Supreme Court E-Library

to determine and fix the rentals on the basis of not more than 25% of the average normal harvest for three (3) agri-years for both tobacco and *palay* crops. The order to the landholder to make reimbursements to the tenants is SET ASIDE. The records of these cases are hereby REMANDED to the Court of Agrarian Relations, Third Regional District, Branch III, at Urdaneta, Pangasinan, for determination and fixing of proper rental rates under Section 34, RA No. 3844, as amended. No costs.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Abad Santos, JJ.,* concur.

Aquino, J., in the result.

SECOND DIVISION

[G.R. No. L-45957. January 22, 1980]

FRANK C. RAMOS, *petitioner, vs.* **HON. COURT OF APPEALS, HON. ANDRES REYES, HON. MARIANO SERRANO, HON. VICENTE M. SANTIAGO, JR., and MARIANO GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; SHALL NOT BE ISSUED WITHOUT HEARING; CASE AT BAR.— The Court of Appeals took cognizance of respondent Garcia's petition in aid of its appellate jurisdiction pursuant to the provisions of Section 30 of Rep. Act 296, as amended, considering that factual and legal issues are involved in the action brought before the trial court and, therefore, any appeal from the decision of the court below would fall within the exclusive appellate jurisdiction of the Court of Appeals. But it acted with grave abuse of discretion when it

Supreme Court E-Library

issued without hearing the subject writ of preliminary injunction restoring respondent Garcia in possession of the litigated property. Indeed, the Rules and jurisprudence require that no preliminary injunction shall issue without hearing.

2. ID.; ID.; ID.; WHEN INJUNCTION IS IMPROVIDENTLY ISSUED, THE ISSUING COURT MAY RECALL OR MODIFY IT.— We discourage the issuance of injunction *ex-parte* and deplore the readiness of some judges to grant and issue the same. We have repeatedly held that preliminary injunction is an extraordinary, peremptory remedy that should be dispensed with circumspection, and both sides should first be heard whenever possible. So that when an injunction is improvidently issued, the issuing Court may recall or modify it. This is authorized by Section 7, Rule 58 of the Rules of Court which specifically provides that: "after hearing on the merits the court may grant or refuse, continue, modify or dissolve the injunction as justice may require," because after all the issuance or recall of a preliminary writ of injunction is an interlocutory matter that remains at all times within the control of the Court. Judge Razo was guided by and acted pursuant to the aforesaid provisions when he dissolved the preliminary injunction improvidently issued by Judge Quicho.

D E C I S I O N

SANTOS, *J.*:

Petition for *certiorari* and prohibition with preliminary injunction filed on April 12, 1977 — (1) to annul the writ of preliminary injunction issued by the Second Division[1] of the Court of Appeals in CA-G.R. No. 06521, entitled "*Mariano Garcia, Petitioner, vs. Hon. Jose C. Razo and Frank C. Ramos, Respondents,*" and (2) to declare said Court without jurisdiction to hear the same.

On April 21, 1977, We required respondents, without giving due course to the petition, to comment on the petition, and issued a temporary restraining order. On May 12, 1977, respondents

[1] *JJ.* Andres Reyes, Chairman, Mariano Serrano, and Vicente Santiago, Jr., members.

Supreme Court E-Library

filed their comment to which petitioner filed his reply on July 16, 1977. A rejoinder required by Our resolution of July 29, 1977 was filed by respondents on September 20, 1977.

Per resolution of January 9, 1978, We considered respondents' comment as their answers and required the parties to submit their respective memoranda. Respondent Garcia manifested that he was adopting his comment and rejoinder as his memorandum while petitioner filed his memorandum on August 10, 1978. With the submission of said memorandum, the case was considered submitted for decision.

