

**CARLOS ZABALJAUREGUI, PETITIONER, VS. POTENCIANO PECSON,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA; THE
SHERIFF OF THE CITY OF MANILA; AND ANGEL DE LEON ONG,
RESPONDENTS.**

G. R. No. L-3642. April 28, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari with preliminary injunction. By resolution issued on February 16, 1950, this Court granted the writ of preliminary injunction upon filing by the petitioner of a bond in the amount of P2,000.

On December 6, 1946, Angel de Leon Ong filed a case for ejectment in the Municipal Court of Manila regarding certain property located at Tanduay, Quiapo, City of Manila. (Civil Case No. 1895). Acting on the stipulation submitted by the parties, the court rendered judgment ordering the defendant to pay the sum of P350 as back rentals, and a monthly rental of P70 from January, 1947. Defendant was allowed to stay in the premises until final judgment is rendered in a civil case between Manuel Tambunting and Angel de Leon Ong pending in the Court of First Instance of Manila. On January 10, 1947, defendant filed a motion for new trial alleging that he has a good and valid defense against the plaintiff. The motion was denied and defendant appealed to the Court of First Instance. And as the defendant failed to pay the rentals as set forth in the judgment, plaintiff moved for the issuance of a writ of execution under the provisions of Section 8, Rule 72 of the Rules of Court. This motion was granted. Defendant filed several motions for reconsideration and when these were denied, he filed this petition for certiorari.

It also appears that months prior to the filing of the ejectment case by Angel de Leon Ong, one Simeon O. Suan also filed against the same defendant a case for ejectment covering the same property, but, aside from its filing, no further step was taken therein, and eventually it was dismissed. (Civil Case No. 1857.)

It likewise appears that pending the ejectment case filed by Angel de Leon Ong, one Manuel Tambunting filed a petition to intervene upon the plea that he had filed a case for, recovery of the same property against Angel de Leon Ong, which petition was granted. Then Angel de Leon Ong sold the property to Simeon O. Suan, and when the latter died, his heirs were ordered substituted in lieu of Angel de Leon Ong.

Petitioner now contends that the lower court abused its discretion in issuing the writ of execution of the judgment of the Municipal Court because he has good reasons justifying his refusal to comply with said judgment which the court has disregarded. These reasons are: that sometime in September 1947, Angel de Leon Ong sold the property in question to Simeon O. Suan, who is the plaintiff in another ejectment case against the petitioner (Civil Case No. 1857 of Municipal Court), wherein he deposited some rentals relative to the same property; that Simeon O. Suan, or his heirs, have failed to ask for the dismissal of said civil case No. 1857, thereby placing the petitioner in a situation where he has to deposit double rentals for the same property; and that there is another case pending in the Court of Appeals between Manuel Tambunting and Angel de Leon Ong involving same property as a result of

which Manuel Tambunting was allowed to intervene in the ejectment case filed by Angel de Leon Ong, thereby exposing petitioner to the risk of paying treble rentals for the same property.

The reasons so advanced by petitioner are neither tenable nor valid under the law. Evidently they are mere pretenses cunningly adduced for the purpose of evading payment of the rentals pending final determination of the ejectment case. The fact that there are two ejectment cases filed against petitioner furnishes no valid reason for not making the deposit required by law, it appearing that only in one of them has a judgment been rendered, while the other has become academic. In fact the latter has already been dismissed upon petition of the plaintiff (see record, Civil Case No. 1857). The pendency of the reivindicatory case filed by Manuel Tambunting is not also a valid excuse for the money will have to be disposed of subject to the final outcome of either of the two cases. Thus, section 8, Rule 72, of the Rules of Court provides that "all money so paid to the court * * * shall be deposited * * * and shall be held there until the final disposition of the appeal." As Manuel Tambunting has intervened in the ejectment case, it is obvious that if he wins, the money will be paid to him; otherwise it will be paid to Angel de Leon Ong, or his successors in interest. To allow petitioner to forego the deposit of the rentals until after the termination of the ejectment case, would be to allow him to enrich himself at the expense of the owner, an injustice which this Court can not countenance.

Wherefore, the petition will be dismissed, with costs.

The writ of preliminary injunction is hereby dissolved.

Paras, C. J., Feria, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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