

GREGORIO CRUZ, PETITIONER, VS. MANILA SURETY & FIDELITY CO., INC., CONCEPCION YNCIONG, ASSISTED BY HER HUSBAND FLORENTINO DE LEON, FILEMON LEONARDO AND ANDREA YNCIONG, RESPONDENTS.

G. R. No. 5268. February 23, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals dated October 31, 1951, which reverses a judgment rendered by the Court of First Instance of Rizal according to petitioner an indemnity in the amount of P2,750.

This case stems from an action for forcible entry instituted by Concepcion and Andrea Enciong and Filemon Leonardo in the Justice of the Peace Court of Parañaque, Rizal, against Gregorio Cruz, docketed as civil case No. 12, wherein they obtained the issuance of a writ of preliminary injunction upon filing a bond in the amount of P3,000. The bond was posted by Manila Surety & Fidelity Co., Inc. After the issuance of the writ, the plaintiffs took possession of the property in litigation and harvested the palay standing thereon. Later, the writ was lifted when the defendant put up a counter bond in the amount of P6,000. The land was returned but after the palay had been harvested.

In the meantime, Gregorio Cruz, the defendant, filed in the Court of First Instance of Rizal an action for certiorari assailing the proceedings had in the forcible entry case then pending in the Justice of the Peace Court of Parañaque, Rizal, which resulted adversely to the plaintiffs therein in that the court declared all the proceedings null and void for lack of jurisdiction.

Five months thereafter, or on July 21, 1947, Gregorio Cruz initiated in the same Court of First Instance of Rizal an action for damages against the same persons who succeeded in dispossessing him of the property in the forcible entry case wherein for the first time he averred having incurred losses in the total sum of P2,950 not only because of his dispossession of the property in litigation but also because of the consequential damages he has suffered as a result of the institution of the forcible entry case against him. In this case the bonding company was made a party defendant.

On October 28, 1947, the defendants filed a motion to dismiss contending, among other grounds, that this action for damages has no legal basis because the same was not included in the judgment rendered in the certiorari case as required by the Rules of Court (Rule 60, section 9; Rule 59, section 20). This motion having been denied, the defendants filed their answer wherein they reiterated the same special defense. And on November 25, 1947, the court rendered decision ordering the defendants to pay to the plaintiff the sum of P2,750 as damages and to pay the costs. But when the case was taken to the Court of Appeals, this decision was reversed and the defendants were absolved from the complaint. Hence this petition for review.

One of the grounds on which the Court of Appeals has predicated its ruling that petitioner-appellant has no cause of action against respondents-appellees to recover the damages which he has allegedly sustained as a result of the issuance of the writ of preliminary injunction by the justice of the peace court of Parañaque, Rizal, is the failure of said petitioner-appellant to press his claim for damages in the forcible entry case wherein the writ was issued as expressly required by section 9, Rule 60 of the Rules of Court, in connection with section 20, Rule 59. Because of such failure, the Court of Appeals says, the petitioner-appellant is now barred from instituting the present action. This ruling is now assigned as error.

We find this ruling of the Court of Appeals correct. This is in line not only with the Rules of Court (section 20, Rule 59 and section 9, Rule 60), but also with well-known jurisprudence on the matter. Thus, it has been held that "A claim for damages suffered by reason of the issuance of a preliminary injunction must be presented in the principal action, and judgment therefor must be included in the final judgment of the case. The remedy is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to such damages" (Casimiro Japco vs. The City of Manila, 48 Phil., 851, 855; citing Santos vs. Moir, 36 Phil., 350; *Somes vs. Crossfield*, 9 Phil., 13; *Macatansay vs. Municipality of San Juan de Bocbo*, 9 Phil., 19).

The procedure for the recovery of damages on account of the issuance of writ of attachment, injunction, receivership, and replevin proceedings, as interpreted in the cases adverted to, requires that the claim for damages should be presented in the same action which gave rise to the special proceeding in order that it may be included in the final judgment of the case, and it cannot be the subject of a separate action. The philosophy of the ruling seems to be that the court that had acted on the special proceeding which occasioned the damages has the exclusive jurisdiction to assess them because of its control of the case. This ruling is sound and tends to avoid multiplicity of action.

We believe, however, that the action of petitioner-appellant is not entirely lost it appearing from the record that the forcible entry case pending in the justice of the peace court of Parañaque, Rizal, is still open and has not been dismissed by the court in the certiorari case. The only import of the decision in the latter case is to declare the proceedings of the justice of the peace court in connection with the issuance of preliminary injunction null and void for having been issued in excess of its jurisdiction but it did not throw the case out of court. Petitioner herein may still press his claim for damages before that court.

We notice that the Court of Appeals has likewise ruled that petitioner herein has no right to claim for damages for the loss of the palay standing on the land in dispute on the sole premise that he is not the lawful owner of the land as proven in registration cases No. 2011, No. 4, and No. 3, wherein the ownership of the land was litigated. But, as counsel for petitioner well says, the ownership of the land is one thing, and the ownership of the improvements is another. The record does not seem to justify any finding relative to the improvements because the evidence presented seems to have been limited to the ownership of the land. Petitioner may have made the improvements in good faith although he may not be the lawful owner of the land. The claim of petitioner that this matter has not been properly threshed out does not seem to be without reason or justification. We are, therefore, constrained to hold that the finding to the effect that petitioner has no right to claim for damages has no basis in the evidence.

The decision of the Court of Appeals is hereby affirmed in so far as it holds that petitioner has no right to institute the present action for damages, but is reversed in all other respects, without prejudice on the part of petitioner to presenting his claim for damages in the forcible entry case pending in the justice of the peace court of Parañaque, Rizal, and without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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