

PACIFICO VICTORIANO, PETITIONER, VS. LEOPOLDO, JOSEFINA, OFELIA AND ENRIQUE BRIAS, AND THEIR ATTORNEY IN FACT JOSE ELZINGRE, EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF MANILA, AND ...

G.R. No. L-1506. December 22, 1947

Ponente: TUASON, J.

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TUASON, J.:

In civil case No. 532 of the Court of First Instance of Manila for unlawful detainer, judgment was rendered on December 12, 1946, sentencing the defendant, petitioner herein, to vacate the premises in question, to pay the rents in arrears (P1,437.50) up to and including November, 1946, and the subsequent rents as they fell due. On April 2, 1947, the court approved the record on appeal and the appeal bond of P60 and ordered them forwarded to the Court of Appeals. Before that date, on March 17, 1947, on motion of the plaintiffs, the court had made an order requiring the defendant to file a supersedeas bond of P2,000 to answer for the payment of the rents in arrears and the rents to become due, with the warning that if he failed to do so execution would be issued. The defendant sought the annulment of that order in a petition for certiorari in the Court of Appeals. In a resolution of the latter court promulgated on the 18th of April, 1947, it denied the petition, declaring the order "valid, just and in consonance with equity and law" but giving the lower court discretion to require the defendant, in lieu of a supersedeas bond, to deposit the amount which the court had found to be due as unpaid rents and thereafter P68.75 monthly during the pendency of the appeal. That resolution was not appealed and has become final. On June 14, 1947, the trial court ordered the execution of the judgment in view of the defendant's failure to file either a supersedeas bond in the required amount or to deposit the current rents and the rents in arrears. It appears that in June, 1947, (the exact date not stated), the plaintiff filed a motion for execution with the Court of Appeals, but that court, by resolution of June 6, 1947, refrained from taking any action on said motion and told the movants to reproduce it in the lower court in accordance with section 9, Rule 41, of the Rules of Court. That resolution of the Court of Appeals has also become final. The plaintiffs filed a motion with the trial court as suggested by the Court of Appeals, and the Honorable Emilio Peña, Judge, on June 14, 1947, ordered execution to issue.

This is an application for certiorari challenging the jurisdiction of the respondent judge to issue the above execution, on the ground that more than two months had expired after the appeal was perfected. The above statement of facts shows that execution was to be issued before the perfection of the appeal but that the petitioner, as defendant in the case, contested its (execution's) legality and succeeded in halting the same, in a petition which was later decided against him by the Court of Appeals.

That being so, the present petition must be denied. Good conscience and fair dealing will not permit a party to take undue advantage of a situation which he himself not only created, but did so against the bitter opposition and to the prejudice of his opponent. As a matter of fact, the execution complained of is practically the same execution issued or to be issued on time and was blocked temporarily by the now petitioner's action. Viewed in this light, the present petition is *res adjudicata*, the execution in question being the very matter which was actually adjudged

and declared in order by the Court of Appeals.

The petitioner's counsel cites section 2 of Republic Act No. 66 and the decision of this court in Santos vs. De Alvarez (78 Phil., 503). That Act and that decision seek to protect honest tenants, not to aid those who refuse to live up to their part of the contract. As has been seen the defendant is very far behind in his rental payments and has not put up any security for the satisfaction of the judgment in the event the appealed decision is affirmed totally or in part as to the amount due and to become due.

The instant petition is one in aid of appellate jurisdiction and should have been filed with the Court of Appeals to which the petitioner has appealed the judgment, the execution of which he wants to stop. His two previous applications for certiorari were addressed to and decided by that court. He has not given any reason why the third one was not presented there also. We should turn down outright this petition for the reason just adverted to if there were a faintest color of merit in it for the proper court to consider.

The petition is denied with costs.

Paras, Perfecto, and Hilado, JJ., concur.

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