

JUAN S. RUSTIA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 48213. February 19, 1943

Ponente: MORAN, J.

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MORAN, J.:

On petition of plaintiff Roman Santos in civil case No. 6474 of the Court of First Instance of Pampanga, the Court, on February 2, 1939, appointed a receiver and issued a preliminary writ of injunction directing defendants therein who were tenants of said plaintiff, "sus abogados, agentes y demas mandatarios para que se abstengan, hasta nueva orden de este mismo Juzgado, de tomar posesion de los terrenos conocidos como 'Hacienda de Candaba' * * * de apoderarse de palay cosechado y por cosecharse dentro de dichos terrenos, de trillado y transportarlo a ptros sitios." In defiance of this order, petitioner here, Juan S. Rustia, assembled the defendants on February 15, 1939 at barrio Bahay-Pari and incited them to proceed with the threshing and harvesting of the palay in the hacienda even against the opposition of the receiver, the tenants could proceed with the threshing of the palay and hire a thresher to that effect. Convinced by the representations of the petitioner, defendants hired threshers and proceeded to harvest the palay in the hacienda in open defiance of the receiver and his assistants. Provincial Commander Cruz and Provincial Fiscal De Jesus, informed of the action of the defendants, repaired to the hacienda and ordered them to cease harvesting the palay. Thereupon, petitioner addressed a petition to the court seeking to modify the writ of injunction with a view to permitting the defendants to harvest the palay with the condition that they would deliver one-half of said palay to the plaintiff. This petition was denied, and on February 25, 1939, the Court, instead, issued an order authorizing the receiver to liquidate the palay already harvested from the hacienda by delivering none-half thereof to the defendants if they were not indebted to the plaintiff, or the remainder upon payment of the indebtedness if otherwise so indebted, but in no case should the portion to be given to them be less than 15 per cent of one-half of the harvest.

On the basis of the foregoing incidents, the Provincial Fiscal, at the instance of the receiver, charged petitioner with criminal contempt for having advised and abetted his clients in effect did. After attempting by himself and later through his counsel de officio to secure several postponements of the trial of the contempt case against him, he announced his intention to file a written the challenge against the competency of the then presiding Judge to take cognizance of the case. This challenge appeared, however, to have never been formally filed with the Clerk of Court. Thereafter, the Court, after due trial, found petitioner appealed to the Court of Appeals, and while the case was pending therein, he asked that his pleading entitled "Peticion de Recusacion e Inhibicion" which he claimed he had presented to the Clerk of the Court of First Instance of Pampanga, be attached to the record. The petition was opposed by respondent, and in support of the opposition, the sworn statements of the Clerk of Court, the deputy Clerk of Court and the interpreter, purporting to deny the actual presentation of said pleading, were submitted. Various petitions were thereafter filed with the appellate Court wherein petitioner sought the annulment of the entire proceedings and the return of the record to the lower Court for a new trial before another judge on the ground that the record was materially deficient and that the evidence, the transcript of the stenographic notes and the decision had all been falsified. Finally, a motion for new trial was filed wherein he

prayed that Lieutenant Cruz be allowed to testify or his report to the Constabulary headquarters at San Fernando, Pampanga, regarding the incident which took place on February 15, 1939 at barrio Bahay-Pari, be produced and the same taken into consideration in the decision of the case. All these motions were denied and on December 19, 1940, the Court of Appeal rendered judgment affirming that of the lower Court.

On the matter of the competency of the trial Judge to take cognizance of petitioner's case, it has been found by the Court of Appeals that the written challenge has not actually been filed with the lower Court and, even if it had been, the Court of Appeals has not found petitioner's trial to have been tainted with bias or partiality. And, on petitioner's claim that the record of the case is deficient, and that the stenographic notes, the evidence, and the decision of the trial Court found nothing to support the claim. The issue being of fact, these findings are conclusive upon this Court.

Petitioner contends that it was error for the Court of Appeals to rely upon ex parte sworn statements of the employees of the trial Court in adjudging that no challenge has actually been made against the presiding judge trying the case. We see no such error. When petitioner asked the appellate Court to attach to the judge which he claims was duly filed, and the respondent denied the same, the appellate Court had every authority to rely upon any competent evidence that the respective parties may produce to determine the question as to whether such challenge had or had not in effect been filed. Upon such a collateral issue, which had reference merely to a supposed deficiency of the record, the appellate Court may legally rely on affidavits of the officials concerned.

As to the denial by the Court of Appeals of petitioner's motion for new trial, this Court has no power of review. It involves a question of fact which this Court cannot re-examine. (*People v. Diaz*, 40 Off. Gaz., 3d Sup., 22). And, besides, the Court of Appeals was right in denying the motion. The alleged newly discovered evidence—the testimony of Lieutenant Cruz or his report to the headquarters regarding petitioner's attitude in the meeting at barrio Bahay-Pari—is not of such nature as to alter, if admitted, the outcome of the case. On the contrary, it only confirms his having advised his clients to disobey the order of the Court. The hacienda and its produce having been placed under receivership, his advise to his clients "to take their shares of the palay and to leave one-half to their landlord" is in defiance of the receivership and in disregard of the court's injunction to the effect that the tenants and their attorneys "se abstengan de apoderarse del palay."

It is also argued that the injunction was in contravention of the provisions of Act No. 4054 and of section 452 of Act No. 190, the first regarding the division of shares between the landlord and the tenants, and the second regarding exemption from attachment of provisions for the maintenance of the debtors for three months. The contention involves a complete misapprehension of the order. The receivership does not constitute a final disposition of the harvest of the hacienda, but is only a mode of securing the custody thereof pending the final determination of the rights of the parties. Possession by the receiver is in law possession by the Court and is not adverse either to the plaintiff or to the defendants.

There is no force in the contention that as the order of February 2, 1939, there can be no contempt committed against an already non-existent order. The order of February 25, 1939, merely amends, but does not supersede, the order of February 2, 1939, as if merely refers to the liquidation of the palay already harvested by authorizing the receiver to deliver one-half thereof to the tenants. The injunction to said tenants or to their lawyers "para que se abstengan de trillarlo y transportarlo" still subsists and petitioner's advise to his clients to proceed with the threshing of the palay constitutes a violation of this part of the injunction.

Petitioner lastly challenges the competency of the provincial fiscal to institute contempt proceedings against him. It is contended that said official had no authority to file the information for indirect contempt arising from a civil case, to which the Government is not a party. Petitioner's advise to his clients to violate the writ of preliminary

injunction issued by the Court, constitutes a direct challenge to its authority and the contempt thus committed is criminal in nature, the provincial fiscal has the unquestionable authority to institute the same.

Considered, however, that in the commission of the criminal contempt herein charged, petitioner does not appear to have been prompted by criminal design but was actuated by the mistaken belief, according to the Court of Appeals, that the order of the trial Court was null and void, and considering further that although such mistake does not and cannot justify his attitude towards the court, still we believe that, under the circumstances in which the incident developed, a fine instead of imprisonment would be a sufficient punishment for him; the judgment of the Court of Appeals is hereby affirmed with the modification that petitioner be sentenced to pay P200 fine with subsidiary imprisonment, according to law, in case of solvency, and to pay the costs.

Yulo, C.J., Bocobo, Generoso and Lopez Vito, JJ., concur

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