

NICOLAS SANTOS, PLAINTIFF AND APPELLANT, VS. LAZARO DE LEON ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 36799. September 13, 1934*

Ponente: ABAD SANTOS, J.

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This is an action for injunction damages instituted by Nicolas Santos, plaintiff appellant, against Elias Cruz his codefendants and appellees. Both Nicolas Santos Elias Cruz claimed ownership possession of the l in question. Before trial, a preliminary injunction was issued at the instance of the plaintiff. After trial, the lower court found that said l belonged originally to Lazaro de Leon, who sold it to Elias Cruz on July 12, 1928 the deed of sale was registered on July 16, 1928. Before this sale, however, Nicolas Santos had obtained judgment against Lazaro de Leon, on account of which the l in question was levied on execution sold at public auction on May 23, 1929, to the judgment creditor. No redemption having been effected within the legal period, Santos obtained the corresponding certificate of sale which was registered on June 4, 1930, on June 21, 1930, he was placed in possession of the property by order of the court.

Upon the foregoing facts, the court below held that, although, under the circumstances of the case, the sale in favor of the defendant Elias Cruz was presumed to be fraudulent, the action instituted was improper, in view of the fact that Cruz took possession of the l on July 12, 1928. The court, therefore, rendered judgment dismissing the action allowed the defendant the sum of P175 as damages by reason of the issuance of the preliminary injunction. From this judgment the plaintiff appealed.

The whole controversy in this case centers on the question of jurisdiction of the court below to grant injunctive relief. This court, on more than one occasion, has held that injunction will not be granted to take property out of the possession or control of one party place it in that of another whose title has not been clearly established by law. (*Devesa vs. Arbes*, 13 Phil., 273; *Palafox vs. Madamba*, 19 Phil., 444; *Evangelista vs. Pedreiros*, 27 Phil., 648.) The doctrine proceeds on the familiar rule that the writ of injunction is an equitable relief, that the determination of title is a legal remedy. In jurisdictions where courts of equity are separate distinct from courts of law, such distinction is by no means a matter of indifference. Indeed, it is a matter of jurisdiction, for courts of equity, by their nature, can only administer equity. Thus, following this, principle, this court has further held that, where the defendant raised the question of title, injunction is not the proper remedy. (*Asombra vs. Dorado Gesmundo*, 36 Phil., 883; *Liongson vs. Martinez*, 36 Phil., 948.)

It is at once clear, however, that where, as in this jurisdiction, courts are not divided into that of equity of law, but are vested with power to administer both law equity, such jurisdictional question is out of place. (21 C. J., 27; *Montilla vs. Van Syckel*, 8 Porto Rico, 153, 155.) Under the law practice in this jurisdiction, the plaintiff is allowed to pray for all legal as well as equitable remedies, the defendant to set up all special defenses, including counterclaims cross-complaints, irrespective of whether they are of legal or equitable nature. Consequently, when a party commences an action for injunction, the facts averred in the complaint would confer jurisdiction, whatever may be the defense, counterclaim or cross-complaint which the defendant may care to make, whether of legal or

equitable nature, our courts will proceed to determine the case whenever possible convenient, in order to avoid multiplicity of suits between the same parties.

Upon the foregoing considerations, the trial court could have properly tried determined this case in the light of the pleadings the evidence presented by the parties. This was intimated in both the *Devesa Rustia* cases, , in a way, it was done in the *Evangelista* case, wherein, by considering the complaint therein as amended in this instance, this court allowed possession damages in favor of the plaintiff. This shifting of an action from, technically, one of equity to one of law, or vice versa, or the joining of legal equitable causes of action has long been in practice in American jurisdiction where joinder of causes of action arising out of the same transaction or transactions connected with the same subject of action, is authorized by law. (1 C. J., 1007, 1060, 1088, 1089, 1130.)

After all, this appeal presents several equitable features for the application of the precedent established in the *Evangelista* case. In the first place, we have the possession enjoyed by the plaintiff since July 26, 1930 by reason of the preliminary injunction issued *ex parte* in this case. In the second place, we cannot shut our eyes to the evidence of record which shows that, in the eyes of the law, plaintiff is the lawful owner of the property, because the contract relied upon by defendants is null void without effect. In the third place, there is strong equity in protecting plaintiff from paying damages suffered by a party who, in the eyes of the law, is a fraudulent grantee of the property in question. It is evident, therefore, that, as the parties now stand, to shift anew the possession from the plaintiff to the defendants, would entail grave consequences for which the tardy inadequate process of the law would fail to afford full complete relief.

In view of the foregoing considerations, the judgment appealed from must be reversed, the writ of preliminary injunction issued by the court below made permanent, without special pronouncement as to costs in both instances. So ordered.

Street, Imperial, Butte, Diaz, JJ., concur.

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