

CONCHITA COINCO, PETITIONER, VS. RAMON R. SAN JOSE JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA JUANITA IGNACIO AND LEON CASTILLO, RESPONDENTS.

G. R. No. L-4583. July 30, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for mandamus against Judge Ramon San Jose of the Court of First Instance of Manila praying that said respondents be ordered to order the execution of the judgment rendered by him against the other respondents, because of failure of the latter, during the pendency of the defendants' appeal to said Court of First Instance, to pay to the petitioner or deposit with the court the rents adjudged by the Municipal Court.

The essential facts alleged under oath in his petition by the petitioner, and not denied by the respondents who failed to answer the petition, are the following:

"That on June 22, 1949, your petitioner filed a civil complaint for ejectment against the respondents Juanita Ignacio and Leon Castillo in the Municipal Court of Manila, which case was docketed in said court as Civil Case No. 7988.

"That the said case was duly tried in the aforementioned municipa court, and, on August 18, 1949, a decision was rendered ordering the herein respondents Juanita Ignacio and Leon Castillo to vacate the premises in question, and to pay your petitioner a monthly rental of P15 a month until said respondents shall vacate the premises in question.

"That respondents, Juanita Ignacio and Leon Castillo perfected their appeal from the aforementioned decision, and the record of the said case had been duly transmitted to the Court of First Instance of Manila, where it is now pending appeal, is docketed as civil case No. 9065.

"That respondents Juanita Ignacio and Leon Castillo failed to pay, either to your petitioner or to the court the rentals for the months of June 1950 to December, 1950, notwithstanding the lapse of the period allowed for said payment by Rule 72, section 8 of the Rules of Court.

"That on December 19, 1950, your petitioner filed a motion for execution of the judgment appealed from on the ground of the aforementioned failure of respondents, Juanita and Leon Castillo to pay rentals within the reglementary period.

"That, after due notice to the respondents Juanita Ignacio and Leon Castillo, said motion was heard by respondents, Judge Ramon R. San Jose, and, in the said hearing respondents Juanita Ignacio and Leon Castillo, admitted not having paid the rentals aforementioned, having deposited only the amount of P120.60 on December 20, 1950, after the service of motion for execution was served, but objected to the motion, and presented arguments which were absolutely without legal basis.

"That, on January 16, 1951, the respondent Judge Ramon R. San Jose promulgated an order, copy of which was

received on January 19, 1961, denying the motion for execution, and laying, as the basis for said denial, the hackneyed, indeterminate and much abused phrase: 'in the interest of justice.'

"That on February 1, 1951, your petitioner filed a motion for reconsideration, inviting the attention of the respondent, Judge Ramon R. San Jose to the error of the order Annex "C" in the performance of an act specifically enjoined upon him as a duty by Rule 72, section 8 of the Rules of Court.

The question for us to determine in the present case is whether the respondent judge was not bound to order the execution of the judgment of the Municipal Court, because the defendants-appellants had deposited all the rents due and unpaid after receiving notice of the motion for execution filed by the plaintiff-appellee.

We have already ruled in the case of Carbungco vs. Axnparo,[1] (46 Off. Gaz., Supp. to No. 11, p. 91), that payment or deposit by the defendant-appellant in a case of illegal detainer of the rents due, made after notice of a motion for execution had been served upon him by the plaintiff-appellee, cannot be accepted as an excuse for not ordering the execution of the judgment. It is true that in the case of Santos vs. Alvarez et al., [2] (44 Off. Gaz., [No. 11], 4259), we have held that, under Commonwealth Act No. 689, as amended by Republic Act No. 66, failure of the defendant-appellant in a case of illegal detainer to make on time periodical deposits or payment of the rents, adjudge by the inferior court during the pendency of his appeal to the Court of First Instance, is not ground for execution unless it be shown that the failure was deliberate or intentional. But this ruling was good only during four years from October 15, 1945, to October 14, 1949, in which said acts were in force.[3] (Estrada vs. Caseda, 47 Off. Gaz., 1815.)

The respondent Judge is therefore compelled to order the execution of the judgment of the Municipal Court if said judgment is still enforceable or the case is still pending appeal in the Court of First Instance, with costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] 83 Phil., 638.

[2] 78 Phil., 503.

[3] 84 Phil., 791.

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