

HUGO EVANGELISTA, PLAINTIFF AND APPELLEE, VS. LUIS PEDREÑOS, DEFENDANT AND APPELLANT.

G.R. No. 7274. January 16, 1914

Ponente: CARSON, J.

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CARSON, J.:

This action was instituted for the purpose of securing peaceable possession of a considerable quantity of rice of which plaintiff alleges the defendant took forcible and unlawful possession. Upon "the case made by the complaint and supported by the evidence" the trial judge found that plaintiff was entitled to the possession of the rice and damages in the sum of P3.50.

The plaintiff (although the allegations of his complaint clearly set forth a cause of action for which the proper remedy was a judgment for possession and damages for the unlawful detention) prayed for a preliminary injunction to restrain the defendant from interfering with the rice, and further that the preliminary injunction be made permanent upon proof of the allegations set forth in his complaint. The trial judge in conformity with the prayer of the complaint granted the preliminary injunction which was made permanent in his final judgment, and in the course of the proceedings issued a special order in favor of the plaintiff for the possession of the rice.

Counsel for the defendant and appellant vigorously contend: First, that the evidence introduced at the trial in the court below did not sustain plaintiff's allegations as to his right of possession; second, that even if the evidence be held to sustain the allegations in the complaint, nevertheless the remedy prayed for was not the proper remedy for the cause of action set forth in the allegations of the complaint; and third, that the judgment of the trial court granting a permanent injunction should be reversed and the complaint dismissed with the costs against the plaintiff.

After a careful review of the whole record we are satisfied that the finding of the trial judge in favor of the right of possession of the plaintiff should not be disturbed, and the only question left for consideration is the disposition which should be made of the case as it now stands, in view of the manifest error of the trial judge in granting the remedy by injunction prayed for in the complaint, in addition to the special order for the possession of the property.

In the case of *Devesa vs. Arbes* (13 Phil. Rep., 273), we said, quoting the syllabus: "Injunctions, as a rule, will not be granted to take property out of the possession and control of one party and to place it into that of another whose title has not been clearly established by law." And in that case we further held that the American doctrine limiting the use of injunctions should be applied in this jurisdiction, and that injunctions should only be allowed where there is no other adequate remedy. In the present case the plaintiff upon his own allegations would appear to have had an adequate remedy in a judgment for possession and for damages for the unlawful taking and detention of the property.

In the former case we held as follows: "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."

In the case at bar there can be no doubt that the question clearly embraced within the issue in the proceedings had in the court below, and in substance and effect the question decided by the trial court, was the right of the plaintiff to possession; so that if the trial judge, instead of making the preliminary injunction permanent and securing the possession of the rice to the plaintiff in that form, had rendered judgment for possession after requiring an amendment of the complaint, it would have been our duty to affirm the judgment thus rendered. We are unable to discover any practical purpose which would be gained by reversing the judgment and dismissing the complaint, the real issue between the plaintiff and defendant having been properly adjudicated in the court below. Following the procedure adopted in the case of *Devesa vs. Arbes* (supra), we think that an amendment to the complaint should be allowed as in the former case, and that the judgment of the trial court should therefore be amended so as to substitute a judgment for possession and damages in the sum of P3.50 for so much thereof as undertakes to make permanent the preliminary injunction; and thus amended we think the judgment of the court below should be affirmed. It does not seem necessary in this case as in the former case to return the record to the court below for this purpose, and unless some sufficient objection be made within ten days from the date of the filing of this opinion, the complaint will be deemed amended and judgment will be entered in this court in favor of the plaintiff for the possession of the rice described in the complaint, and for damages in the sum of P3.50 as found by the trial judge.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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