

THE ASIATIC PETROLEUM COMPANY (P. I.), LTD., PLAINTIFF AND APPELLEE, VS. ORLANES AND BANAAG TRANSPORTATION CO., INC., DEFENDANT AND APPELLANT. PARSONS HARDWARE COMPANY, INC., DE...

G.R. No. 38097. December 07, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The Asiatic Petroleum Company (P. I.), Ltd., brought this action against the Orlanes and Banaag Transportation Co., Inc., to collect a certain sum of money owed it for gasoline and oil which the defendant bought on credit together with interest due thereon.

Upon the plaintiff filing a bond, the court appointed the Philippine Trust Company receiver for the defendant's entire business consisting in the operation of freight and passenger trucks on various lines. The Philippine Trust Company immediately took possession of all the equipment, accessories and other properties of the defendant and, in turn, employed E. H. Teal to manage said transportation business, with the approval of the court.

During the pendency of the suit, various creditors of the defendant intervened therein and asked for the payment of their respective claims. Many of these claims were secured by mortgages constituted on personal property or on trucks which formed part of the equipment of the defendant's business. It happened, however, that instead of filing complaints in intervention therein, the said creditors sought to recover their credits through motions to that effect. In the trial court, the defendant did not raise any question relative to the procedure followed by the aforesaid creditors. However, the court, *motu proprio*, treated the motions in question as complaints in intervention and proceeded in accordance with the provisions of the Code of Civil Procedure.

After the trial and when all of the evidence had been presented therein, the court rendered judgment sentencing the defendant to pay its proven debts, together with interest thereon. During the pendency of the defendant's appeal, the said court ordered the execution of the judgment on the ground that the defendant failed to file the required bond for a stay thereof. The trucks and other equipment and accessories on which the mortgages were constituted were sold and the proceeds thereof delivered to the respective creditors.

It is unnecessary to state herein the amount involved in each claim inasmuch as the defendant does not question the correctness of the figures in its appeal. The defendant appealed from the judgment thus rendered and from the subsequent amendment thereto, as well as from the final order of the court authorizing the sale and directing the application of the proceeds thereof to the payment of the claims in the order stated therein.

The defendant contends that the trial court erred: (1) In ordering that its properties' and business be placed under judicial receivership immediately after the filing of the complaint; (2) in appointing the Philippine Trust Company receiver for its properties and business; (3) in converting the action, which is an ordinary civil one, into an insolvency proceeding; (4) in rendering its decision of October 26, 1931, and the subsequent amendment thereto;

and (5) in ordering the execution of the judgment in spite of the fact that its properties and business were in custodia legis and that an appeal was taken therefrom.

The first two assignments of error may, in the light of sound logic, be discussed jointly. The court appointed a receiver to take charge of the properties and business of the defendant on the ground that the plaintiff had established prima facie and by affidavit that said defendant was on the verge of insolvency and that the remedy granted was the most adequate and the most convenient means to preserve such properties during the pendency of the suit, thus protecting the interest of all parties concerned. The appointment made did not become effective until after the plaintiff had filed the required bond. The fact that the remedy was granted ex parte does not constitute a reversible error inasmuch as the Code of Civil Procedure authorizes it under just and reasonable motives.

It is not true that the ordinary action brought by the plaintiff has been converted into an insolvency proceeding. All there was to it is that the trial court treated the motions of the creditors as complaints in intervention and we believe that by doing so the court did not commit a substantial error sufficient to justify reversal of the judgment rendered therein. We are of the opinion that the trial court relied upon the provisions of section 2 of the Code of Civil Procedure which prescribes a liberal interpretation of the provisions thereof as well as of the proceedings thereunder, in order to assist the parties in their right to obtain speedy justice.

The penultimate assignment of error is a mere corollary and therefore does not require further discussion.

The last assignment of error is likewise of no merit. Notwithstanding the appeal taken by the defendant, the trial court had jurisdiction to order the sale of the properties in the hands of the receiver, and the execution of the judgments rendered therein, in accordance with the provisions of section 144 of the Code of Civil Procedure. Said execution was more or less proper inasmuch as the defendant failed to file the bond required of him for a stay thereof. That the properties of the defendant were then in the hands of a receiver is of no consequence on the ground that, at any rate, the orders appealed from were issued by one and the same court and therefore, the alleged conflict, which is the ground for the prohibition sought, could not legally exist.

The judgment and the order appealed from are hereby affirmed, with the costs against the defendant-appellant. So ordered.

Malcolm, Villa-Real, Hull, and Diaz, JJ., concur.

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