

SOFIA DEVESA, PLAINTIFF AND APPELLEE, VS. CRISPIN ARBES, DEFENDANT AND APPELLANT.*G.R. No. 4891. March 23, 1909*

Ponente: CARSON, J.

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Plaintiff alleging that the defendant, acting as administrator of the estate of Gregoria Arbes, deceased, had unlawfully taken possession of certain rice lands and cocoanut groves, the property of the plaintiff, prayed for an injunction restraining defendant from continuing in possession and enjoying the fruits of the land in question until and unless he obtained a final judgment in a proper action declaring these lands to be the property of the estate of which he is administrator, and prayed further that a preliminary injunction be issued restraining defendant from continuing in possession or enjoying the fruits of the land in question pending the trial of the cause.

The complaint alleges that the property in question was assigned to plaintiff's deceased husband under the terms of an extrajudicial partition contract executed in the year 1887 by the heirs of Gregoria Arbes, plaintiff's husband's first wife, and that ever since that date until the defendant took possession of this land, plaintiff and her husband had continued in the quiet, peaceable, and exclusive possession thereof. The trial court, apparently without giving the defendant an opportunity to be heard, granted the preliminary injunction prayed for, conditioned upon the execution of a bond for costs and damages, whereupon the defendant presented a motion which though irregular in form may fairly be regarded as a demurrer to the complaint on the ground that the facts alleged do not constitute a cause of action, and prayed that the preliminary injunction be dissolved.

The trial court overruled the demurrer, and declined to dissolve the preliminary injunction, and defendant without excepting to the ruling of the court withdrew his motion and filed his answer. In this answer defendant admitted having taken possession of the land in question, as alleged by the plaintiff, but denied plaintiff's allegation that she and her husband had been in the exclusive possession thereof, and alleged that the land in question was the property of Gregoria Arbes, deceased, of whose estate he is the administrator, and that after the death of Gregoria Arbes, it passed pro indiviso to her heirs, who from the time of her death continued in Joint possession thereof, until he took possession upon his appointment as administrator; he also alleged that one of the heirs, Vicente Sola, widower of Gregoria Arbes, deceased, married the plaintiff; that plaintiff's claim to an interest in the property in question is or should be strictly limited to the interest which she is entitled to take from her husband, since deceased; and that while it is true that she and her husband exercised certain rights of possession of the land in question, they never had exclusive possession, and such rights of possession as they did exercise were exercised not only on their own behalf but on half of all the heirs of Gregoria Arbes.

Upon these pleadings the parties went to trial, and plaintiff introduced evidence tending to prove that the land in question was originally the property of her husband, Vicente Sola, acquired by him, not from his first wife, Gregoria Arbes, but by purchase, in part prior to, and in part after his marriage with his first wife; she also introduced in evidence a document, dated January 31, 1887, purporting to be a partition agreement between her husband Sola, and the other heirs of Gregoria Arbes who died a short time prior to the execution of the

instrument, whereby the land in question was assigned to Sola as his property. Plaintiff further introduced testimony which clearly established her allegation that from the date of that instrument until the time when defendant took possession of the land, she and her husband had had the exclusive possession thereof.

Defendant did not deny the execution of the partition agreement, and wholly failed to prove that the land in question was or is a part of the estate of Gregoria Arbes, deceased, or to establish his allegation that plaintiff and her husband were not in the exclusive possession of the land in question from the date of its execution to the time when he took possession as administrator, or that they held possession thereof jointly with the other heirs of Gregoria Arbes. He insisted, however, that the agreement was not binding upon the heirs of Gregoria Arbes, because at the date of its execution two of them, a niece and a nephew, were minors and incapable of executing such a document, although it appears that they were represented upon that occasion by their respective fathers who married sisters of Gregoria Arbes, and signed the instrument as the legal representatives of these minor heirs.

The trial court on the pleadings and proof submitted at the trial found that the plaintiff was entitled to the possession of the land in question, and rendered final judgment in accordance with the prayer of the complaint, granting a final injunction perpetually restraining the defendant administrator from continuing in possession of the land in question or enjoying the fruits thereof.

