

JOSE MORENTE, PLAINTIFF AND APPELLEE, VS. SALVADOR FIRMALINO, DEFENDANT AND APPELLEE. ALFONSO DADIVAS, MOVANT AND APPELLANT.*G.R. No. 47262. December 09, 1940*

Ponente: LAUREL, J.

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On January 23, 1929, a complaint was filed by Jose Morente against Salvador Fimalino for the purpose of obtaining a writ of permanent injunction prohibiting the latter from disturbing and molesting him in the use and possession of certain parcels of land described therein. On January 26th of the same year the Court of First Instance of Capiz during the pendency of the case issued a preliminary injunction. On November 23, 1929, after due hearing and trial, judgment was rendered by the court with the following dispositive part:

"Por tanto, el Juzgado declara que el demandante Jose Morente es el dueiio legitimo y poseedor actual de los lotes Nos. 1665, 1669, 1686, 1670 y 1702 del catastro de Dao, Capiz, como estan mas especificamente descritos en la demanda, con facultad de ejercer libremente sus derechos dominicales y posesorios, y ordena que el interdicto prohibitorio preeliminar expedido al inicio de esta causa sea convertido en definitivo y permanente, y condena al demandado Salvador Fimalino a pagar al demandante la cantidad de ₱11.60 por via de indemnizacion, y las costas." This court, where the case was subsequently brought on appeal, in a decision promulgated May 25, 1934 (G. R. No. 36620), reversed the decision of the lower court and dissolved the preliminary injunction issued."

This court also remanded the record to the court of origin for further proceedings in accordance with section 170 of the Code of Civil Procedure, for the purpose of determining the amount of damages occasioned by the appellant on account of the issuance of the injunction.

On September 10, 1935, the parties litigant submitted to the court the following agreement for approval:

"Que el demandante pagara al demandado la cantidad de P300 con cuya cantidad el demandante queda relevado completamente de toda ulterior responsabilidad por danos y perjuicios y por las costas que pudieran derivarse de la expedicion declarada ilegal del interdicto prohibitorio preliminar sin que se cntienda que el demandante admite que el demandado tuviorc derecho a cualquier clase de indemnizacion de danos y perjuicios, y que el demandado acusa recibo de tal suraa al demandante, y con ello se da fin al asunto de un modo total y definitivo."

On September 26, 1935, the court in approving the agreement entered into by the parties, dismissed the case without any pronouncement as to damages or costs.

Subsequently, the court in an order, dated the 19th of March, 1936, set aside its own order of September 26, 1935, because of the opposition filed by Atty. Alfonso Dadivas, against the dismissal of the case which would deprive him of his right to enforce his lien as counsel for Salvador Fimalino.

On April 23, 1936, the court rendered judgment finally dismissing the case, and from which decision Atty.

Alfonso Dadivas, through his counsel, has interposed an appeal.

It is contended by appellant in the present case that by virtue of the notice of attorney's lien which he filed on August 18, 1932, for his fees in the amount of P5,000, he has a right to present evidence to establish the damages sustained by Salvador Firmalino, on account of the issuance of the preliminary injunction. It is further argued that in as much as Atty. Alfonso Dadivas has filed a notice of attorney's lien, Salvador Finnalino should not be allowed to defeat such a lien by asking for the dismissal of the case. We are of the opinion that the lower court did not err in holding that notice of an attorney's lien did not entitle the attorney-appellant to subrogate himself in lieu of his client. It only gives him the right to collect a certain amount for his services in case his client is awarded a certain sum by the court. In the present case, Salvador Firmaiino suffered no damage, never having been in possession of the land. The defendant having suffered no actual damage by virtue of the issuance of the preliminary injunction, it follows that no sum can be awarded the defendant for damages. It becomes apparent, too, that no amount having been awarded the defendant, the herein appellant's lien could not be enforced. The appellant could, by appropriate action, collect his fees as attorney.

The order appealed from is affirmed, with costs against the appellant. So ordered.

Avanceña, C.J., Imperial Diaz, and Horrilleno, JJ., concur.

Order affirmed.

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