

CHUNG BEN, HONORABLE AGUSTIN P. MONTESA, PRESIDING JUDGE OF BRANCH B, COURT OF FIRST INSTANCE OF MANILA, AND THE SHERIFF OF THE CITY OF MANILA, PETITIONERS, VS. CO BUN KIM, LYDI...

G.R. No. L-7033. November 29, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

A complaint for detainer was filed by Chung Ben against Co Bun Kim and Lydia Tiao Han in the municipal court of Manila where after trial judgment was rendered—

* * * in favor of the plaintiff and against both defendants, ordering the latter to vacate plaintiff's premises mentioned in the complaint; to pay the plaintiff the sum of P2,700 as rentals in arrears with 6 per cent interest thereon from June 2, 1953 until fully paid, plus the rentals that may be due from July 1, 1953 at the rate of P300 a month until they finally vacate and surrender possession thereof to the plaintiff, plus the sum of P200 as and for attorney's fees, aside from the costs of this suit. (Case No. 20436.)

The defendants appealed to the Court of First Instance of Manila (Case No. 20070). On 16 July 1953 the plaintiff moved for the immediate execution of the judgment on the ground that the defendants had failed to pay him in advance or to deposit in court the rental for July within the first five days of said month as stipulated in the lease contract. On 18 July the Court granted the motion. Whereupon the defendants filed in the Court of Appeals a petition for a writ of certiorari with preliminary injunction to annul the order directing immediate execution of the judgment. On 31 August the Court of Appeals annulled and set aside the order complained of on the ground that the rent for July would be due and payable on or before the 10th day of the succeeding month.

In this petition Chung Ben seeks the review and reversal of the judgment of the Court of Appeals. The other petitioners are just nominal parties.

The petitioner contends that as the respondents failed to pay him the rental for July or to deposit it in court on or before the 5th day of said month, as stipulated in the lease contract, he is entitled to have the judgment of the municipal court, executed. On the other hand, the respondents claim that pursuant to the provisions of section 8, Rule 72, the rental for July was not yet due on 18, July 1953 when the writ of execution was issued by the Court of First Instance of Manila, but on or before the 10th of August.

True, the dispositive part of the judgment rendered by the municipal court does not make mention or reference to a contract of lease nor does it state the time when payment of the monthly rental should be made. Nevertheless, the respondents do not deny the allegation of the petitioner that the writ of execution was issued "for failure to pay or deposit rents on time as agreed;" and "that in this case there is no dispute that there is a contract between the parties whereby it was agreed that the monthly rental should be paid in advance within the first five days of the month to which such rental shall be made to correspond." The same allegation was made in the Court of Appeals by the petitioner, then respondent, and the respondents, then petitioners, did not deny it. They just relied to

support their petition to annul the writ of execution on the provisions of section 8, Rule 72, which allow them to pay to the petitioner or deposit in Court the rental of a given month on or before the tenth day of the following month.

As there is a contract of lease upon which, "the judgment rendered by the municipal court was found, that part of section 8, Rule 72, which provides: ' * * * and unless, during the pendency of the appeal, * * * or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment,' " does not apply, but another part of the section and Rule immediately preceding the one just quoted applies. . Said part provides: " * * * and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, * * * ." This view finds support in the rule laid down in *Peck vs. Concepcion, et al.*, 74 Phil. 653. There as in this case the dispositive part of the judgment rendered by the municipal court made no mention of a lease contract but merely ordered the defendant to restore the premises to the plaintiff and to pay him a monthly rental of P55 from October 1943 until the premises shall have been restored to the plaintiff and costs; and a writ of execution having been issued by the Court of First Instance to which the case had been appealed, because of defendant's failure to pay the monthly rental as agreed upon or stipulated in the lease contract, the defendant sued out a writ of certiorari in this Court which was denied by the dismissal of the petition. This Court said:

The petitioner contends that since the judgment of the municipal court did not expressly find that there existed a contract between the parties, the monthly rental required in said judgment to be paid must be considered as "the reasonable value of the use and occupation of the premises" and that, therefore, it should be paid or deposited within the first ten days of the month succeeding that to which it corresponded, as provided in the last clause of section 8 of Rule 72 above quoted. The respondents, on the other hand, contend that since the complaint for unlawful detainer alleged the existence of a written contract of lease between the parties on a month-to-month basis at a monthly rental of P55, payable in advance, which contract, attached to the record, has not been denied by the petitioner, the fact that the judgment of the municipal court for the monthly rental was in accordance with said contract made it obligatory upon the defendant to pay or deposit said rental in accordance with said contract.

We find respondents' contention to be correct. To assume that there was no contract between the parties and that the monthly rental of P55 mentioned in the judgment of the municipal court was merely based on a finding as to the reasonable value of the use and occupation of the premises, is not only unwarranted by the language of the judgment itself but contrary to the record before the respondent judge. * * *.

* * * Since in the instant case there is a contract between the parties for the payment of the rent of P55 in advance within the first ten days of each, month, and since the petitioner as defendant below failed to pay or deposit the rent for the month of January 1944 on or before the 10th day of said month, the respondent judge had no alternative but to grant the petition for execution prayed for by his co-respondent Mrs. Montenegro.

The judgment under review rendered by the Court of Appeals is reversed, and the writ of preliminary injunction issued by the Court below is dissolved, with costs against the respondents, except the Court of Appeals.

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

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