

**CINE LIGAYA, PETITIONER, VS. ALEJO LABRADOR, JUDGE OF FIRST INSTANCE OF LAGUNA, AND LAZARUS JOSEPH, RESPONDENTS.***G.R. No. 46262. November 29, 1938*

Ponente: DIAZ, J.

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Petitioner commenced this certiorari proceeding to set aside the orders of the respondent judge dated July 3 and July 20, 1938, both of which were issued in civil case No. 7102 of the Court of First Instance of Laguna, alleging that the same constitute an illegal and arbitrary act and an abuse of authority or jurisdiction by said judge.

In the above-mentioned case petitioner filed a complaint on July 2, 1938 praying for the issuance of a writ of preliminary injunction against the respondent Lazarus Joseph in order to prevent the latter, his agents, attorneys and representatives from molesting and interfering with the petitioner in its possession of the cinematograph known as Cine Ligaya, in the municipality of Biñan, Province of Laguna. The respondent judge acceding to the prayer in the complaint that a writ of preliminary injunction issue against Lazarus Joseph while the case was not yet decided on the merits, issued ex parte the writ prayed for on petitioner's filing a bond in the amount of P1,000. In said writ he directed that until further order, Lazarus Joseph, his employees, attorneys and agents, and whoever might aid him should stop molesting, preventing or interfering with the petitioner or his new lessee, Jacinto Francisco, in the ownership, possession and use of the Cine Ligaya. The writ of preliminary injunction issued was duly served, Lazarus Joseph and his attorney, Vicente Bautista, being notified of the same at 12 o'clock noon on July 2, 1938. Instead of acting in accordance with the requirements of said writ, Lazarus Joseph and his men went to the Cine Ligaya at 2 o'clock in the afternoon of the same day, July 2, 1938, and once there forced open the gates which had been closed with padlocks placed there by the petitioner through its representatives. This they did in spite of the opposition of the latter, who, nevertheless, stayed in the building without leaving it for a moment. In order to avoid disorder and acts of violence, petitioner had to apply to the Army authorities in Biñan for their help which they in fact gave, more on the verbal request of the respondent judge than on that of petitioner. It was through these means that petitioner was able to continue its possession and occupation of the cinematograph and to maintain the effectiveness of the writ. On the following day, which was Sunday, while petitioner was in possession of the cinematograph through its representatives and agents, the respondent judge, on verbal petition of Lazarus Joseph, and without the formal requisite of a sworn statement supporting the petition of said interested party or of notice to the petitioner, and without a trial having been held so as to give opportunity to all the parties to state their reasons, issued an order on the same day whereby the writ of preliminary injunction issued by him on the previous day was set aside and dissolved. Shortly thereafter, he gave a verbal order to allow Lazarus Joseph to enter the building and continue holding shows therein.

Petitioner, on and prior to the dates herein mentioned, was and had been and continues to be the owner of the Cine Ligaya. It leased the same to Lazarus Joseph on May 18, 1937 for a period of six months to be counted from July 1st of the said year, with the understanding that this period might be extended at the will of both parties. The second period of lease expired on June 30, 1938. Five days before the latter date, that is, on June 25, 1938,

petitioner notified Lazarus Joseph of the fact that he should vacate the Cine Ligaya at the expiration of his term of lease on the 30th of said month and year. In the meantime, petitioner leased said cinematograph to Jacinto Francisco for two years from July 1, 1938. Around 7.30 in the morning of July 2, petitioner took possession of the cinematograph and was already occupying it at the time it filed the complaint above-mentioned with the effects and incidents hereinbefore stated.

The questions which the parties have raised in their pleadings may be summed up as follows: Did the respondent judge act with abuse of jurisdiction in issuing the orders in question which required the restoration of the natural possession or possession in fact held by the petitioner to the respondent Lazarus Joseph, dissolving previously and summarily the writ of preliminary injunction he had issued the day before?

