

JOSE H. GUEVARA, PETITIONER AND APPELLANT, VS. ANANIAS LAICO, PROVINCIAL SHERIFF OF LAGUNA, CARLOS YOUNG, NEWLAND BALDWIN AND ADELE C. BALDWIN, UNDER THE FIRM NAME OF THE TUNASA...

G. R. No. 44057. February 27, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In civil case No. 794 of the justice of the peace court of the municipality of San Pedro, Province of Laguna, wherein the herein respondents Carlos Young, Newland Baldwin, and Adele C. Baldwin, as sublessors, doing business under the firm name of The Tunasan Estates, were plaintiffs, and the herein petitioner Jose H. Guevara, as sublessee, was defendant, judgment was rendered, the dispositive part of which reads as follows:

"In view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant, condemning the defendant to vacate lot No. 298-A of The Tunasan Estates; to pay the sum of P61.38 as rents due on the premises with legal interest from the date of the filing of this complaint; the sum of P30.69 equivalent to 50 per cent of the rent due and unpaid as penalty for non-payment and costs of this action."

As the above-named defendant had not appealed from said judgment, it became final and executory. On January 17, 1935, upon petition of said plaintiffs, a writ of execution (Exhibit A), addressed to the herein respondent provincial sheriff of Laguna, was issued, ordering him, among other things, as follows:

"Wherefore, you are hereby commanded to cause the defendant immediately to vacate said property and to restore possession thereof to the plaintiffs. You are likewise commanded to collect from him the rents, damages and costs, in the above-stated amount, together with your fees for the service of this execution, and upon failure of the defendant to pay for them, you shall attach the personal property of said defendant, except such as is exempt from execution, and sell the same in the manner provided by law in such cases, until you obtain an amount equal to that of the judgment, plus the costs of the suit, and the corresponding interest thereon from the date of the judgment, aside from your lawful fees on this execution, turning over the amount so collected by you to the plaintiffs in this case, excluding your lawful fees on the execution."

On January 18, 1935, said provincial sheriff of Laguna required the therein defendant and herein petitioner Jose H. Guevara to remove his house from the residential lot No. 298-A of The Tunasan Estates, situated in the municipality of San Pedro, Province of Laguna, giving him until January 24, 1935, to do so, and warning him that, should he fail to comply therewith, said sheriff would be compelled to do so himself (Exhibit B).

On January 22, 1935, the attorney for the petitioner wrote to the respondent sheriff asking him what steps he proposed to take in compliance with said writ of execution, Exhibit C.

On the 23d of said month and year, said sheriff answered the attorney for the petitioner saying that he would follow the practice usually observed in the service of writs of execution of the same nature and that he would eject the defendant and execution debtor Jose H. Guevara from the residential lot No. 298-A of The Tunasan Estates,

described in the writ of execution in question, remove the latter's house therefrom and collect the various amounts and fees mentioned in said writ of execution (Exhibit D).

On January 26, 1935, the attorney for the petitioner again wrote to the respondent sheriff telling him that in view of the vagueness of the terms of the writ of execution as to the manner of compliance therewith, he should consult the competent court in regard thereto. (Exhibit E.)

On January 31, 1935, the respondent sheriff answered said attorney telling him, among other things, the following: "Inasmuch as the size and construction of the defendant's house are such that it is impossible to remove it from the lot without tearing it down, the house not being portable except certain parts thereof, consequently, said house will necessarily have to be demolished." (Exhibit F.)

In view of the foregoing answer, the herein petitioner Jose H. Guevara, on February 7, 1935, filed in the Court of First Instance of Laguna, the petition for a writ of preliminary injunction, now under consideration, against Ananias Laico, provincial sheriff of Laguna, Carlos Young, Newland Baldwin and Adele C. Baldwin, doing business under the firm name of The Tunasan Estates. Said petition was docketed as civil case No. 6613 of said court. It prayed for the issuance of a writ of preliminary injunction, to become final and permanent after the corresponding proceedings and hearing, ordering the respondent sheriff to leave the petitioner in the peaceful possession and enjoyment of his rights of ownership of said house belonging to him, with the costs to the respondents, alleging that the demolition of the house was neither ordered in the writ of execution nor authorized by law.

On said date, February 7, 1935, the Court of First Instance of Laguna, then presided over by the Honorable Fernando Jugo, granted the petition and ordered the issuance of the corresponding writ of preliminary injunction, after filing a bond of P100.

In answer to the petition, the respondent sheriff Ananias Laico, in his pleading of February 18, 1935, denied each and every one of the facts stated therein and, as a special defense, alleged, among other things, as follows:

"(c) The only interest of the respondent in the subject matter of the petitioner's application consists in his earnest desire to show that, in attempting to comply with said writ of execution the delivery of possession of the land described therein as lot No. 298-A of The Tunasan Estates, he has acted under the sincere and honest conviction on his part that said writ of execution included the removal from the land not only of the person of the defendant but also of his house of mixed materials constructed thereon, which is also the same interpretation given thereof by the plaintiffs and execution creditors in said civil case No. 794, who, from January 17, 1935, requested the respondent sheriff to turn over to them the possession of said land in accordance with said interpretation, that is, first removing therefrom not only the person of the defendant but also his house of mixed materials constructed thereon, as an indispensable prerequisite to restitution of possession of the land to the plaintiffs."