We are in entire accord with the trial judge as to his findings of fact, and agree with him that the evidence of record establishes plaintiff's right of possession in and to the lands in question: for without deciding whether the extrajudicial partition agreement between the heirs of Gregoria Arbes, deceased, executed in 1887, conveyed to plaintiff's deceased husband the absolute right of ownership in the land assigned to him thereby; or whether that agreement, which was executed before the present Code of Civil Procedure went into effect, can be successfully attacked at this time by the minor heirs, because of the apparent lack of judicial approbation of the action of their legal representatives; it is sufficient, for the purposes of this decision, to point out that plaintiff, and her husband having been in exclusive possession of this land, under a claim based on the partition agreement, for more than fifteen years, the defendant, in his capacity of administrator, had no lawful authority to take possession thereof without plaintiff's consent, in the absence of a final judgment of a competent court securing to him his alleged right of possession; and that defendant having failed to prove that the estate of which he is administrator is the true owner of all or any part of the land in question, the plaintiff is entitled to be replaced in possession.

We are of opinion, however, that the remedy by injunction sought by the plaintiff and allowed by the trial court was not the proper remedy for the cause of action set out in the pleadings and established by the evidence, and that, in accordance with the provisions of section 126 of the Code of Civil Procedure, the court should have granted "relief consistent with the case made by the complaint and supported by the evidence and embraced within the issue," and to that end should have required an amendment of the complaint by striking out the prayer for an injunction and substituting therefor a prayer for judgment for possession of the land described in the complaint, and upon the complaint thus amended, judgment should have been rendered in favor of the plaintiff.

Both the parties to this action appear to have labored under a misapprehension as to the purpose, scope, and limitations of the special remedy, known as an injunction, and defined in section 162 of the Code of Civil Procedure. The records in many cases in this court disclose a considerable degree of doubt and uncertainty in the minds of counsel as to the function of this remedy, and in some cases a wholly erroneous concept of the purpose and object for which it is provided. This erroneous concept may, perhaps, be due to the fact that in the Spanish version of the new Code of Civil Procedure, the term injunction is translated *interdicto prohibitorio*, which may thus have, given rise to the impression that the remedy by injunction is similar in character to the summary interdictal actions of the Spanish procedural law; but while the injunction resembles in many respects the *interdicto* of the Roman law, especially the *decretal* (*decretale*, *quod praetor re nata implorantibus decrevit*), and

while it also resembles to a certain degree in its operation and effect, the *interdictos de adquirir, de retener, and de recobrar or de despojo* of the Spanish procedural law; nevertheless, it is wholly distinct therefrom, and, as a rule, the circumstances under which, in accordance with the former procedural law, these *interdictos* properly issued, would not justify nor sustain the issuance of an injunction, as defined and provided in the new Code of Civil Procedure. An injunction is a "special remedy" adopted in that code from American practice, and originally borrowed from English legal procedure, which was there issued by the authority and under the seal of a court of equity, and limited, as in other cases where equitable relief is sought, to cases where there is no "plain, adequate, and complete remedy at law" (30 Barb., 549; 5 R. L., 472; 121 N. Y., 46; 31 Pa., 387; 32 Ala., N. S., 723; 37 N. H., 254; 61 Hun., 140; 145 U. S., 459; 141 Ill., 572; 49 Fed. Rep., 517; 37 id., 67; 34 id., 357; 129 Md., 464; 109 N. C., 21; 83 Wis., 426; 115 Mo., 613), which "will not be granted while the rights between the parties are undetermined, except in extraordinary cases where material and irreparable injury will be done," which can not be compensated in damages, and where there will be no adequate remedy (3 Bosw., 607; 1 Beasl., 247, 542; 15 Md., 22; 13 Cal., 156, 190; 6 Wis., 680; 16 Tex., 410; 28 Mo., 210; 24 Fla., 542; 39 N. H., 182; 12 Cush., 410; 27 Ga., 499; 1 McAll, 271; 54 Fed. Rep., 1005; 64 Vt., 643), and which will not, as a rule, be granted, to take property out of the possession of one party and put it into that of another whose title has not been established by law. (144 U. S., 119; 40 W. N. C. Pa., 121.)