The factual and procedural antecedents which gave rise to this petition are as follows. It appears that the land involved in Civil Case No. 4426, entitled *Mariano Garcia vs. Rosario Benito-Gardner and Frank C. Ramos of the Court of First Instance of Albay* — consisting of about two and one-half hectares, designated as Lots Nos. 2444 and 535 of the Cadastral Survey of Ligao, Albay — were among the properties inherited by Rosario Benito-Gardner, an American citizen, from her deceased mother. Before Mrs. Gardner left for the United States, she entrusted the property to the care of herein private respondent, Mariano Garcia, with instruction for the latter to look for a buyer and sell it for a good price.[2] On July 15, 1970, Mrs. Gardner wrote respondent Mariano Garcia and pressed him to look for a buyer of the property because she was in need of money. She further informed him that if he could not find a buyer until the 20th of August of the same year or inform her that he is interested in buying it himself, she would be constrained to look for a buyer herself.[3] Then, in a letter dated August 29, 1970, Mrs. Gardner informed respondent Garcia that she was selling the property on September 1, 1970 to her nephew Frank Ramos, petitioner herein, who is also an American citizen.[4]

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[2] *Rollo*, Annex 3 at p. 29; Annex 4, p. 30.

[3] *Id.*, Annex 3, p. 29.

[4] *Id.*, Annex 4, p. 30.

Supreme Court E-Library

On or about February 26, 1971, Ramos arrived from the United States. He showed respondent Garcia the Deed of Sale executed by him and his aunt, Mrs. Gardner. He thereupon entered the premises of the property with the knowledge and consent of respondent, Garcia, and commenced to exercise acts of possession over the same by clearing, fencing and planting on the land.

Four months thereafter, or more specifically, on June 18, 1971, respondent Garcia filed the aforesaid Civil Case No. 4426 against petitioner and his aunt for annulment of the sale, specific performance and damages with preliminary injunction to restrain the defendants Ramos and/or any of his agents and helpers from further molesting plaintiff in his possession of the land. On the same date, Judge Perfecto Quicho, then presiding Branch I of the Court of First Instance of Albay, to which the case appears to have been assigned, issued, *ex-parte*, a writ of preliminary injunction. On June 19, 1971, herein petitioner, defendant in Civil Case No. 4426, filed a motion to dissolve the same. This was initially heard before Branch I of the Court, but when Branch I became vacant, and upon request of the petitioner, the hearing was transferred, by virtue of Our resolution of January 23, 1975, to Branch II, which continued to receive the evidence therein.

On January 3, 1977, Judge Jose C. Razo, presiding Branch II, dissolved the writ of preliminary injunction previously issued by Judge Quicho. The order reads as follows:

"Considering that the writ of preliminary injunction was granted *ex-parte*; that defendant Frank C. Ramos is the registered owner of the two parcels of land in question (Exhibits 'B' & 'C'); that the plaintiff's appointment as Farm Manager did not cover the two parcels of land in question (Exhibit '4'); and that title to private lands acquired by citizens of the United States (acquired) before July 3, 1974 are valid as against other private persons (Section 11, Article 17, 1973 Constitution of the Republic of the Philippines);

"AS PRAYED FOR by the counsel for the defendants, the said writ of preliminary injunction heretofore issued should be, as it is hereby DISSOLVED. Accordingly, the plaintiff is ordered to vacate

Supreme Court E-Library

the premises in question and to restore the defendant Frank C. Ramos to the possession thereof immediately.

"SO ORDERED.

"Legaspi City, Philippines, January 3, 1977."

(SGD.) JOSE C. RAZO
Presiding Judge"

The motion for reconsideration of the foregoing order filed on February 5, having been denied on March 14, Garcia filed on March 28, 1977 with the Court of Appeals a special civil action CA-G.R. No. 06521 for *certiorari* entitled "*Mariano Garcia vs. Hon. Jose C. Razo and Frank C. Ramos*" alleging that respondent Judge Razo, acted without or in excess of his jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in dissolving the injunction and delivering the possession of the lands in question to the private respondent. Petitioner prayed that the lower Court's Order of January 3, dissolving the injunction as well as the Order dated March 14, 1977, denying his motion for reconsideration, be set aside, and that another order be entered commanding private respondent Ramos to vacate the lands in question, and to restore him in possession thereof.

