

MADRIGAL & CO., PETITIONER AND APPELLANT, VS. COURT OF APPEALS, HON. BIENVENIDO A. TAN, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, CONCEPCION L. PLANAS, A...*G. R. No. L-4940. April 22, 1953*

Ponente: BENGZON, J.

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By way of certiorari, the petitioner-appellant seeks the reversal of the Court of Appeals' decision dismissing its action for mandamus to compel the respondent Judge Bienvenido Tan of Rizal to issue a special demolition order to execute the decision in a civil case requiring the other two respondents to return to said petitioner-appellant a certain lot in Pasay City.

The following facts, quoted with approval by petitioner in its printed brief, are all that is necessary for the disposition of this request for review:

"It appears that the petitioner, Madrigal & Co., Inc., is the owner of a parcel of land containing an area of approximately 3,953 square meters, located at the corner of Dewey Boulevard and San Juan Street, Pasay City, part of which was occupied since April 1, 1948, by the respondents Concepcion Planas and Iluminado Planas, who constructed houses thereon. On February 16, 1949, the petitioner filed in the Municipal Court of Pasay City an action of forcible entry and detainer against Concepcion Planas and Iluminado Planas to compel the latter to vacate the said parcel of land and surrender possession thereof to the petitioner, and to remove the improvements they had erected thereon and pay a reasonable compensation for the use and occupation of the property from April 1, 1946, until the same is vacated, plus the costs of the suit. On June 5, 1946, after due hearing, the Municipal Court of Pasay City rendered in the case a judgment ordering Concepcion Planas and Iluminado Planas to vacate the parcel of land described in the complaint and surrender possession thereof to Madrigal & Co., Inc., and to pay the latter the amount of P595 a month from April 1, 1948, until they vacate the premises, and the costs of the action. On August 26, 1949, Concepcion Planas and Iluminado Planas appealed from this decision to the Court of First Instance of Rizal, and the appeal was docketed in that Court as Civil Case No. 954, entitled Madrigal & Co., Inc., plaintiff, vs. Concepcion Planas and Iluminado Planas, defendants.

"On October 18, 1949, while the case was pending on appeal before the Court of First Instance of Rizal, the plaintiff filed in that Court a motion for the immediate execution of the judgment of the Municipal Court of Pasay City, on the ground that the defendants therein had failed to pay to the plaintiff or to deposit with the Court the compensation for the property, as fixed in the judgment of the Municipal Court of Pasay City, for the month of September, 1949. This motion was granted by the respondent Judge in an order dated October 22, 1949, and on October 27, 1949, the corresponding writ of execution was issued and delivered to the Sheriff of Rizal for compliance. This writ was duly served on the defendants Concepcion Planas and Iluminado Planas and they were given sufficient time to vacate the premises and remove their buildings thereon and to pay the rents due on the property. Apparently said defendants ignored the writ, for on November 26, 1949, the Sheriff

of Rizal made a return on the writ of execution stating that, notwithstanding that the defendants had been given sufficient time to vacate the premises and remove their houses erected thereon, and to pay the plaintiff the rents due on the property under the judgment, said defendants have failed to do so. In view of this default, Madrigal & Co., Inc., on December 12, 1949, filed with the Court of First Instance of Rizal a motion praying for the issuance of a special order of demolition of the houses of the defendant on the premises. After due hearing on this motion, the respondent Judge issued on December 19, 1949, an order granting Concepcion Planas and Iluminado Planas a period of six months from receipt of the order within which to remove their buildings from the premises, with the warning that if they failed to do so an order for the demolition of said buildings will be issued.

"In the meantime, the defendants Concepcion Planas and Iluminado Planas filed an answer to the complaint in Civil Case No. 954, Court of First Instance of Rizal. The case was tried on the merits in said Court and on March 23, 1950, the respondent Judge rendered therein judgment for the plaintiff and against the defendants, ordering the latter to vacate the property described in the complaint, to pay P411.70 a month to the plaintiff from April 1, 1948, until the property is vacated, and to pay the costs of the suit. From this judgment, Concepcion Planas and Iluminado Planas appealed to the Court of Appeals, and the case was docketed in this Court as CA-G. R. No. 6562-R, entitled Madrigal & Co., Inc., plaintiff-appellee vs. Concepcion Planas and Iluminado Planas, defendants-appellants.

"On April 15, 1960, defendants Concepcion Planas and Iluminado Planas filed in the Court of First Instance of Rizal a motion in which they asked that the writ of execution of the judgment of the Municipal Court of Pasay City, issued in the case pursuant to the order of December 19, 1949, be suspended. This motion was granted by the respondent Judge in an order dated April 15, 1950. On June 12, 1950, Concepcion Planas and Iluminado Planas again filed in the Court of First Instance of Rizal another motion in which they asked that, inasmuch as the six months period fixed by the Court in its order of December 19, 1949, within which the defendants should vacate the premises was then about to expire, and they had appealed from the judgment of the Court of First Instance to the Court of Appeals, the order of execution of October 22, 1949, and that of demolition of December 19, 1949, be suspended or set aside. On June 17, 1949, the respondent Judge granted this motion and suspended his order of demolition of December 19, 1949, and gave the defendants a further extension of sixty days, or until September 30, 1950, within which to remove voluntarily their improvements on the premises. This extension having expired without the defendants having removed their improvements on the property, on October 3, 1950, Madrigal & Co., Inc., filed an urgent motion for the issuance of a special order of demolition, under the provisions of Section 13 of Rule 39 of the Rules of Court. The Court of First Instance of Rizal, then presided over by Hon. Manuel M. Mejia, denied this motion in an order dated October 9, 1950. Hence, the present action."

Considering that the motion of October 3, 1950 was submitted after the court of first instance had rendered its decision in the matter and therefore the municipal court's decision had become *functus officio*, the Court of Appeals declined to direct the execution prayed for.

The doctrine of "*functus officio*"—appellant argues does not apply to ejectment cases. Enough to say that we expressly applied it in *De la Fuente vs. Jugo*, 42 Off. Gaz., 2764[1] which the appellate court correctly followed.

Again the appellant insists that the *de la Fuente* doctrine is not controlling, because in the instant litigation, a writ of execution had been issued before the rendition of the decision of the court of first instance. But that writ is unimportant now. It has not been carried out. The present controversy related to the urgent motion of October 3, 1950 for a special order of demolition which motion was properly refused, first because the inferior court's decision had become *functus officio* upon the rendition of the decision of the court of first instance on March 23, 1950, and second, because the Planases had already appealed the cause to a higher court.

It does not matter that, after promulgation of its judgment, the Planases petitioned the Rizal court for extensions of

time, impliedly believing that the execution could still be carried out. That was defendants' error of law which could not bind the courts. Anyway it is not shown that their action had placed the other party in a position wherein it may rightly invoke estoppel on grounds of equity.

Wherefore, the appellate court's decision is hereby affirmed, with costs.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] Also in *Zarcal vs. Herrera*, 46 Off. Gaz. (11th Supp.) 163; 83 Phil., 711.

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