1 Phil. 502

[G.R. No. 968. November 26, 1902]

FRANCISCO M. GO-QUICO, PLAINTIFF AND APPELLEE, VS. THE MUNICIPAL BOARD OF THE CITY OF MANILA AND THE HEIRS OF BALBINO VENTURA HOCORMA, DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

On March 3, 1902, the plaintiff filed a complaint in the Court of First Instance of Manila, naming as defendants the city of Manila and the heirs of one Hocorma, in which he stated that he was the tenant in possession of the land described therein; that the landlord had fraudulently leased the property to others; that the city of Manila had ordered the houses on the land destroyed, and that he had commenced an action against the landlord for fulfillment of his contract with said landlord. The prayer of the complaint is as follows: "Plaintiff prays that in accordance with the article cited (162) a preliminary injunction issue against the Municipal Board restraining it from executing or causing to be executed the aforesaid order for the demolition of the above-described tenements, until further orders; and that the heirs of D. Balbino Ventura Hocorma be restrained from disturbing the enjoyment of the said lot."

On the same day, without notice to the defendants, the court made the following order:

> "Upon reading and filing the above complaint ordered that a preliminary injunction issue as prayed for in the complaint against the defendants, upon the execution by the plaintiff of a bond in the sum of 500 Mexican pesos, in accordance with law.
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> "Manila, March 3, 1902.

"ARTHUR F. ODLIN, *Judge.*

> "The defendants may appear before me March 5 at 8.30 a. m., should they so desire, to move for the dissolution of the said injunction.
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> "ODLIN, *Judge*."

On March 7 the attorney for the city, appearing specially for the purposes of the motion only moved to dissolve the injunction. This motion was heard and granted on March 10. On April 12 the plaintiff presented another petition in which "he (the plaintiff) prays that a new preliminary injunction issue," etc. This petition was heard on April 15, the City Attorney appearing specially as before and objecting on the grounds, among others, that no summons or copy of the complaint in the action had ever been served on the city. In overruling this objection the court said: "It is unquestionably true that before the city of Manila can be required to answer or demur to the complaint in this action a copy of the same and of the summons should be served upon it; but the question now pending is an incidental issue such as that contemplated in article 168. The court has, beyond question, power to issue this preliminary injunction, without notice to the city of Manila." A temporary injunction was, on April 16, ordered to be issued in the same form as the preceding one. The City Attorney again appeared specially and moved to dissolve this injunction. Among other grounds he renewed those contained in his first motion, hereinbefore cited. The court, on May 20, denied the motion in the following order:

> "Upon reading and filing the motion presented April 19, 1902, praying for the dissolution of the preliminary injunction issued herein April 17, 1902, and the memoranda submitted by the respective parties upon the hearing of the said motion, and upon the pleadings and the record:
>
> "*Ordered*, That the said motion be and the same is overruled, and that the said injunction continue in force, without prejudice to the right of the defendant, the Municipal Board of the city of Manila, to move for its dissolution upon the filing of an approved bond in the sum of $2,000, Mexican currency, conditioned for the payment by the defendant to the plaintiff of all damage he may suffer by reason

> of the demolition of the condemned buildings should the said order be affirmed or the appeal dismissed. Dated in Manila, May 20, 1902.
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> "ARTHUR F. ODLIN, *Judge.*"

On May 26 the city appealed from the order of April 16 and from the order of May 20. A bill of exceptions was allowed on June 9, and certified to this court A motion having been made here by the plaintiff to amend the bill of exceptions, it was suggested by the court that the orders in question were not appealable. That question has been argued and is now for decision.

Article 123 of the Code of Civil Procedure is as follows:

> "SEC. 123. No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other."

The defendant claims that the only relief prayed for was a preliminary injunction, "and the court having granted him all that it could grant him (art. 126) and there being nothing further to adjudicate in the case" the order refusing to dissolve the injunction Avas the final judgment. The same thing could be said of the very first order made in the case on March 3, when the complaint was presented. By that order the plaintiff secured all he prayed for, and if the contention of the defendant is true that was the final judgment. The same thing could be said also of the order of March 10 dissolving the temporary injunction. There is no difference in principle between any of these orders so far as their finality is concerned. Some may have been made with more evidence before the court and .after more deliberation than the others, but so far as putting an end to the litigation in the court is concerned they were equal. If the contention of the defendant is true, the court below, after the order of April 16, had no power to entertain the defendant's motion to dissolve the injunction therein granted, for that order was the final judgment in the case.

