

VENANCIO P. WAGAN AND VENANCIO GARCIA, PETITIONERS, VS. CWSPULO SROSCO AND BENITO NATIVIDAD, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, RESPONDENTS.*G. R. No. 42324. September 28, 1934*

Ponente: IMPERIAL, J.

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This is a petition for a writ of certiorari filed by the petitioners, for the purpose of setting aside the orders entered by the respondent judge on November 29, 1933, and July 31, 1934, requiring them, together with other persons, by means of the writ of preliminary injunction issued therein, to refrain from interfering with the possession and enjoyment of certain portions included within the Hacienda del Progreso and from gathering therefrom the unharvested palay, finding them and other individuals guilty of contempt for having violated the terms of said writ of preliminary injunction, and ordering them each to pay a fine of P50, with corresponding subsidiary imprisonment in case of insolvency.

In land registration case No. 2727 of the Court of First Instance of Nueva Ecija, G. L. R. O. Record No. 47721, the respondent Crispulo Sideco applied for the registration of his title to the Hacienda del Progreso, together with the improvements thereon, alleging that he is the owner thereof. The herein petitioners and many other persons who likewise alleged themselves to be the owners of the portions and improvements of which they were in actual possession and which are included within said hacienda, filed opposition to the registration. While said application and the oppositions thereto were pending hearing and while the title to said hacienda still remained undetermined and unadjudicated, the respondent Sideco filed a motion praying for the issuance against the petitioners and many other persons of a writ of preliminary injunction for the purpose of restraining them from interfering with the possession of the entire hacienda and from gathering the unharvested palay. After objections thereto had been filed by the petitioners, the court issued the writ of preliminary injunction prayed for. The petitioners and their co-oppositors vainly prayed for the reconsideration and dissolution of the injunction, for, their motions were denied. A commissioner was appointed to inspect the hacienda and he reported that the petitioners and their co-oppositors indicated the portions claimed by them together with the unharvested crop and that they, as well as the respondent Sideco, claimed ownership of the unharvested palay which was sown by various and different tenants. Later, the same respondent Sideco filed another motion charging the herein petitioners and other individuals with contempt, having violated the terms of the injunction. After due hearing during which the court made an ocular inspection, the petitioners and one Santiago Garcia were found guilty of contempt and were each sentenced to pay a fine of P50, with corresponding subsidiary imprisonment in case of insolvency. The other co-defendants were acquitted. The petitioners filed a motion for reconsideration of the latter order but the same was denied.

Contrary to the claim of the petitioners, the respondent judge had jurisdiction to issue the writ of preliminary injunction, the dissolution of which is one of the purposes of the present petition. Section 17 of Act No. 496, as amended by section 3 of Act No. 1680, grants him such authority. The latter Act has not been entirely repealed by

the final section (b) of Act No. 2711 and its amendments (Revised Administrative Code), as the petitioners contend. Only section 1 of said Act, which certainly has nothing to do with the power to grant a writ of injunction, is repealed.

Finding that the respondent judge had authority to issue the injunction, the only question left to be decided is whether or not he acted in excess of such authority in issuing the writ of preliminary injunction, in holding the herein petitioners guilty of contempt, and in sentencing them for such offense to pay the fine above stated.

It is a well established doctrine in this jurisdiction that an injunction is not the proper remedy for the recovery of possession of real estate and the improvement's thereon, as well as for the ejectments therefrom of the actual occupants who claim to have title to or material interest therein. The use of said remedy in such cases has invariably been considered unjustified, in open violation of the legal presumption that the bona fide possessor of a certain piece of land and the improvements thereon, holds the same under claim of ownership and with a just title, and as an advanced concession of the remedy to which the claimant might be entitled. (*Asombra vs. Dorado and Gesmundo*, 36 Phil., 883 ; *Golding vs. Balatbat*, 36 Phil., 941; and *Rustia vs. Franco*, 41 Phil., 280.) There is not the least doubt that the petitioners, by themselves or their tenants, were in actual possession of the portions claimed by them together with the improvements and crops thereon, inasmuch as such fact is shown by the report of the commissioner and by the circumstance that their tenants were likewise charged with contempt for disobedience to the injunction. If, as claimed by respondent Sideco, they were his tenants, or if they acted as his agents, it cannot be understood why they were prohibited from entering the land and from harvesting the palay sown by them and finally punished for contempt.

Wherefore, the remedy applied for is granted and, with respect to the herein petitioners, the orders dated November 29, 1933 and July 31, 1934, are hereby set aside, and the writ of preliminary injunction issued by this court is declared final, with costs against the respondent Sideco. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

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