

**GERONIMO DE LOS REYES, PETITIONER, VS. MARIA B. CASTRO, AND
HON. FEDERICO A. ALIKPALA, IN HIS CAPACITY AS PRESIDING
JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA (BIFIAN)
AND T...**

G. R. No. L-8960. January 31, 1957

Ponente: LABRADOR, J.

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LABRADOR, J.:

Certiorari against diverse orders of the Court of First Instance of Laguna, one of which orders directs the execution of the judgment of the justice of the peace court in Civil Case No. 9828, entitled "Maria B. Castro vs. Geronimo de los Reyes," which case is one of unlawful detainer and is pending in said court of first instance on appeal from a judgment of the justice of the peace court of Calauan, Laguna.

The record discloses that on August 31, 1943, petitioner Geronimo de los Reyes executed in favor of respondent Maria B. Castro, a deed of sale with the right to repurchase of two parcels of coconut land in barrio Calisunga, Calauan, Laguna. The price is P120,000. At the same time the land sold was leased by the vendee to the vendor at a yearly rental of P7,200. The rentals for the first two years were paid in advance. The lands subject of the sale and of the lease were covered by certificates of titles Nos. 8254 and 8255 (of the register of deeds of Laguna), in the name of De los Reyes. One parcel contains 168.9909 hectares and the other 77.2798 hectares. These lands are planted to coconuts.

On October 24, 1947, respondent Castro filed a complaint for unlawful detainer of said lands in the justice of the peace court of Calauan, alleging non-payment of the yearly rentals overdue. The defendant presented an answer setting up the following defenses: (1) that the lands subject of the action were not actually leased to the defendant by the plaintiff but were mortgaged by the former to the latter, the rentals appearing in the contract of lease being the interest on the mortgage loan at the rate of 6% ; (2) that the defendant offered to pay the loan in December, 1944 and in January, 1945, but plaintiff refused to accept the payment offered, so the defendant sued the plaintiff in the Court of First Instance of Manila (Civil Case No. 3134), consigning in favor of the defendant, now petitioner, the amount of the loan; (3) that the plaintiff in the detainer case obtained consolidation of ownership, and secured title to the properties in her own name, fraudulently and without knowledge on the part of the defendant; (4) that the court has no jurisdiction of the action because title to the property is involved; and (5) that there is another action pending in the Court of First Instance of Manila regarding the same land, this pending action being Civil Case No. 3910 of said court, in which case the question of possession of the property is necessarily included or involved.

On October 12, 1949, the justice of the peace court of Calauan rendered judgment in favor of the plaintiff, and defendant appealed to the Court of First Instance. He gave notice of his appeal on November 16, 1950. The apparent delay in the perfection of the appeal gave occasion to the Court of First Instance of Laguna for not accepting the appeal, but upon proceedings in this court the appeal was allowed to be prosecuted.

On November 11, 1954, plaintiff filed a motion in the Court of First Instance of Laguna for the immediate execution of the judgment of the justice of the peace court. On March 16, 1955, after due hearing and opportunity for the parties to settle the case amicably, without their having been able to do so, the Court of First Instance issued an order for the execution of the judgment of the justice of the peace court. The order is as follows:

"It appearing that the defendant, through counsel, has admitted in open court that he has not paid the rentals on the leased premises corresponding to the period from the rendition of the judgment in the lower Court up to the present and it, likewise, appearing that no supersedeas bond has been filed to stay execution during the pendency of the appeal and the period of fifteen days granted by this Court to the defendant to effect the amicable settlement of this case having expired;"As prayed for by the plaintiff, let a writ of execution be issued in accordance with the judgment of the Justice of the Peace Court of Calauan, Laguna."SO ORDERED."

By virtue of this order of execution two writs were issued, one directed to the sheriff of Manila for the collection of the unpaid rentals, and another to the provincial sheriff of Laguna or to his deputies, directing that plaintiff be placed in possession of the land subject of the action. Upon denial of the motion to reconsider the order for immediate execution, petitioner filed this case in this Court on March 24, 1955, and an amendatory petition, on March 28, 1955.