It is apparent, however, that there can, in the nature of things, be no such action as one for

a temporary injunction and for nothing else. A temporary injunction lasts only during the pendency of the action. When the action terminates the temporary injunction falls. If, therefore, the judge, after a hearing, should enter a final judgment granting a temporary injunction, that very act would dissolve the injunction. In this case, if the only purpose of the suit was the temporary injunction and the order of April 16 or of May 20 was the final judgment, the defendant did not need to appeal. The injunction fell with the termination of the suit, and the only effect which the defendant's appeal against it had was to keep it alive.

If the only purpose of this suit was to obtain a preliminary injunction the defendant should have moved to dismiss the action, for no such suit can be maintained.

But it is apparent to us that the purpose of this suit was to obtain an injunction restraining the defendants until the determination of the *other* action between the plaintiff and the heirs of Hocorma. Whether such relief can be made the subject of an independent action or should be sought in the original action is not before us for decision, and we do not decide it. Such a suit, if it can be maintained, would be a suit for a final injunction (art. 164, 1), not for a preliminary injunction. It is true that the plaintiff has used the word "preliminary" in his prayer and has not asked for other relief. But that prayer could be amended if the defendant answered, and if the defendant did not answer and no amendment could be allowed under article 126, as claimed by the defendant, the only result would be that the court would have to enter a final judgment dismissing the suit.

No answer has ever been made in this case, no issues of any kind have been joined. there has therefore been no trial of any issue, either of fact or law. with each motion presented by the defendant he presented various affidavits as to matters of facts. there is nothing to show that the parties ever agreed upon these facts, or ever agreed that the order of may 20 should be considered as the end of the case. if the plaintiff in his complaint had asked for a final injunction and at the same time had asked for a preliminary injunction we do not think that it would be claimed that the proceedings had below legally terminated the action.

It may be true that the court below has really decided the question of law in the case in passing upon these motions, and that upon the trial no new facts would be developed. that frequently happens in motions for preliminary injunctions, but it does not make an order on such a motion a final judgment. after the order of march 10 the plaintiff had a right to amend his complaint or to proceed with the case without an amendment. after the decision of april 16 and after the decision of may 20, the defendant had a right to answer, at the trial to present additional evidence and to reargue the questions of law.

The decision on the preliminary motion was not an adjudication of the questions there passed upon, either on the facts or the law. The order of May 20 did not finally dispose of the question there decided so far as the Court of First Instance was concerned. It still had jurisdiction and the power to enter a final judgment for the defendant after a trial on the issues raised by an answer. If it had not, every preliminary injunction would be a final one in the trial court. This proposition finds support in the case of Lalande *vs.* McDonald, 13 Pac. R., 347 (Idaho), cited by the defendant.

In Weston vs. City Council (2 Peters, 449), also cited by the defendant, a judgment had been entered reversing a judgment granting a writ of prohibition and *ordering judgment for the defendant*. It was suggested that this judgment, although it ended that particular suit, did not really finally decide whether the ordinance of the city of Charleston was void or valid, and therefore was not a "final" judgment within the meaning of the twenty-fifth section of the judiciary act. The court, however, said: "The word 'final' must be understood in the section under consideration as applying to all judgments and decrees which determine the particular case." It is apparent that this case does not support the defendant's contention, for the question here is, Has the particular suit been terminated or not?

In Potter vs. Beal (50 Fed. R., 860) the order appealed from finally disposed of a part of the property in dispute so that it passed beyond the control of the court. Putnam, J., said: "The order * * * seems to dispose of a part or the whole of the matter in controversy so effectually that we are forced to accept as a final decree so much as directs a distribution."

We can not agree with the majority opinion in the case of Lewis *vs.* Campan (14 Mich., 458; 90 Am. Dic., 245), so much relied upon by the defendant, even supposing that the statutory provisions of that State are similar to ours. On the contrary, we incline to the view stated by the Chief Justice in his dissenting opinion. He said: "The bill was filed to remove administrators and for appointment of others, asking for the appointment of a receiver and an injunction until the final hearing. The receiver was appointed and an injunction granted upon an interlocutory motion. The final hearing has not yet been had, and the question of costs and further directions is expressly reserved until the final hearing. How this can be regarded as a final decree under the rulings in this State I am at loss to conceive."

In considering the American authorities it must be borne in mind that probably no one of the statutes therein construed contained such strong provisions against appeals from interlocutory resolutions as are found in our article 123. The evils resulting from such appeals under the *Ley de Enjuiciamiento Civil* were well known. It was to cure such evils

that this article was adopted. It expressly prohibits appeals not only from interlocutory orders but also from interlocutory judgments. This prohibition is reiterated in article 143, which says: “Upon the rendition of final judgment disposing of the action either party shall have the right to perfect a bill of exceptions.”

The appeal in this case is prohibited by these articles and it is accordingly dismissed.

Arellano, C. J., Torres, Smith, Mapa, Cooper, and *Ladd, JJ.,* concur.

Date created: April 14, 2014