

**VALERIANO ROXAS, PETITIONER, VS. FRANCISCO ZANDUETA,
JUDGE OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.***G.R. No. 37605. July 27, 1932*

Ponente: STREET, J.

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This is an original application in this court, in the form of certiorari, filed by Valeriano Roxas against Francisco Zandueta, as Judge of First Instance of the Province of Rizal, with whom is joined the sheriff of Rizal and some seventeen individuals, who will be herein referred to as the creditors. The purpose of the petition is to secure the annulment of an order granted by the respondent judge on June 9, 1932, in the Court of First Instance of Rizal. Incidentally a preliminary injunction is sought to restrain the defendant sheriff and his codefendants, other than the respondent judge, from taking possession of a rice mill alleged to be the property of the petitioner. The cause is now heard upon answer of the various defendants.

The respondents, other than the judge and sheriff, are judgment creditors by reason of various judgments obtained in certain civil proceedings in the courts of Rizal Province against Claro Sta. Maria and his wife, Mercedes Roxas. For the purpose of making these judgments effective said respondents caused executions to be levied upon a rice mill located in the Province of Rizal, as property of Claro Sta. Maria and wife. The present petitioner, Valeriano Roxas, a brother of Mercedes Roxas, thereupon intervened as a third-party claimant, asserting that the rice mill belonged to himself. In order to arrest the effect of this third-party claim the respondent creditors executed a bond in the amount of P14,000 to hold the sheriff harmless; and the latter official thereupon proceeded to sell the rice mill at public auction, the judgment creditors becoming the purchasers of the property. Being then desirous of obtaining possession of the rice mill, the creditors caused the sheriff to take possession of the property, to which end, so it is alleged, it was necessary for him to break a lock which the petitioner had placed upon the camarin in which the mill was placed, thereby dispossessing the petitioner of the property.

Meanwhile the petitioner had previously instituted a civil action in the Court of First Instance of Rizal asserting his ownership over the mill and asking for an injunction to prevent the sheriff from selling the property; and later, on March 28, 1932, an amended complaint in the same proceeding was filed by the petitioner, seeking an injunction to prevent the sheriff from delivering possession of the mill to the creditors.

Judge Zandueta, who was then presiding in the court, refused to grant any injunction to delay the sale or to replace the petitioner in possession; but Judge Isidro Paredes, acting as vacation judge in Rizal Province pending the court vacation, on April 18, 1932, ordered the provincial sheriff to replace the petitioner, as plaintiff in the aforesaid cause, in possession of the property, it being required that the petitioner should execute a bond in the amount of P1,000. By virtue of this order the petitioner was restored to possession. Against this development the creditors interposed a motion for reconsideration; and this motion presently came before Judge Zandueta, then again acting as Judge of First Instance of the province. The first thought of Judge Zandueta was to allow the restorative order of Judge Paredes to continue in effect, with the requirement that the petitioner, as plaintiff in the civil cause mentioned, should give an additional bond of P13,000. It will be noted that this bond, in case it had been given,

together with the bond for P1,000 already executed, would have placed the petitioner under the same obligation (in the amount of P14,000) that had been exacted from the creditors when they first seized the property under execution. But the petitioner did not give the additional bond; and Judge Zandueta, at the request of the petitioner, on June 4, 1932, extended by five days the period for the giving of the additional bond. The bond not having been given by June 9, 1932, the court on that date vacated the order for the extension of time and ordered that the sheriff should return to the creditors (purchasers at the execution sale) the possession of the rice mill and camarin wherein it is located. Thereupon the present proceeding was instituted in this court, and a preliminary injunction was granted to prevent the disturbance of the petitioner in the possession of the property during the pendency of this proceeding.

As this is a certiorari proceeding the only question before the court is whether Judge Zandueta acted within his powers in making the order of June 9. It is claimed by the petitioner that this act, which had the effect of abrogating the prior interlocutory order of Judge Paredes, was irregular and in excess of the jurisdiction of the court. With this proposition we are unable to agree. The orders made by Judge Paredes and by Judge Zandueta were all of an interlocutory nature, and it is rudimentary that such orders are subject to change in the discretion of the court. Certainly the order of Judge Paredes is on no higher plane than it would have been if Judge Zandueta had made the order himself, and the power of the presiding judge, upon motion of reconsideration, to modify or abrogate such an order is unquestionable.

It appears that the petitioner, under the doctrine of *Pabico vs. Ong Pauco* (43 Phil., 572), considers himself to be entitled to the possession of the executed property for at least one year from the date of the execution of the sale. It is possible that he has such right, depending on whether he is the true owner of the property or not. But if he has the right asserted by him, he is protected by the bond given when he intervened as a third party against the levy of execution. Into the merit of that question we cannot here enter. The question here is whether a judge of First Instance before whom an action is pending has jurisdiction to modify, upon motion for reconsideration, an order in the same case entered by another judge acting as vacation judge. Upon this point there seems to us to be no room for any doubt whatever. The answer is in the affirmative, and this proceeding cannot be maintained.

The petition will be dismissed, and it is so ordered, with costs against the petitioner.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Butte, JJ., concur

DISSENTING

IMPERIAL, J.

I quite agree with the majority that the only question involved in this certiorari proceeding is whether or not Judge Zandueta acted within his powers in making the order of June 9, 1932. I also agree that the order issued by Judge Paredes being interlocutory in character could be set aside by Judge Zandueta as he did. N But what I maintain is that there is another legal reason by which the order made by Judge Zandueta in putting the private respondents in possession of the premises is contrary to law and against the doctrine laid down by this court in *Pabico vs. Ong Pauco* (43 Phil., 572) and reiterated in *Gonzalez vs. Calimbas and Poblete* (51 Phil, 355).

In those two cases we have already settled that purchasers of real property at public auction have no right to take possession of it within the year granted by law for redemption. Relying upon this principle the petitioner herein instituted this proceeding in order to set aside the order granted by Judge Zandueta. If the doctrine advanced in those two cases is still in force, as it is, there can be no question that the order of June 9 was issued in excess of jurisdiction.

It is not good reason to dismiss this proceeding simply because the judgment creditors and purchasers have given a bond in the amount of P14,000 in favor of the sheriff and that the petitioner herein is fully protected by said bond. Having been disturbed in his lawful possession, as it is admitted in the majority opinion, the petitioner has a clear and undeniable right to maintain this action and to pray for the preliminary mandatory injunction. When the law recognizes several remedies to a party it should not be denied of any of them when no such prohibition exists.

Inasmuch as according to the majority opinion the petitioner was in real possession of the premises at the time the order of June 9 was issued and the sheriff delivered the possession to the private respondents, the writ of preliminary mandatory injunction should have been granted.

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