The grounds upon which the amendatory petition for certiorari are based are as follows: (1) that the execution of the judgment of the justice of the peace court could not be ordered after a period of five years from the rendition of judgment of the said court, because the party in whose favor the judgment was rendered is estopped from praying therefor; (2) that no opportunity was given the petitioner to file a supersedeas bond to stay execution of the judgment; (3) that there is another action pending in the Court of First Instance of Manila on the question of title of the property, and the question of ownership is of initial and prior importance over the liability that defendant may have for alleged rentals of the property in question. It is also argued, in connection with the pendency of the action involving ownership, that this question is a prejudicial question that should first be decided before petitioner may be adjudged liable for supposed rentals or to vacate the property in favor of plaintiff. Upon presentation of the amendatory petition, we granted a writ of preliminary injunction upon petitioner filing a bond in the sum of P2,000.

A majority of the Justices are of the opinion that the certiorari should be granted as the execution under the circumstances of the case constituted an abuse of discretion, but their common judgment is based on different grounds. Thus the Chief Justice is of the opinion that inasmuch as the execution of the judgment of the justice of the peace court was not prayed for within five years from the rendition of the judgment in said court, under the principle that a judgment of a court may not be executed after the expiration of five years from its entry, said judgment should not be allowed to be executed as a period of five years had elapsed since its rendition. Other Justices, like Justices Bengzon and Alex Reyes, hold the view that inasmuch as there are reasonable grounds for the belief that original contract between the petitioner and the respondent was one of sale with right to repurchase and the vendor remained in possession of the property, the contract may actually have been one of mortgage, and not one of real sale, especially in view of the fact that the price in the sale (which was in Japanese war notes) was proportionately low in comparison with the actual value of the property (See Arsenio Es-cudero's affidavit that in September, 1943 he had offered to purchase this land for P700,000, but that the owner refused the offer and preferred to mortgage it to another person, Annex B attached to supplementary memorandum, p. 327 of Record.) Another reason given by these Justices is the pendency of the action involving the ownership of the property, which action was filed in the Court of First Instance of Manila before liberation and subsequently renewed, when the petitioner learned that the respondent had secured a certificate of title to the property without knowledge of or notice to him, this action being filed soon after the institution of the action for unlawful detainer in the justice of the peace court.

The undersigned, however, in addition to the reasons expressed by Justices Bengzon and Reyes, is of the opinion that the provision for the immediate execution of a judgment of the justice of the peace court in actions of unlawful detainer under section 8 of Rule 72 of the Rules of Court, is not applicable to an action of detainer like the present, where there is no immediate urgency for the execution because it is not justified by the circumstances. This view is based on the history of the action of forcible entry. This action originated in the English common law where it was originally in the form of a criminal proceeding whereby lands or properties seized through the use of force could immediately be returned. In time, this action was transferred into a civil one and was applicable in those cases where a person has been dispossessed of an estate by force or intimidation and the law desires that the possession he has lost be returned to him in a summary proceeding. In the course of time the action was extended to cases where tenants refused to deliver property rented by them to their landlords in spite of the existence of contract obligations to surrender possession of the property leased (*Penalosa vs. Tuason*, 22 Phil. 303, 315-317; 2 Moran, 1952 ed., pp. 286-289.) It is the opinion of the writer that inasmuch as the property now subject of litigation was originally sold only with right to repurchase to the plaintiff, so that the plaintiff was not really and originally the owner and possessor of the property, and since there are reasonable grounds to believe that the contract entered into between them was not one of lease but one of loan with mortgage of the property, the right of the plaintiff to the immediate possession of the property is not apparent, clear or conclusive, and neither should his right to the immediate execution of the property allowed until opportunity to settle the question of ownership is had. In other words, the writer of the opinion holds that while section 8 of Rule 72 is applicable also in cases of unlawful detainer, the immediate execution it provides for may be availed of only if no question of title is involved and the ownership and the right to the possession of the property is an admitted fact. Here is the opinion of this Court in *Penalosa vs. Tuason*, *supra*:

" * * these statutory summary actions of unlawful entry and detainer are not processes to determine the actual title to an estate nor to determine the right of entry to an estate, but simply quieting processes by virtue of which a party in possession of an estate may not be dispossessed of that estate by force; the law preserving his possession to him in a summary manner until the right of ownership or of possession can be tried in due course of law and by due process of law rather than left to be determined by the relative strength of the parties."*
(Italics ours.)

The majority of the Court, therefore, is of the opinion that the petition for certiorari should be, as it hereby is, granted, and the orders of the Court of First Instance of Laguna, subject thereof, reversed and set aside, and the preliminary injunction issued hereby made permanent, without costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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