On March 31, 1977, the Second Division of the Court of Appeals gave due course to the petition and issued *ex-parte* a writ of preliminary injunction restoring possession of the real properties subject of litigation to Garcia.[5]

Hence, this petition, alleging that the Court of Appeals acted without or in excess of its jurisdiction in giving due course to the petition, on the grounds that —

(1) The dissolution of the *ex-parte* writ of preliminary injunction by the trial court is a lawful exercise of its jurisdiction.

(2) The petition below does not show that irreparable loss and injustice will be suffered by the private respondent as a result of the dissolution of the injunction.

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[5] *Id.*, Annex 1, p. 69.

Supreme Court E-Library

(3) The petition below is predicated on false, erroneous and misleading statements for contrary to his allegations, plaintiff Mariano Garcia, private respondent herein, was never appointed as "Farm Manager of the land described in the complaint nor an agent to be entitled to a reimbursement of expenses allegedly incurred by him.

(4) The order of the trial court dissolving the writ of preliminary injunction dated June 19, 1971, was issued after the parties were heard and relevant evidence received.

(5) In issuing the writ of preliminary injunction, *ex-parte*, respondent Court of Appeals violated the fundamental rule of injunction in that a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another whose title thereto has not been clearly established by law.

(6) The petition below raises the issue as to whether the trial court correctly applied jurisprudence, law and the Constitution on the matter of dissolving the writ of injunction, hence the Court of Appeals has no jurisdiction to issue the writ of injunction.[6]

which in a nutshell raise the issue of whether or not the Court of Appeals acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in giving due course to the petition for *certiorari* filed by the herein private respondent Garcia and in issuing the preliminary injunction restoring said private respondent Garcia in possession of the property in controversy.

This petition is clearly invested with merit. For while the Court of Appeals had jurisdiction to take cognizance of the petition for *certiorari* filed by the herein private respondent, it, however, acted palpably with grave abuse of discretion amounting to lack of jurisdiction in issuing the preliminary injunction *ex-parte*.

The Court of Appeals took cognizance of respondent Garcia's petition in aid of its appellate jurisdiction pursuant to the provisions of Section 30 of Rep. Act 296, as amended, considering that

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[6] *Rollo*, pp. 7-9.

Supreme Court E-Library

factual and legal issues are involved in the action brought before the trial court and, therefore, any appeal from the decision of the court below would fall within the exclusive appellate jurisdiction of the Court of Appeals.[7] But it acted with grave abuse of discretion when it issued without hearing[8] the subject writ of preliminary injunction restoring respondent Garcia in possession of the litigated property. Indeed, the Rules[9] and jurisprudence[10] require that no preliminary injunction shall issue without hearing. Section 5, Rule 58 of Revised Rules of Court explicitly provides that:

"SEC. 5. *PRELIMINARY INJUNCTION NOT GRANTED WITHOUT NOTICE; EXCEPTION. — No preliminary injunction shall be granted without notice to the defendant unless it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice*. The judge to whom the application for preliminary injunction was made, must cause an order to be served on the defendants, requiring him to show cause, at a specified time and place why the injunction should not be granted." (Italics supplied.)

Aside from the fact that the issuance *ex-parte* of a writ of preliminary injunction is considered the exception rather than the rule, the party applying for its issuance must show a clear right thereto the violation of which is so recent as to make its vindication an urgent one.[11] In *Locsin vs. Climaco*,[12] We made the pronouncement that the applicant's right or title must be clear and unquestioned, for equity, as a rule, will not take

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[7] Sec. 29, RA 296, as amended; *Medina vs. Gen. Manuel Yan, et al.*, L-30978, Sept. 30, 1974; *Lagman, et al. vs. Investment Planning Corp. of the Phil.*, L-18103, Feb. 29, 1964; *Tubera, et al. vs. Fernando et al.*, L-18492, March 31, 1964.

