

JOSE M. GONZALEZ, PLAINTIFF, VS. PERCY M. MOIR, JUDGE OF FIRST INSTANCE, DEFENDANT.

G.R. No. 9098. March 20, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an action of certiorari, the object of which is to vacate an order for the appointment of a receiver of a parcel of land sold under execution, and the dissolution of a preliminary injunction against the judgment debtor restraining him from entering thereon.

On April 8, 1912, two judgments were rendered by the respondent judge against the herein plaintiff. Judgment in a suit on a mortgage in favor of the mortgagee, Ezequiel Ruiz, was declared a preferred credit. Judgment in an action for debt was rendered in favor of Cecilio Imaz. In this suit Ezequiel Ruiz was an intervener. The first was appealed to the Supreme Court and is still pending. The judgment in the second case became final and execution issued thereon on April 19, 1913, Under this execution the realty in question was sold at a sheriff's sale, subject to the payment of the mortgage credit of Ruiz and was purchased by Imaz, the judgment creditor. On July 8, 1913, on petition of Imaz, the court made the order for the appointment of a receiver and issued the preliminary injunction complained of in this certiorari action. Both the order appointing the receiver and the one directing the preliminary injunction to issue were made upon the petition of Imaz ex parte, without giving the herein plaintiff an opportunity to be heard. Upon being informed of the issuance of these orders the herein plaintiff commenced this action in the Supreme Court without first having sought the annulment or a modification of these orders in the court out of which they were issued, notwithstanding the fact that the respondent judge has been in the district from the date of the issuance of said orders up to the present time.

In view of the fact that the orders complained of in this action were issued ex parte, the question arises whether it is not the better practice to require the party seeking to have such orders annulled or modified to present the matter to the court out of which the orders were issued before seeking his remedy in this court.

In the case of *Herrera vs. Barretto and Joaquin* (25 Phil. Rep., 245, 272), which was an original action of certiorari, this court said:

"We cannot leave the case without suggesting that the applicant herein, before coming to this court, should, as the better practice, have made the proper application to the Court of First Instance for a dissolution or modification of the mandatory injunction, and thereby given that court an opportunity after full argument of counsel and citation of authorities, to pass upon the question of his power and jurisdiction, and even, the correctness and propriety of his action, should power and jurisdiction be found by the court to exist. Questions which Courts of First Instance are required by law to decide should not be summarily taken from them and presented to this court without first giving them an opportunity of deliberately passing on such questions themselves. The most natural and proper thing to do when such court, in the judgment of one of the parties, has issued an injunction erroneously, is immediately to call the attention of that court to its supposed error and ask for its correction. The strongest reasons of policy and courtesy, if not actual legal right itself, require such

procedure; and we discourage all attempts to come to this court upon questions which a court below is entitled to decide without first invoking its judgment thereon. There are special reasons for following this course in cases where the court has acted ex parte."

The orders complained of having been issued ex parte, the petitioner Gonzalez should have called the attention of the respondent judge to the supposed errors before coming to this court. Let judgment be entered dismissing this petition, with costs against the petitioner.

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

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