

[G. R. No. 18402. March 22, 1922]

CALIXTO BERBARI, PETITIONER, VS. HONORABLE CARLOS A. IMPERIAL, JUDGE OF FIRST INSTANCE OF MANILA, AND ALFREDO CHICOTE, RESPONDENTS.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of certiorari. The record shows that on September 26, 1921, Alfredo Chicote filed a complaint against the plaintiff herein, Calixto Berbari, in the Court of First Instance of Manila, alleging in substance that he, in the month of December, 1918, delivered to said Calixto Berbari the sum of P37,500 with instructions to use the money for the purchase of stock for the account of Chicote in the Tayabas Oil Company, a corporation ; that said Berbari did not so use the money but retained it and diverted it from the purpose for which he received it and refused to return it to Chicote; that in order to prevent the loss or disappearance of the money it would be necessary to appoint a receiver to take charge of the funds in question. In the prayer of the complaint the plaintiff asked the appointment of a receiver; the restitution of said P37,500; an accounting of the benefits and interest produced by said sum during the period of its retention by the defendant, the herein petitioner, together with damages in the sum of P12,000. Answering this complaint the defendant admitted the receipt of the said sum of P37,500, but alleged that he had retained it by way of a partial set-off against a much larger amount due him from plaintiff. He further alleged that the money delivered to him by plaintiff had been transmitted to Beyrouth, Syria, was therefore outside the jurisdiction of the Philippine courts and that, consequently, the court had no jurisdiction to appoint a receiver therefor.

Notwithstanding the opposition of the defendant, the court, on April 21, 1921, appointed a receiver to take charge of the aforesaid sum of P37,500 claimed by the plaintiff. The defendant, the petitioner herein, thereupon brought the present action in this court alleging that the respondent Chicote had no such interest in the funds here in question as to entitle him to the appointment of a receiver and that, furthermore, the lower court exceeded its

jurisdiction in appointing a receiver for the funds outside of the territorial jurisdiction of said court. The petitioner therefore asks that a writ of certiorari issue ordering the respondent judge to certify to this court a transcript of the record and proceedings in the case pending in the court below and that thereupon the order appointing a receiver be vacated and set aside.

That the lower court had *jurisdiction* to appoint the receiver in the present case admits of very little doubt. Section 174 of the Code of Civil Procedure reads:

“A receiver may be appointed in the following cases :

“1. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

“2. Where it is made to appear by the complaint or answer, and by such other proof as the judge may require, that the party making the application for the appointment of receiver has an interest in the property or fund which is the subject of the action and it is shown that the property or fund is in danger of being lost, removed, or materially injured unless a receiver shall be appointed to guard and preserve it;

“3. In an action by the mortgagee for the foreclosure of a mortgage, where it appears that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt;

“4. Whenever in other cases it shall be made to appear to the court that the appointment of a receiver is the most convenient and feasible means of preserving and administering the property which is the subject of litigation during the pendency of the action.”

That under this section the court would not, upon the facts stated, have had jurisdiction to appoint a receiver for all of the defendant's property is quite clear and is well settled by former decisions of this court. (Bonaplata vs. Ambler and McMicking, 2 Phil., 392; Rocha & Co. vs. Crossfield and Figueras, 6 Phil., 355; Molina vs. De la Riva, 7 Phil., 302; Strong & Trowbridge vs. Van Buskirk-Crook, Co., 10 Phil., 190; Arey vs. Wislizenus, 26 Phil., \$25.) But such is not the case here. The funds in question were alleged to be trust funds of which plaintiff claims to be the owner and which must be presumed to still remain intact,

separated from other funds under the control of the defendant and a receiver was appointed to take charge of the trust fund only. That the defendant may have made this fund' productive through investment or otherwise, cannot alter the case; it is not essential that the identical coins or currency received by the defendants should still be in his hands.

Nor does there seem to be any reason on principle why the fact that the money may, for the present, be outside of the territorial jurisdiction of the court, should be held to deprive the latter of the power to appoint a receiver of funds, the ownership or possession of which is in litigation before it; a receiver appointed here might conceivably, with the aid of the courts of the country where the fund is situated, obtain possession or control of the same. The court appointing the receiver may also, through its jurisdiction over the parties, compel them to do all in their power to place the receiver in possession, and it is quite possible that pressure so exerted may prove sufficient in the present case. There are, it is true, a few decisions of State courts in which it is intimated that jurisdiction of *res* is essential to the power to appoint a receiver thereof, but the great weight of authority supports the view we have here expressed. (*See* 34 Cyc., 108 and authorities there cited.)

The receivership here in question may possibly prove of little efficacy, but certiorari goes to the jurisdiction and will not lie to correct mere errors of judgment on the part of the lower tribunals.

The petition is therefore denied with the costs against the petitioner. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.