

**RAYNUNFO FELIPE AND ANGELINA DAGURO, PETITIONERS, VS.
ANASTASIO TEODORO, JUDGE OF FIRST INSTANCE OF ILOCOS
NORTE, ET AL., RESPONDENTS.**

G.R. No. L-22770. October 11, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the record of the present case that the respondents Agustin Balisacan, Patricio Abes and Domingo Rasalan brought an action of forcible entry and detainer in the court of the justice of the peace of the municipality of Solsona, Province of Ilocos Norte, against the herein petitioners and obtained a judgment for the possession of the land in litigation and for the return of 20 uyones of palay or the value of the same amounting to P580. In an anticipation of an appeal by the defendants, the plaintiffs in the forcible entry and detainer case, the herein respondents, presented a motion to the justice of the peace praying that he amend his judgment by adding to it a clause filing the monthly rental value of the land, but the motion was denied by the court on the ground that the action was one of despojo and not of desahucio, and that the land had no special monthly rental value.

The defendants thereupon perfected an appeal to the Court of First Instance in accordance with section 76 of the Code of Civil Procedure and gave the appeal bond there prescribed, but failed to give the special bond for rents, damages and costs required by section 88 of the same Code for a stay of execution.

After the case had been entered upon the docket in the Court of First Instance, but before trial, the plaintiffs filed a motion asking that the monthly rental value of the land be determined and that the defendants be required to make monthly deposits with the court of the amount of the rental value so found. Subsequently the plaintiffs filed another motion asking that the defendants be ordered to give the special bond for rents and damages required by section 88 of the Code of Civil Procedure.

In an order dated June 17, 1924, the respondent judge granted both motions fixing the amount of the monthly rental value of the land at P48.33 and the amount of the special bond for damages in the sum of P580. The defendants thereupon presented a motion for the reconsideration of this order and upon the denial of the motion brought the present proceeding for a writ of certiorari, praying that the Court of First Instance be ordered to certify to this court the record of the action of forcible entry and detainer and that thereupon the order of June 17, 1924, be declared null and void and in excess of the jurisdiction of the court from which it issued.

We agree with the petitioners that the Judge of the Court of First Instance exceeded his jurisdiction in undertaking to fix the amount to be deposited monthly with the Court of First Instance for the use and occupation of the land by the defendants. In the absence of a contract, the amount of the periodical deposits to be made by an appellant under section 88, must be determined in the judgment of the justice of the peace, who has original jurisdiction of the case, and the Court of First Instance cannot, in advance of the trial upon its merits, virtually modify that judgment by adding to it a provision fixing the amount of such deposits.

It is obvious, however, that the issuance of a writ of certiorari on that ground in the present case will be futile. The

failure of the appellants from the judgment of the justice of the peace to give the special bond required by section 88, +, for rents and damages, prevents' a stay of execution of the judgment as far as the restitution to the appellees of the possession of the land is concerned. The fact that the Court of First Instance in its order of June 17th required the appellants to file the special bond in nowise altered the previously existing situation; by operation of law, the appellees were entitled to the immediate execution of the judgment for possession and did not need the order of June 17th to accomplish that purpose.

The petition is denied with the costs against the petitioners. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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