

ANGEL JOSE REALTY CORP., PLAINTIFF AND APPELLEE, VS. FELIX GALAO ET AL., DEFENDANTS, BERNARDINA GALAO AND FONG LAY, DEFENDANTS-APPELLANTS.

G.R. No. L-45. February 26, 1946

Ponente: JARANILLA, J.

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JARANILLA, J.:

This contempt proceeding arose from civil case No. A-47 of the Municipal Court of Manila and G. R. No. L-30 (75 Phil., 109), of this court in a previous appeal. The appellants in the present case were the defendants and appellants in that appeal. In the instant incident for contempt the Court of First Instance of Manila in civil case No. 70380 sentenced the appellants Bernardina Galao and Fong Lay to be imprisoned for five days and each to pay a fine of P50.

The pertinent facts of the case are as follows:

On April 25, 1945, the Municipal Court of Manila rendered a decision in civil case No. A-47 adjudging the appellants to pay the rent of the premises that they were occupying and ordering them to vacate the same. They appealed said decision and perfected their appeal within the period prescribed by law.

On May 16, 1945, the plaintiff and appellee herein filed an ex parte petition praying for the issuance of a writ of execution of the judgment, which was appealed, and the said Municipal Court, without any notice to the appellants, granted the petition and issued a writ of execution.

On May 25, 1945, in view of the fact that the complaint filed in the case did not seek any other damages than the payment of rent, the said execution was ordered suspended by the court for the reason that the current rents due from March to May 1945, inclusive, had already been deposited with the court.

On May 29, after fifteen days since the appeal in the case had been perfected, the plaintiff and appellee again filed a petition, without any previous notice to the defendants and appellants, praying that an alias writ of execution be issued by the Municipal Court, which prayer was granted. The Sheriff of Manila thereupon executed the judgment and ordered the appellants to vacate the premises in question; so that the appellants were driven from the premises and did not have a place where to sleep on that occasion.

At the bottom of the writ of execution it was noted that the appellants might stay the writ of execution by filing a supersedeas bond of P200, but the Sheriff failed to give them the chance to file said bond before proceeding to eject them from the premises.

About one hour after the said appellants had been ejected from the premises they returned to occupy them again and took temporary possession thereof for lack of a place in which to stay and sleep that night and in so doing they had to break the padlock of the door.

The following day, which was the 30th of May, being a legal holiday, the appellants could not make the deposit in

court of the supersedeas bond of P200 required in the writ of execution above mentioned, which bond was only filed on May 31, 1945.

Before approving this supersedeas bond the court set the matter for hearing with due notice to both parties and after having been informed that the appellants were not given the chance to deposit the bond before entering the premises, the judge of the Municipal Court approved the bond and declared untenable the claim of the plaintiff and appellee that the defendants and appellants had committed contempt of court for breaking into the premises after they had been ejected therefrom. The Municipal Court forwarded the case after the incident above referred to had been submitted to said court without any action thereon. The plaintiff and appellee, however, filed written charges in the Court of First Instance of Manila accusing the defendants and appellants of contempt of court, as a result of which the latter were convicted by said court as above related.

The appellants assign four errors allegedly committed by the court below, which read:

- "1. The lower court incurred in error in trying the case at all for lack of original as well as appellate jurisdiction.
- "2. Having tried the case, the lower court incurred in error in not taking the failure of the Municipal Court to act on the charge in writing, as either a dismissal of the charge or an acquittal of the defendants.
- "3. The lower court incurred in error in, having tried the case, not acquitting the defendants on their defense of double jeopardy.
- "4. The lower court incurred in error in not finding that there was no contempt."

After a perusal of the record we consider it expedient that these assignments be reduced to the sole proposition of whether or not the defendants and appellants committed contempt of court in view of the facts above stated.

It appears that the Municipal Court of Manila had already lost jurisdiction over the case due to the perfection of the appeal by the defendants in the ejectment proceedings. But even if the question of jurisdiction is not considered here, it is uncontroverted that when said Municipal Court issued the writ of execution on the 29th of May 1945 the rents pertaining to the said month of May had already been deposited with the court by the appellants. For that reason the Municipal Court could not legally issue the writ of execution in question, ejecting the appellants from the premises during the month of May 1945. (Section 8, Rule 72, Rules of Court.) Moreover, according to said section 8 of Rule 72 of the Rules of Court, before a writ of execution could be issued, upon motion of the plaintiff, the defendant should have notice thereof—which was not complied with in this case.

Before contempt could be committed, it is a prerequisite that the order issued by the court which was violated be a valid and legal one. Without a lawful order having been issued, no contempt of court could be committed. So has it been held by this court in the following cases:

"For disobedience or resistance of a lawful order of court a person may be punished for contempt, but a court has no authority to punish anyone for disobedience or resistance of an order made without authority." (Chanco vs. Madrilejos, 9 Phil., 356.)

"That an order, void for want of jurisdiction may be disobeyed without incurring contempt, appears to be settled by decisions of the Supreme Court of the United States: * * * But if the command was in whole or in part beyond the power of the court, the writ, or so much as was in excess of jurisdiction, was void, and the court had no right in law to punish for any contempt of its unauthorized requirements.'" (Weigall vs. Shuster, 11 Phil., 340, 345.)

Pursuant to said section 8 of Rule 72 of the Rules of Court, we repeat, the writ of execution may only be issued by the court in ejectment cases after notice to the adverse party and if the rents have not been paid or deposited by him. These, however, are not the facts in the instant case, where the express provisions of the law were utterly

disregarded, and therefore the said order of execution, which originated this contempt proceeding, was not validly and legally issued.

Wherefore, the appealed judgment is reversed and the defendants and appellants are acquitted of the charges with costs de oficio. So ordered.

Moran, C. J ., Paras, Feria, Pablo, and Briones, JJ., concur.

Judgment reversed; defendants acquitted.

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