Answering, in turn, said petition, the respondents Carlos Young, Newland Baldwin and Adele C. Baldwin, in their pleading of March 20, 1935, denied each and every one of the facts alleged therein, and set up a special defense with a counterclaim praying that the petitioner be ordered to pay them the sum of P1,000 as damages, plus the sum of P61.38 as annual rent from January 1, 1935, until the petitioner turns over the possession of the property, in accordance with the judgment rendered in civil case No. 794 of the justice of the peace court of San Pedro, Laguna, with the costs.

The petitioner Jose H. Guevara, replying to said counterclaim, denied each and every one of the facts alleged therein.

After due trial and hearing of the evidence presented by the respective parties, the Court of First Instance of

Laguna, then presided over by the Honorable Sptero Rodas, rendered judgment on June 19, 1935, the dispositive part of which reads as follows:

"Consequently, the court orders the dissolution of the writ of preliminary injunction issued in this case, holding that the petitioner is not entitled to the relief prayed for in his complaint and ordering him to pay to the defendants 'The Tunasan Estates' the sum of P5.12 monthly from the date of his refusal to vacate the lot described in the complaint until full restitution of possession thereof is made to said defendants, with the costs."

The petitioner interposed the present appeal from said judgment, assigning the following alleged errors as committed by the court a quo, to wit: .

"1. In not holding that by virtue of the writ of ejectment under the terms prescribed in section 85 of the Code of Civil Procedure, the sheriff, process server or any other person, has neither right nor authority to demolish or destroy the house of the appellant, as execution debtor in the writ of ejectment.

"2. In not declaring the writ of preliminary injunction, previously issued, permanent and final, in dismissing the complaint with, costs, and in ordering the petitioner to pay P5.12 monthly, as compensation for the occupation of the premises.

"3. In denying the new trial applied for and in not providing for the opinion of experts for the assessment and compensation of the value of the house in question."

The first question to be decided in this appeal is whether or not said court erred "in not holding that by virtue of the writ of ejectment under the terms prescribed in section 85 of the Code of Civil Procedure, the sheriff, process server or any other person, has neither right nor authority to demolish or destroy the house of the appellant, as execution debtor in the writ of ejectment."

While the present case was pending decision in this court, Commonwealth Act No. 89 was enacted on October 26, 1936, section 1 of which reads as follows:

"Section 1. The provincial sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the court. The court may authorize the provincial sheriff to do so, upon petition of the plaintiff or his attorney, after due hearing, and upon the failure of the defendant to remove the aforesaid improvements within a reasonable time after being so ordered by the court."

The above-quoted legal provision prohibits the sheriff, executing a decision in an ejectment case, from destroying-, demolishing or removing the improvements constructed by the defendant and execution debtor or his agents, unless, upon petition of the plaintiff or his attorney and after due' hearing, it is so authorized by the court, upon failure of the defendant and execution debtor to do so within a reasonable time, after having been so ordered by said court.

In view of this new law, which is procedural in nature and, therefore, with a retroactive effect (*Enrile vs. Court First Instance of Bulacan*, 36 Phil., 574; *Hosana vs. Diomano and Diomano*, 56 Phil., 741), the respondent sheriff cannot carry out t.he demolition of the petitioner's house constructed by him on the lot in question.

With respect to the counterclaim set up by the respondents Carlos Young, Newland Baldwin and Adele C. Baldwin, section 95 of the Code of Civil Procedure makes no distinction between a simple complaint and a -complaint praying for the issuance of a writ of preliminary injunction, in authorizing the defendant to set forth by answer all the facts constituting his defense and the counterclaims he may have, whatever their nature, provided they are in favor of all the substantial defendants and against all the substantial plaintiffs in the action, as required

by section 96 of said Code. The counterclaim under consideration herein is in favor of the substantial defendants and execution creditors Carlos Young, Newland Baldwin and Adele C. Baldwin, the other defendant Ananias Laico, as provincial sheriff of Laguna, being a mere process server, and against the substantial plaintiff, the herein petitioner, Jose H. Guevara. A preliminary injunction is an ancillary remedy and it may be issued by a court only in an action pending before it or before an inferior tribunal (section 163, Act No. 190). Therefore, the judgment rendered in favor of said respondents, upon their counterclaim, is in accordance with law and the result of the evidence.

Wherefore, the appealed judgment is reversed in so far as it orders the dissolution of the writ of preliminary injunction issued, which is made permanent, and it is affirmed in all other respects, without special pronouncement as to costs. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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