays that costs in this case be adjudged against the defendants Azarraga."

On October 21, 1929, the respondent judge issued an order for the preliminary injunction in accordance with the prayer of the complaint, upon the filing of an undertaking by the plaintiff Josue Soncuya in the amount of P2,000; and on the next succeeding day the preliminary writ of injunction was issued (Exhibit L) enjoining the De la Rama firm from extending the credit stipulated for in the mortgage and the Azarragas from receiving any portion of the money intended to be advanced. The issuance of this writ was followed by a motion for reconsideration and various other interlocutory proceedings, but His Honor, the respondent judge, refused to abrogate his order and dissolve the injunction, and it was for the purpose of abrogating the same that the present petition was filed in this court. It may be added, by the way, that on March 12, 1930, the Panay Municipal Cadastre, Inc., which, according to the mortgage, was to receive the amounts to be advanced by the De la Rama firm, filed a motion in intervention and moved the respondent judge to set aside and annul the injunction, but this motion was likewise denied.

From what has been stated it will be seen that the injunctive order against which relief is sought in this case was issued in a case (No. 2643) in which no other relief is sought than the issuance of a preliminary injunction in aid of the prior pending action in case No. 2541. No ultimate substantive relief whatever was sought in this second action (No. 2643). A perusal of the petitory part of the complaint, transcribe above, shows this clearly.

Upon these facts it is obvious that the granting of the preliminary injunction against which relief is sought in this petition was an irregular act and beyond the jurisdiction of the respondent judge. The preliminary injunction is so purely subsidiary remedy, available in aid of the right which is to be vindicated in the action wherein the

preliminary injunction is issued. An independent action will not lie merely to obtain a preliminary injunction. There must be some substantive right to be enforced in the action in which the preliminary injunction is sought and which right is intended to be conserved by the injunction. This rule is fundamental; and a contrary practice cannot be tolerated, since it would tend to a multiplicity of actions and lead to unnecessary expense in litigation. Any conservative remedy to which the plaintiff might really have been entitled could have been obtained by motion in the original action (No. 2541).

For the reasons stated the petition must be granted and the order of October 21, 1929, and the subsequent writ of injunction of October 22, 1929, (Exhibits K and L) are hereby abrogated, as prayed in the petition with, costs against the respondent Josue Soncuya. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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