4 Phil. 751

[G.R. No. 1693. February 05, 1904]

FRANCISCO GARCIA, PETITIONER VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

JOHNSON, J.:

This was a petition asking "that the Supreme Court issue a writ of mandamus, in such form as may be deemed expedient, directed to the Hon. John C Sweeney, judge of the Court of First Instance of Manila, commanding that, after the bond heretofore offered shall have been filed, he, as judge of Part III of said court, shall remit to this court the cause referred to on appeal, in order that the court may pass upon petitioner's right to appeal, the bond required by law having been duly filed, and that this court may render final judgment in the matter of the appointment of a guardian for Don Francisco Martinez."

Mandamus has always been regarded as an extraordinary legal remedy granted by courts of appellate jurisdiction directed to some corporation, officer, or inferior court, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of some law. It has never been the practice of any court under any sovereignty to grant this extraordinary writ of mandamus if "there is another plain, speedy, and adequate remedy in the ordinary courts of law."

It is now the practice in this court, when an application is made for the writ of mandamus, for the clerk of the court to issue an order to show cause, directed to the respondent, without submitting the application therefore to the court or any member thereof in the first instance. In other words, an applicant may file his petition asking for the writ of mandamus with the clerk of the

court, and the clerk thereupon may issue an order to show cause why the writ of mandamus should not issue, direct the same to the respondent, and compel him to incur all of the annoyance and loss of time in preparing a demurrer or an answer why the writ of mandamus should not be issued, without having the application therefor passed upon by the court or by some member thereof. This practice, in our judgment, is wrong. The writ of mandamus is not a writ to which a party has an absolute right. In our judgment it is not intended by statutes in force in these Islands to give it this character. It is an extraordinary remedy, and should be granted only in extra-ordinary cases, and then only when the parties are without other plain, speedy, and adequate remedy in the ordinary courts of law. A writ of right is a writ to which the parties are entitled upon filing a petition in proper form, which then issues as a matter of course upon the mere application (oral or written) therefor. An ordinary summons is a writ of right. In other words, by filing the petition in an ordinary civil action in the Courts of First Instance of these Islands, the party filing the same is entitled to a summons directing the other party to appear and demur or answer within a definite period. Any person filing the ordinary petition is entitled to this writ as of right. But the extraordinary writ of mandamus is a very different procedure. It is extraordinary in its nature, and unless the law specifically provides that the clerk may issue a notice to show cause why it should not issue, the clerk ought not to be vested with such authority. Nothing in the Code of Procedure in Civil Actions in these Islands justifies such a procedure. This remedy, being an extra-ordinary remedy, the law, during the entire history of the same, has required that extraordinary facts should be shown before the machinery of the court shall be put into operation in order to comply with the requests contained in the application therefor. Among other things the applicant must specifically show that unless he is granted this extraordinary remedy of mandamus he is without remedy, and the statutes in force here now provide specifically that the writ shall only issue when there is “no other plain, speedy, and adequate remedy.” The clerk has no authority to examine a petition or application therefor and to determine whether or not a party is without other plain, speedy, and adequate remedy, or whether the petition upon its face presents a prima facie case justifying the applicant in annoying the respondent to the extent of coming into court and showing why he should not be subjected to the provisions of this extraordinary writ.

Not only has the clerk no authority by virtue of the statutes in force here to issue this order to show cause but, moreover, the Courts of First Instance of the Archipelago have their own numerous duties to perform, and should not be annoyed by the necessity of coming into this court and showing why a writ of mandamus should not be issued, when perhaps the application therefor shows no ground whatever justifying this court finally to issue the writ. In the application in the above said cause for the writ of mandamus there is not a single allegation showing to this court that the said applicant is without other "plain, speedy, and adequate remedy." This is a prerequisite allegation in the application for mandamus. This court should not be called upon to examine the law and the procedure for the purpose of ascertaining whether, or not the1 party has other plain, speedy, and adequate remedy. These facts must be clearly set out and supported by affidavits. The writ is never awarded where the party has a plain, speedy, and adequate remedy by an ordinary action at law. It may be that the person has neglected his remedy and has placed himself in a position where the use of the usual and ordinary remedy is no longer available. This fact may be disclosed by the petition or application and would be ^sufficient to defeat his right to this extra-ordinary remedy.

It is the duty of the court and not the clerk, to examine the application for the purpose of ascertaining whether or not the party is entitled, prima facie, to this extra-ordinary remedy. The applicant must show that he is possessed of a legal right to have some legal duty performed by the respondent, and that he has no other legal, specific remedy except by mandamus. The applicant is not entitled, as a matter of right, to the remedy by mandamus or even to an order to the respondents to show cause why the same should not issue. The granting or withholding of the writ of mandamus is always an exclusive, discretionary right on the part of the court. Mandamus lies only to compel the performance of duties purely ministerial in their nature. So far as the petition discloses, the applicant in this cause is not without other plain, speedy, and adequate remedy. The petition contains no allegations whatever upon that question. We are opposed to the practice inaugurated by this court in allowing the clerk to issue an order to show cause in an application for mandamus without first presenting the application therefor to this court or to some judge thereof. It is a loose and dangerous practice, which submits respondents to much unnecessary annoyance and the expenditure of much time

and labor.

We are informed that the court adopted the rule of allowing a summons to issue as in ordinary civil actions, upon an application for mandamus, upon that part of section 222 of the Code of Procedure in Civil Actions which reads as follows: “and the court, on trial, finds the allegations of the complaint to be true.” The court held that the phrase “on trial” meant that there should be a trial in the Supreme Court, and that therefore the application for mandamus was the commencement of an ordinary civil action and should take the course of ordinary civil actions.

The court, however, in certiorari and prohibition proceedings has adopted the practice of issuing an order to show cause, thereby treating certiorari proceedings as extraordinary proceedings—not allowing the writ to issue until after the court had examined the sufficiency of the application.

Upon an examination of section 217 of the Code of Procedure in Civil Actions, Ave find exactly the same language with reference to the issuance of process that is found in section 222. The language is as follows”: “and the court, on trial, finds the allegations of the complaint to be true.”

It will be seen, therefore, that the legislature used the same language in each of these statutes. Not only that but in section 226, relating to the remedy of prohibition, we find the same language, which is as follows: “and the court, on trial, shall find that the allegations of the complaint are true.”

Why the court should have adopted a different practice under the above-quoted provisions of these various sections is more than we can understand. Why they should have-treated mandamus as an ordinary remedy, which has never been so regarded by any court, and treat certiorari and prohibition as extraordinary remedies, which have seldom been so regarded, when the language of the statutes is the same, does seem to us at least novel.

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