

EUGENIO EVANGELISTA, PETITIONER, VS. M. L. DE LA ROSA, ETC., ET AL., RESPONDENTS.*G.R. No. L-180. February 06, 1946*

Ponente: HILADO, J.

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Petitioner Eugenio Evangelista prays for the issuance of a writ of mandamus directing respondent Judge M. L. de la Rosa of Branch IV of the Court of First Instance of Manila "immediately or at some other specified time, to order the execution of the judgment appealed from in Civil Case No. 71376" of said Court.

On September 17, 1945, the Municipal Court of the City of Manila rendered a decision in Civil Case No. 1056 of said Court for illegal detainer in favor of the therein plaintiff, now petitioner, and against the therein defendant, now respondent Dolores Kishimoto, "for the restitution of the premises described complaint and for the recovery of a monthly rental of P80 from June 1, 1945, up to the date of a restitution, and for costs" (Annex B of petition). Respondent having appealed from that judgment, the action was docketed as civil case No. 71576 of the Court of First Instance of Manila.

On November 14, 1945, before the trial of the case in the latter court, petitioner filed a motion for execution of judgment (Annex D of petition) based upon the ground, among others, of the alleged failure of respondent Kishimoto "to make payment on the 10th of September, 1945, and on the 10th of October, 1945, at the rate of P80 a month as determined in the judgment appealed from (par. 2, motion Annex D). Respondent Kishimoto opposed said motion by filing, through her attorneys, her opposition dated November 17, 1945 (Annex E) wherein, among other things, it was alleged that she had "made attempts to pay the monthly rent to the plaintiff for the months of October and November, 1945, but the plaintiff has refused and told her to see his attorneys instead", and that she deposited with the clerk of the Court P140 on the same day, November 17, 1945, "for the months of October, November, and December, 1945".

At the oral argument counsel for both parties agreed that the sum thus deposited was really P240, instead of P140. From the allegation, of paragraph III of the complaint in the Municipal Court (Annex A), it would, appear that the stipulated rent was payable at the end of every month. Upon this basis, when the deposit of P240 was made on November 17, 1945, the rent for December was not yet due—in fact, even that of November was yet to become due. When the motion for execution of judgment (Annex D) and the opposition thereto (Annex E) were argued before the Court of First Instance, neither party offered any evidence in support of his respective allegations. Neither the motion nor the opposition is Verified. Neither did the court require the presentation of affidavits or depositions in support of the motion or the opposition, nor did either party Offer to present them, nor did the court direct the controverted facts to be heard, wholly or partly on oral testimony or depositions, under the authority of Rule 123, section 100, providing as follows:

"SEC. 100. Evidence on motion.—When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions".

In the case of *Bauermann vs. Casas*, (10 Phil., 386, 390), the Supreme Court, applying the rule governing judgment on the pleadings to a similar situation, held *inter alia*:

"One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (*La Yebana Company vs. Sevilla*, 5 Off. Gaz., 1073.)"

While the pleadings involved in the case just cited were the plaintiff's complaint and the answer of the defendant Enrique Carmelo, the reasons therein given in support of the holding that the party who prayed for judgment on the pleadings therein without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings, are equally applicable to the present case where the movant submitted his motion without offering proof as to the truth of the allegations contained therein, even only in the form of affidavits or depositions, and without giving the opposing party an opportunity to introduce evidence in rebuttal.

It follows from what has been said above that petitioner, as movant, must be taken to have submitted and rested his motion on the material and relevant allegations of the opposition fallen together with such of his own as are admitted therein. One of those allegations of the opposing party was that she had made attempts to pay to petitioner the monthly rents for October and November, 1945, but that said petitioner refused the offer, telling her to see his attorneys instead. If petitioner did not desire to rest his motion for execution on these and other pertinent allegations of the opposing party, he should have offered evidence in the form, of oral testimony, affidavits or depositions, as the Court might direct, under the authority of Rule 123, section 100. As to the month of September, 1945, it appearing that when the deposit of P240.00 was made for the months of October and November, and December, the rent for December was not yet due, not to mention that for November which, strictly, was not due either—while the writer has some doubts on the matter—the majority of the Court are of opinion that the Court should consider P80 out of that deposit to be applicable, as it is hereby applied, to the month of September, 1945.

In view of the foregoing, we hold that the respondent Judge did not neglect to perform any act specifically enjoined by law as his ministerial duty, in denying the motion for executions. Petition denied, without costs. So ordered.

Moran, C. J., Ozaeta, Parás, Jaranilla, Feria, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

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