

LORENZA PALAFOX, PLAINTIFF AND APPELLEE, VS. REMIGIA MADAMBA, DEFENDANT AND APPELLANT.

G.R. No. 4735. August 07, 1911

Ponente: MAPA, J.

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MAPA, J.:

The complaint in the present case alleges the following facts:

"1. That the deceased husband of the complainant, Gregorio Garcia, possessed four parcels of land situated in the sitio of Cataratara-an, municipality of Dingras, Ilocos Norte, which are described in the complaint itself.

"2. That upon the death of Gregorio Garcia, the complainant and her minor sons Paciano, Lorenzo and Clodoaldo, had by the deceased during their married life, succeeded him in possession of the estates described, which have remained up to the present time undivided and under the administration of the said complainant.

"3. That notwithstanding the lawful possession in which the successors to Gregorio Garcia, held the said property, a lady named Remigia Madamba ordered, in the harvest just passed, that of the year 1906, that the paddy cut on these lands by the tenant of said complainant, amounting to 4 uyones and 8 boars, be taken from the storehouse on the said lands, in which it was being stored; and further ordered cut the paddy that had not yet been harvested.

"4. That on account of such conduct of Remigia Madamba and because her actions tend to disturb the legal and peaceful possession of the owners, the complainant who now appeals to your honorable court begs, on behalf of herself and her said minor sons, a final injunction against the aforesaid Remigia Madamba."

And closes with the following petition:

"It is therefore prayed that the court, after admission of this complaint with its attached informal copy, subject the same to the proper procedure and, after the legal action required in the case, pronounce judgment by ordering the issuance of a final injunction perpetually restraining the commission or continuation of the act that gave rise to the complaint, with the damages provided in section 170 of the Code of Civil Procedure."

After due trial of the case, judgment was rendered in favor of the plaintiff, ordering the issuance of the injunction requested in the complaint; from which judgment the defendant appealed to this court.

The complaint has for its only and exclusive object, as has just been seen, to secure the issuance of a final injunction against the defendant. Absolutely nothing more than that was asked therein, and in fact nothing else was granted or allowed in the judgment appealed from. The question is therefore reduced to determining the propriety of said injunction in this case.

The permanent or final injunction is one of the special remedies provided by the Code of Civil Procedure now in force. Necessarily it does not issue except upon the condition, common to all special remedies, that no other ordinary, speedy and adequate remedy exists for avoiding or repairing the damage done, or which may be done, by an act in violation of the plaintiff's rights. (*Devesa vs. Arbes*, 13 Phil. Rep., 273.)

The facts alleged in the complaint involve questions of property or of possession that should be formulated and decided by prosecution of the actions that arise from one or the other right. Under the first point of view recovery would be proper, and under the second restitution of the possession Of which the plaintiff is alleged to be unjustly deprived or despoiled. In either case, there exists the ordinary remedy of action for property of possession, which may be either plenary or summary, according to the method by which she may have been deprived of her alleged possession. As such ordinary remedy exists, entirely adequate to correct the violations committed against the right of property of possession, such as those set forth in the complaint, it appears that the facts alleged therein, which were the basis of the action, do not constitute proper material for the final injunction asked therein, because, as has been said before, this remedy is applied only in so far as there does not exist any ordinary and efficacious remedy for protecting the plaintiff or restoring to her the possession and exercise of her right.

The reason for this principle has been clearly stated in the decision in the case of *Devesa vs. Arbes* (13 Phil. Rep., 273, 279), above cited :

"To hold otherwise - was there stated - would be to render practically of no effect the various provisions of the code touching many if not most of the ordinary actions, and the enforcement of judgment in such actions; for it may well be supposed that if a complainant could secure relief by injunction in every case where 'the defendant is doing or threatens or is about to do, or is procuring or is suffering to be done, some act probably in violation of the plaintiff's rights' and could enforce the judgment granting the injunction by the summary contempt proceedings authorized in section 172 of the code to punish violations of injunctions, he would seldom elect to enforce his rights in such cases by the; ordinary remedies, involving as they do the difficult and oftentimes fruitless labor of enforcing judgments obtained therein by execution."

With reversal of the judgment appealed from the present case is dismissed, without finding as to costs in either instance.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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