

**JUAN BENEMRITO, ET AL., PETITIONERS AND APPELLANTS, VS.
PETRONILA COSTANILLA, JULITA DE RABOY AND MARCIAL
UGBINAR, JUSTICE OF THE PEACE OF BADIAN, CEBU, RESPONDENTS
AND APPELLEES.**

G. R. No. L-17132. May 31, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Juan Benemrito and Solomon Benemrito appeal on questions of law from the decision of the Court of First Instance of Cebu dismissing their petition for a writ of certiorari against respondents Petronila Costanilla, Julita de Raboy and Marcial Ugbinar.

The facts are: In Civil Case No. 15 of the Justice of the Peace Court of Badian, Cebu, for forcible entry, judgment was rendered on February 5, 1951 in favor of plaintiffs Petronila Costanilla and Julita de Raboy. The judgment ordered defendants Juan Benemrito and Solomon Benemrito to vacate the land in litigation and to pay monthly rents until the return of possession, plus damages.

The defendants appealed to the Court of First Instance of Cebu. They filed a supersedeas bond to stay execution and regularly paid the adjudged monthly rents. Pending appeal the parties entered into an amicable settlement, so on July 20, 1956 they filed a joint motion asking the court "to have the appeal of the above-entitled case dismissed." On the same day the court issued an order dismissing the appeal and directing that the case be returned to the Justice of the Peace Court of Badian for the execution of its judgment.

Having received the case, Marcial Ugbinar, the Justice of the Peace of Badian (and now one of the respondents-appellees), on December 13, 1956 issued a writ of execution of the judgment, but when the sheriff tried to enforce the writ the defendants refused to leave the premises. Instead on January 2, 1957, they filed a motion to quash the writ, alleging that the court's judgment could not be executed since the same had been novated by the amicable settlement, whereby it was agreed that the defendants would continue in possession of the land until the question of ownership could be litigated and decided. , On March 16, 1957 the court denied the motion.

Consequently, the defendants in that action filed a petition for certiorari in the Court of First Instance of Cebu, seeking the annulment of the writ of execution issued by the Justice of the Peace of Badian and the order denying their motion to quash. After trial the writ prayed for was denied, hence this appeal.

The only question to be resolved is whether respondent Justice of the Peace acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the two orders complained of.

The effect of the dismissal of the appeal in the Court of First Instance, pursuant to the "joint motion of the parties, was to revive the judgment appealed from (Section 9, Rule 48, Revised Rules of Court). It was as though no appeal had been duly perfected, and therefore execution should issue as a matter of right (Section I, Rule 39,

Revised Rules of Court). It was evidently in accordance with this Rule that the Court of First Instance directed the return of the case to the Justice of the Peace Court and ordered expressly the "execution of the judgment." Upon the foregoing facts respondent court neither acted without or in excess of its jurisdiction nor abused its discretion. Indeed it had no discretion at all which it could exercise. Compliance with the order of the Court of First Instance was a ministerial duty, which it could not shirk by denying execution or quashing it afterwards.

Petitioners' position is that in the amicable settlement entered into by the parties in the forcible entry case and by reason of which they jointly moved for the dismissal of the appeal therein it was agreed that they (petitioners) would remain in possession of the litigated property. This is denied by private respondents, who claim that it is they who were to be in possession, and they have been sustained in the decision subject of this appeal. But this point is of no decisive importance or after the Court of First Instance dismissed the appeal in the forcible entry case and returned it to the court of origin for execution of the judgment, petitioners' remedy was to have the order of dismissal reconsidered and modified so that it would reflect the true agreement. This petitioners failed to do, and the order became final. What would amount to a modification thereof could certainly not be obtained from the Justice of the Peace Court, whose only possible course of action was to issue, as it did, a writ of execution.

The judgment appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Bengzon, J. P. and Zaldivar, JJ., concur.

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