

**PEDRO CEREZO, PETITIONER, VS. HONORABLE EMANUEL M. MUNOZ, JUDGE COURT OF FIRST INSTANCE OF PANGASINAN AND PEDRO S. SISON, RESPONDENTS.**

*G.R. No. L-9575. July 17, 1956*

Ponente: BAUTISTA ANGELO, J.

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**BAUTISTA ANGELO, J.:**

This is a petition for certiorari praying that the writ of execution issued by respondent judge on July 29, 1955 be set aside on the ground that it was issued in excess of his jurisdiction.

This petition stems from a decision rendered by the Court of First Instance of Pangasinan, presided over by his Honor Emanuel M. Munoz, in two civil cases which were jointly tried upon agreement of the parties on the ground that they involve the same parties and the same subject matter (cases Nos. 10374 and 12672). Case No. 10374 is for recovery of possession of a parcel of land occupied by Pedro Cerezo while case No. 12672 is for unlawful detainer of the same land brought against the same party. The dispositive part of the decision reads as follows:

"a. In civil case No. 10374, declaring the plaintiffs Cornelio Barnachea, Fernanda Corpus, Esteban M. Corpus and Eusebio S. Sison as owners and entitled to the possession of the land described in the complaint in the proportion provided for in their agreement evidenced by Exhibit 'C';

"b. In civil case No. 12672, the defendant Pedro Cerezo is hereby ordered, after this decision becomes final, to deliver the possession of the land to the plaintiffs;

"c. In civil case No. 12672, defendant Pedro Cerezo is hereby ordered to pay the rentals at the rate of PI 50 a year until possession shall have been delivered to the plaintiffs;

"d. Also in civil case No. 12672, the Provincial Treasurer of Pangasinan is hereby ordered to deliver to the plaintiffs or their attorney of record, Jose G. del Castillo, the sum of P1,050 deposited under Official Receipt No. 7534896, dated July 14, 1954; and

"e. The defendant is hereby sentenced to pay the costs in both cases."

On July 23, 1955, the plaintiffs in both cases filed a motion for execution of the judgment alleging, among other grounds, that defendant has failed to deposit with the clerk of court the rental of the land for the current year and, therefore, they are entitled to take immediate possession of the property pursuant to section 8, Rule 72, of the Rules of Court. This motion was favorably provided for in an order issued on July 29, 1955, which was amended on August 16, 1955, by virtue of a clerical error inadvertently committed, with regard to the beneficiaries of the judgment. And when the court refused to reconsider these orders and to set aside the writ of execution, defendant interposed the present petition for certiorari.

It should be noted that respondent judge in granting the motion for execution did not state any particular reason for allowing such execution pending appeal but simply stated that the motion was "well taken and in accordance

with law." Undoubtedly, the court was referring to paragraph c of the motion which states that "in view of the failure of the defendant to deposit the rental for the current year, execution may issue to place the plaintiff in possession of the premises pursuant to the provisions of Rule 72, Sections 8 and 9." If such were the case, the question that arises is: Was the court justified in ordering the execution on that ground? Petitioner contends that this case does not come under Section 8, Rule 72, and we believe that this position is well-taken.

Note that the judgment which is sought to be executed fixes a yearly rental of P150 which should be paid by defendant until possession of the property is returned to the plaintiffs. No damages were assessed against defendant because, with regard to the rentals for the previous years, which amount to P1,050, the same have already been deposited in court even before rendition of the judgment. Not being a monthly rental what defendant is required to deposit in court, section 8, Rule 72 does not apply, for, as this Court aptly said: "This rule contemplates payment of a monthly rental the failure of which would give rise to execution, and not the payment of rental in any other manner. In the present case, the rental fixed by the justice of the peace court is not monthly but yearly, and this is understandable considering the fact that the property subject of lease is a fishpond. \* \* \* As it now appears the rental fixed by the court is not yet due and, therefore, the order of execution issued by the respondent judge is premature." (Victor de la Cruz vs. Honorable Ambrosio T. Dollete, et al., 96 Phil., 797). Since the rental which defendant has allegedly failed to deposit is for the "current year", it is evident that; based on this ground, the writ of execution is premature.

It is true that under Section 2, Rule 39 the trial court may also order that "before the expiration of the time to appeal", in the exercise of its discretion, a writ of execution be issued "on motion of the prevailing party with notice to the adverse party upon good reasons to be stated in a special order", and that, even in that eventuality, execution may be stayed "upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from", but the writ of execution in question cannot be justified even under the above provision of the rules for the order of the court does not state the "good reasons" that may justify such departure from the normal course of appeal. While the reasons justifying such action may be gathered from other pleadings appearing in the record, we fail to find any in this particular instance. We are therefore persuaded to conclude that the respondent judge has acted in excess of his jurisdiction when he granted the writ of execution under the circumstances obtaining in this case.

Wherefore, petition is granted, with costs against respondents, other than respondent judge.

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

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