

**VITALIANO ROBLES, ET AL., PETITIONERS AND APPELLANTS, VS.
CANDIDA SAN JOSE, ET AL., RESPONDENTS AND APPELLEES.***G.R. No. L-8627. July 31, 1956*

Ponente: PARAS, C.J.

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The respondents and appellees, Candida San Jose et al., filed in the municipal court of Manila against the petitioners-appellants separate complaints for unlawful detainer (Civil Cases Nos 27142, 27144, 27156, 27157, 27158, 27170, 27171 and 27172). After a joint trial the court rendered a decision on October 19, 1953, ordering the appellants to vacate their respective lots and to pay to the appellees their respective unpaid back rentals, copy of which decision was received by attorney for appellants on October 22, 1953. Instead of appealing, the appellants filed on November 5, 1953, or one day before the expiration of the period for appeal, a petition for certiorari in the Court of First Instance of Manila (Civil Case No. 21118), which was summarily dismissed on the same date on the ground that appellants' remedy was appeal. Notice of the order of dismissal was received by attorney for appellants on November 7, 1953, when the period for appeal had already expired. On December 3, 1953, the appellants filed in the Court of First Instance of Manila a petition for relief from the decision of the Municipal Court in the detainer cases (Civil Case No. 21332), alleging that said appellants were prevented from taking an appeal by accident, mistake or excusable negligence. On January 4, 1954, the court dismissed said petition for relief on the ground that appellants' failure to perfect an appeal on time was unexcusable negligence, pure and simple. The petitioners have appealed.

Counsel for appellants contends that he is a new practitioner and his mistake in instituting a petition for certiorari, instead of appealing from the decision of the municipal court in the detainer cases, may be considered excusable, considering that immediately upon knowing that certiorari was not the proper remedy he filed the petition for relief, and especially in view of the fact that this case involves a big social problem—the ejection of about 160 persons living in the houses respectively occupied by the appellants.

While we sympathize with appellants' situation, we cannot depart from the rule that "relief will in no case be granted to a party who seeks to be relieved from the effects of a judgment which he claims has been obtained against him through fraud, where the loss of the remedy at law was due to said party's own negligence or fault or that of his counsel" (*Echarri vs. Belen Velasco*, 55 Phil., 570, 573), and "the erroneous interpretation or application of a law is not an excusable error giving the right to remedy afforded by section 113 of the Code of Civil Procedure" (*Catala vs. Monteverde*, 63 Phil., 503, 509). It is needless to state that we have to apply the law and the Rules of Court with uniformity, unaffected by the class of litigants.

It is to be noted that when the appellants, through their counsel, filed in the Court of First Instance of Manila a petition for certiorari on November 5, 1953, there was still one day within which to perfect an appeal from the decision of the municipal court in the detainer cases; and yet although counsel for appellants received notice of the dismissal of their petition for certiorari on November 7, 1953, no step was taken by said counsel until December 3, 1953, when he filed in the Court of First Instance of Manila the present petition for relief. Some

earnestness would have urged counsel to perfect an appeal in the detainer cases on the same day when he received notice of the dismissal of his petition for certiorari, or even one day thereafter; and he could have reasonably contended that the period for appeal was suspended during the pendency of the petition for certiorari in the Court of First Instance of Manila. We advert to these facts merely in further support of the ruling of the court a quo that appellants' failure to appeal in the detainer cases was unexcusable.

Although already superfluous, it may be pointed out that the alleged ownership by the appellants of their respective lots finds sufficient refutation in the conclusion of fact of the Municipal Court that they were mere lessees under the evidence; and the contention that the Municipal Court had no jurisdiction over the detainer cases involving a period of more than one year, is likewise contrary to what was proved during the trial, namely, that the notices to vacate were received by the appellants only on May 31 and June 1, 1953, or much less than one year before the complaints for unlawful detainer were filed in the Municipal Court on July 27 and 28, 1953.

"The fact that it is alleged in the complaint that defendants failed to pay the rents since after August 26, 1923, does not make unlawful defendant's withholding of possession of the property. Mere failure to pay rents does not ipso facto make unlawful tenant's possession of the premises. It is the owner's demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate,, which make unlawful withholding of possession. There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession." (Canaynay, et al. vs. Sarmiento, 45 Off. Gaz., No. 1, p. 252.)

Wherefore, the appealed order is affirmed, with costs against the appellants,

Bengzon, Padilla, Reyes, A., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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