

JOSEPH FELDMAN, PETITIONER, VS. HON. BEMETRIO ENCARNACION, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, VICTORIO LACHENAL, ALFONSO LACHENAL AND JOSE VILLAFLOR, RESPONDENTS.

G.R. No. L-7021. July 31, 1954

Ponente: PADILLA, J.

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PADILLA, J.:

The petition seeks to annul the order of the respondent court entered on 30 June 1953, the dispositive part of which reads as follows:

IN VIEW OF THE FOREGOING, the second motion of the defendants in the opinion of this Court is in order, and the plaintiff is hereby ordered to deposit with the Clerk of Court of this Court the accumulated unpaid rentals including interest thereon in the total amount of P119,700 and the corresponding rental on the said property every month from May 1, 1953 until the appeal is finally decided; * * *

for lack of jurisdiction of the respondent court to enter it.

The petitioner and the respondents are agreed that in civil case No. 7799 of the Court of First Instance of Rizal entitled Joseph Feldman, plaintiff; Mercedes H. Vda. de Hidalgo, intervenor, as party-plaintiff; Hon. Herbert Brownell, Jr., Attorney General of the United States in lieu of the Philippine Alien Property Administrator of the United States, intervenor versus Ramon L. Corpus, etc., defendants ; Victorio Lachenal, Ildefonso Lachenal, and Jose Villaflor, joinders, as parties-defendant, judgment was rendered on the counterclaim of the defendants, the pertinent dispositive part of which reads as follows:

* * * .On the counterclaim of the defendants, the plaintiffs and his business partners, Henry Pile and George Feldman, are hereby ordered to vacate and to surrender to the defendants the property formerly known as Varadero de Navotas * * * and to pay the defendants, by way of rentals on the shipyard the amount of P1,000 a month from and beginning June 1, 1946, up to the date the physical possession of the entire property or shipyard with all its accessories and improvements thereon shall have been actually returned to and duly received by the defendants, the registered owners thereof, with legal interest thereon from the date of the filing of the counterclaim;

that from such judgment a notice of appeal, an appeal bond and a record of appeal were filed on 30 October 1950; that on 10 March 1952 the record on appeal was amended; that on 24 March 1952 the trial court issued an order which reads as follows:

There being no opposition to the amended record on appeal, dated March 10, 1952, filed by counsel for the plaintiff, which is also adopted by the above named intervenor, and finding the same to be correct and in order, the said amended record on appeal is hereby approved.

The Clerk of Court is hereby directed to certify and elevate the same to the Court of Appeals, together with all

the exhibits adduced during the trial, oral and documentary, within the period prescribed by the Rules of Court; that the record on appeal was forwarded to and docketed in the Court of Appeals as CA-G. R. No. 9375-R; that on 3 August 1953 the case was forwarded to this Court by the Court of Appeals; that on 14 May 1953, the respondents Victorio Lachenal, Alfonso Lachenal and Jose Villaflor, defendants therein, filed in the respondent court a supplemental motion, the prayer of which reads as follows:

- That the plaintiff (now petitioner) be ordered to deposit with the Clerk of this Court (Court of First Instance of Rizal) the accumulated rental plus interest in the total amount of P119,700 and the monthly rentals of P1,000 every month beginning June 1, 1953, until the decision appealed from shall have been finally considered and disposed of by the appellate court;

- That the plaintiff and his business partners be ordered and enjoined not to sell, encumber, remove, dismantle, or otherwise dispose of any of the installation, equipments, machineries and motor vehicles listed in the Annex "B" hereto attached, without the consent and approval by this Honorable Court;

that on 30 June 1953 the respondent court granted the motion in an order the dispositive part of which is quoted at the beginning of this opinion; and that a motion for reconsideration of the order just referred to on the ground of lack of jurisdiction of the trial (respondent) court was denied;

It is the contention of the petitioner that upon approval or allowance of the record on appeal the respondent court lost its jurisdiction over the case and, consequently, the order of 30 June 1953 complained of was entered without jurisdiction.

On the other hand, the respondents claim that despite the appeal the respondent court retains the power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." pursuant to section 9, Rule 41. In support of their pretense they cite the assignment of errors made by the petitioner, appellant therein, to wit:

- The lower court erred in holding that the consent of appellant to the waiver of his rights over the varadero on May 5, 1943 (Exhibit G-I) was voluntary and for good consideration and not under duress;

- The lower court erred in holding that the appellant had not exercised the option granted by the original lease, Exhibit "A";

- The lower court erred in finding that the appellant was a possessor in bad faith, and the appellees in good faith, for purposes of article 361 of the Civil Code. (Pp. 10-11 appellant's brief, CA-G.R. No. 9376-R, now SC-GR No. L-7195.)

It would seem that the respondents' theory is that taking into consideration the assignment of errors of the petitioner, appellant therein, the directive to the petitioner to deposit with the clerk of court the accumulated unpaid rentals including interest thereon amounting to P119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, does not involve a matter litigated in the appeal of the petitioner in the original action. This contention is not well taken, because if the consent of the petitioner, appellant therein, to the waiver was not voluntary and for good consideration but under duress as he contends, he might be entitled to exercise the option granted in the lease; because if the petitioner, appellant therein, had exercised the option, granted as he contends, he would be entitled to continue in possession of the leased premises; and because if he was a possessor: in good faith, as he contends, then the judgment of the trial court, which unfortunately has not been brought to us by the parties but only the pertinent dispositive part directing the petitioner, appellant therein, to vacate the leased premises and to pay the rentals would have to be reversed. The accumulated unpaid rentals and interest thereon and the future rentals of the leased premises are then matters

involved and litigated in the appeal. To order the deposit thereof with the clerk of court is virtually, if not actually, an execution of the judgment which the respondent court cannot direct but for good reasons to be stated in a special order and to be set forth in the record on appeal.[1] The good reasons do not appear. The order complained of is not the one contemplated in the rule just referred to because it was issued not while the case was still within the jurisdiction of the respondent court. If it be true as contended by the respondent, appellees therein, that the order of the respondent court complained of was just to supplement the writ of execution issued against Mercedes H. Vda. de Hidalgo, intervenor and party-plaintiff therein, who has not appealed from the judgment rendered against her, then it would be pertinent to ask why the liability under the judgment of the intervenor and party-plaintiff who has not appealed from the judgment rendered against her should be supplemented by making the petitioner, appellant therein, responsible for her obligation or liability under the judgment? Are they severally (solidariamente) responsible?

That part of the order which enjoins and prohibits the petitioner, appellant therein, "to sell, encumber, remove, dismantle or otherwise dispose of any of the installation, equipments, machineries and motor vehicles as listed aforesaid, without the consent and approval of this Court," is not being questioned by the petitioner. It need not be passed upon.

The order in so far as it directs the petitioner, appellant therein, to deposit with the clerk of court the accumulated unpaid rentals including interest thereon in the total amount of P119,700 and the corresponding rental of the property every month from 1 May 1953 until the appeal is finally decided, is annulled and set aside for lack of jurisdiction of the respondent court to enter it, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] Section 2, Rules 39.

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