The law confers authority or jurisdiction on Courts of First Instance to issue writs of preliminary injunction *ex parte* and to dissolve those which they may have issued in said circumstances under prescribed limitations (sections 164, 166, 169, Act No. 190). It does not require that in order to annul or set aside a writ of preliminary injunction issued by a Court of First Instance, a notice be previously sent to plaintiff; but it does require that, at least, a hearing be first held so that plaintiff may make such objections as he deems proper. Nevertheless, even if a previous notice were required and even if there had been no hearing on the petition to lift or dissolve the injunction granted, it cannot be said for that reason that the courts dissolving the injunction thus issued, acted without or in excess of jurisdiction. The courts have such jurisdiction and the respondent judge in the case now before us had authority to take cognizance of the case and also, of course, of all the incidents thereof. The failure to send notice or to hold a hearing as required by section 169 *aforecited* of Act No. 190 is not in any way jurisdictional so as to invalidate the proceedings of the court on the ground of lack or excess of jurisdiction.

"Preliminary injunction could be dissolved without notice when, from the urgency of the case, it was necessary to guard against serious loss, which sometimes might be occasioned by the delay incident to serving notice, and except, we may add, where the injunction has been improvidently granted upon a complaint disclosing no ground whatever for equitable relief, as in the present case." (*Borland vs. Thornton*, 12 Cal., 440, 449.)

"An *ex parte* injunction order may be modified or dissolved by the court in which it was granted, in the exercise of its judicial discretion, at any time before final judgment, either on motion of the parties themselves, or, it would seem, on the court's own motion, whenever it becomes satisfied that the order was improvidently or erroneously made." (14 Cal. Jur., sec. 82, p. 282.)

At most, the respondent judge, in dissolving the writ of preliminary injunction which he had issued the day before, committed an error but not one involving lack of jurisdiction. It was only an error which should and can be remedied by appeal and not by certiorari. The respondent judge, however, did not limit himself to merely dissolving the writ of preliminary injunction issued by him, but ordered that the possession of the Cine Ligaya be delivered to the respondent, knowing that the petitioner had actual possession thereof. The law recognizes but one method of depriving one of possession of real estate with the view of giving the same to another. Said method is that set forth in section 80 of Act No. 190 as amended by Act No. 4115. This cannot be done summarily, but only by following the procedure marked out by said provision of law. In so doing, the judge undoubtedly acted in excess of jurisdiction, in fact, without any jurisdiction at all because the illegal detainer in the present case having taken place within one year, it is the justice of the peace court which had and has the power to determine and decide it. We cannot but reiterate on this occasion what we said in the case of *Mediran vs. Villanueva* (37 Phil., 752). We there said that in giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who, in fact, has actual possession, and, in case of controverted right, it requires the parties to preserve the status quo until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership; that it is but just that the person who has first acquired possession

should remain in possession pending this decision; and that the parties cannot be permitted to engage in a petty warfare over the possession of the property because to do so would be dangerous to individual security and disturbing to social order.

In passing we may say that with regard to the observation made that the order of the respondent judge having been carried out on a Sunday, should be declared null and void, this fact does not destroy the validity of the challenged writ if it were valid for other reasons because there is no law in this jurisdiction which prohibits the issuance of a writ of preliminary injunction on a Sunday or on other holidays.

"\* \* \* a court of equity, independent of statute, has power to issue a preliminary injunction upon Sunday, in a case where immediate relief is necessary for the prevention of irreparable injury." (High on Injunctions, 3d ed., sec 1584, p. 1199; 60 C. J.; 1139, sec. 91.)

But, as has been said, the respondent judge did not have authority on jurisdiction to dispose of the question of possession in the summary manner that he had done, removing the petitioner from its possession of the Cine Ligaya in order to turn it over to Lazarus Joseph.

In view of all the foregoing, the respondent judge is held to have acted not only in excess of, but without, jurisdiction; and his challenged orders are, accordingly, null and void and without effect whatsoever. It is, therefore, ordered that things be restored to their former state at the time the respondent judge required the return of possession of the Cine Ligaya to Lazarus Joseph; or, in other words, let said possession be restored to the petitioner, without prejudice to the final prosecution of case No. 7102 above-referred to.

Costs shall be assessed against respondent Lazarus Joseph. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Concepcion, JJ., concur.

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