This court has frequently held, when treating of the special remedies by injunction, *mandamus* and prohibition, which are provided in the now Code of Procedure in Civil Cases, that the accepted American doctrine limiting the use of these remedies to cases where there is no other adequate remedy, and otherwise controlling the issuance of these writs, and must be deemed to limit their use in like manner in this jurisdiction, when not otherwise provided by law: to hold otherwise 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 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. But so many cases have come before us where preliminary injunctions have been issued apparently without regard to this rule, that we are satisfied that the erroneous impression still prevails, in some quarters, that a preliminary injunction must issue where a *prima facie* showing is made of the existence of the circumstances under which such injunctions may be granted as set out in section 164 of the Code of Civil Procedure, without keeping in mind the fact that applications for injunctions are made to the sound discretion of the court, and that the exercise of that discretion is controlled by the accepted doctrines touching: the granting of injunctions in such cases; and we may add that the records also disclose a dangerous tendency to grant permanent injunctions on insufficient grounds, as a result of a similar erroneous construction of the provisions of the code in that regard.

No brief was filed by plaintiff on appeal, and the contentions of the parties in the court below are not very clearly set out in the very short brief of the defendant and appellant. It appears, however, that defendant challenged the jurisdiction of the trial court, on the ground that the summary interdictal actions of the Spanish procedural law have been done away with by the provisions of the new Code of Procedure in Civil Cases, the *interdicto de recobrar or de despojo* having been expressly displaced by the summary remedies prescribed in section 80 of the new code, for the recovery of lands or buildings of which one is deprived by force, intimidation, fraud, or strategy within a year prior to the institution of the action; and defendant insists that the action instituted by plaintiff, while in form a proceeding praying for an injunction under the new code, assimilated to the former proceeding praying

for an interdicto de recobrar or de despojo, is in fact an action which could only be maintained under the provisions of section 80 of the new code, of which original jurisdiction is conferred upon the courts of the justice of the peace, exclusive of the Court of First Instance. Plaintiff and appellee on the other hand seems to have insisted that the injunction proceedings instituted by her were assimilated rather to the summary action known as the interdicto de retener and that the facts alleged and proven establishing her right to an interdicto de retener, under the old law, she is entitled to an injunction under the new code, that remedy being the equivalent provided by the new code for the interdicto of the old law.

But while we agree with defendant and appellant that the summary remedies provided in section 80 may be said to replace and perhaps abrogate the old interdicto de recobrar or de despojo, and that if the facts alleged and proven made out a cause of action under that section and, therefore, within the exclusive jurisdiction of the court of the justice of the peace, it would be necessary to hold that the trial court was wholly without original jurisdiction; and while we can not agree with the plaintiff and appellee that the facts set out in the pleadings and evidence would support the issuance of an interdicto de retener, even under the former procedure, because possession of the land and buildings had been actually lost to plaintiff when the action was instituted, nor can we agree with her that even if a proper case for the granting of an interdicto de retener under the old procedure had been established, it necessarily follows that an injunction should issue under the new procedure; and without deciding whether all the summary interdictal remedies of the Spanish law have been wholly and in all cases abolished under the provisions of the new code, it is sufficient for the purpose of this decision to hold that since there is nothing in the allegations or proof to show that defendant obtained possession of the land in question by force, intimidation, fraud, or strategy, the action is not in the nature of the summary remedy known to the old law as an interdicto de recobrar or de despojo, nor is it the summary remedy of forcible entry and wrongful detainer provided in section 80 of the new code, and therefore it does not fall within the exclusive jurisdiction of the court of the justice of the peace, to the exclusion of the Court of First Instance, which tried the case.

What has been said disposes of all the errors assigned by appellant, except his assignment of error based on his contention that the administrator having taken possession as an officer of the court wherein the estate was being administered, his conduct in that regard should not be questioned, except in the course of the administration proceedings.

We have frequently held that a contested claim of an administrator that certain rights of possession and ownership are the property of the estate which he represents must be determined in a separate action, and not in the course of the administration proceedings; and it should not be necessary to add that the mere fact that an administrator holds letters of appointment from some court, in nowise authorizes him to take possession of property held by another under a claim of a right to possession until and unless he successfully establishes his right to possession of such property in a proper proceeding in a competent court.

Ten days from the date of this decision let judgment be entered, reversing the judgment of the trial court and dissolving the preliminary and permanent injunctions issued therein, without costs to either party in this instance, and ten days thereafter let the record be returned to the court below where, upon the amendment of the complaint along the lines therein indicated, judgment will be rendered in favor of the plaintiff for the possession of the lands described in the complaint, together with the costs in the Court of First Instance, but without damages, which were not satisfactorily established by the evidence of record. So ordered.

Arellano, C.J., Torres and Johnson, JJ., concur.

Willard, J., concurs in the result.

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