[8] *Señeres, et al. vs. Frias, et al.*, 39 SCRA 533.

[9] Sec. 5, Rule 58, Revised Rules of Court.

[10] *Butuan Lumber Mfg. Co., Inc. v. Ortiz*, 9 SCRA 451.

[11] *Subido v. Gopengco*, L-25618, March 26, 1969.

[12] 26 SCRA 930.

Supreme Court E-Library

cognizance of suits to establish title, and will not lend its preventive aid by injunction where the applicant's title or right is doubtful or disputed. So that if a writ of preliminary injunction is issued despite applicant's doubtful title to the property in controversy or lack of interest therein, the Court is justified in dissolving the writ. Thus, in *Pio vs. Marcos*,[13] We said: "It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought — in other words, that he shows no equity. Want of equity to use the injunctive process of the Court to enforce a mere barren right will justify the Court in refusing the relief."

In the case at bar, the cause or claim of respondent Garcia against the petitioner is not clear. He claims that he had an option to purchase the property, whereas the record shows that the very same property had already been purchased by the petitioner. He claims that he was appointed farm manager of the lots, whereas the trial Court found that his appointment did not extend to the two parcels in question. True it is that respondent Garcia was also given the opportunity to purchase the land himself, but he failed to signify his intention to avail of such opportunity within the period fixed by Mrs. Gardner. Verily, respondent Garcia miserably failed to show any clear legal right to purchase the property at this late date.

On the other hand, petitioner took actual physical possession of the property on February 26, 1971 immediately upon arrival from the United States; cleared, fenced and planted on it, declared it in his name for taxation purposes and paid all the realty taxes due thereon; and was disturbed in possession thereof only on June 18, 1971, when Judge Quicho ordered the issuance of the writ of preliminary injunction by virtue of which petitioner Ramos was enjoined from entering upon and molesting respondent Garcia's possession. Subsequently, however, Judge Razo, upon motion of petitioner, dissolved the writ, taking into account the fact that it was issued *ex-parte.* In so doing, Judge Razo acted providently.

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[13] 56 SCRA 726.

Supreme Court E-Library

We discourage the issuance of injunction *ex-parte* and deplore the readiness of some judges to grant and issue the same. We have repeatedly held that preliminary injunction is an extraordinary, peremptory remedy that should be dispensed with circumspection, and both sides should first be heard whenever possible.[14] So that when an injunction is improvidently issued, the issuing Court may recall or modify it. This is authorized by Section 7, Rule 58 of the Rules of Court which specifically provides that: "after hearing on the merits the court may grant or refuse, continue, modify or dissolve the injunction as justice may require," because after all the issuance or recall of a preliminary writ of injunction is an interlocutory matter that remains at all times within the control of the Court. Judge Razo was guided by and acted pursuant to the aforesaid provisions when he dissolved the preliminary injunction improvidently issued by Judge Quicho.

In fine, We perceive no plausible reason to disturb the order of Judge Razo dissolving the writ of injunction and, therefore, the Court of Appeals acted with grave abuse of discretion in its resolution of March 31, 1977, directing the issuance of a writ of preliminary injunction, as in fact the writ was issued on the same day, which restored respondent Garcia in possession of the lots in question.

WHEREFORE, judgment is hereby rendered annulling and setting aside the resolution of the Court of Appeals dated March 31, 1977 and the writ of preliminary injunction issued on the same date pursuant thereto, and converting temporary restraining order issued by this Court on April 21, 1977 into a permanent injunction. Costs against private respondent Mariano Garcia.

SO ORDERED.

Barredo (Chairman), Antonio, Aquino, and *Concepcion Jr., JJ.,* concur.

Abad Santos, J., took no part.

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[14] *The Police Commission vs. Hon. Bello, et al.,* 37 SCRA 230; *Señeres, et al. vs. Frias,* 39 SCRA 533.