

MAGDALENO MENESES, PETRONILA MENESES AND PASCUALA BIGTING, PETITIONER, VS. RAFAEL DINGLASAN, JUDGE OF FIRST INSTANCE OF MANILA, L. PASICOLAN, SHERIFF OF MANILA, FELICIDAD PATIO,...

G.R. No. L-2088. September 09, 1948

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

From the meagre data to be gathered from the petition for a Writ of Certiorari and Injunction, and the answer thereto, as well as from the statements and admissions by counsel for both parties in the course of the oral argument, the facts in this case may briefly be stated as follows:

Before the second World War, the respondents Felicidad Patio and Brigido Valencia were leasing part of Condesa street, Binondo, Manila, known as lot No. 11, from the City of Manila, and had constructed on it a building of strong materials, which building was destroyed during the aerial bombing of the City in 1944. After the liberation of the City, said respondents constructed on the same spot a make-shift structure or barong-barong using in its construction part of the materials, especially iron roofing salvaged from their burnt house on the lot. They lived in said house, and resumed paying rent to the city for the use of the lot at the rate of P7 a month, since September 1, 1945. According to said respondents, because a daughter of petitioner Magdaleno Meneses was a god-daughter of respondent Felicidad Patio, and because Petronila Meneses, one of the petitioners, was about to deliver, out of compassion and because of their close relationship, the petitioners were invited and came to live with the respondents in the latter's barong-barong. This is indirectly denied by the petitioners who claim that, although they are mere squatters on lot No. 11, without any contract with the City of Manila, they, nevertheless, were the ones who built the barong-barong in question. But it is a fact that the respondents, as plaintiffs, brought an action in the Municipal Court for detainer against the petitioners, as defendants, and the Municipal Judge even made an ocular inspection of the lot and the structure on it and, on the basis of this inspection and the evidence laid before him, evidently found that the said barong-barong belonged to the plaintiffs-respondents, for he rendered judgment ordering the defendants-petitioners to vacate the said structure on lot No. 11 on Condesa Street and to pay plaintiffs P17 a month for the use and occupation of the barong-barong and lot, from July 1947 up to the time they vacate it completely, and costs. The sum of P17 is made up thus: P10 for the use and occupation of the building, and P7 for the rent of the lot, which rent had been and is being paid monthly to the City by the plaintiffs.

Furthermore, according to the respondents' answer, they have now been given a permit by the City Engineer to construct a building of modest size on the lot in question, which they contend, is confirmatory of the right and claim of the said plaintiffs-respondents to said lot, and which may perhaps explain the desire of the said plaintiffs to demolish the barong-barong already referred to to give way to the new contemplated building; but because of the refusal of the petitioners to leave said barong-barong, plaintiffs had to resort to the courts through an action in detainer.

The defendants appealed the case to the Court of first Instance of Manila; but pending appeal, they failed to deposit the monthly rent of P17 fixed by the Municipal Court, for the months of November and December, 1947.

On December 31, 1947, the plaintiffs-respondents filed a motion for the execution of the judgment of the Municipal Court, copy of which was received by the defendants-petitioners on January 3, 1948. Because of lack of time, the Court of First Instance of Manila could not hear the motion until January 27, 1948. In the meantime, or on January 15 of the same year, the petitioners-defendants deposited P51 as rents corresponding to the months of November and December, 1947 and January, 1948. Then, after the hearing of the motion on January 27, 1948, Judge Dinglasan issued an order for execution of the judgment. Thereafter several motions of the petitioners for the stay of execution were filed, but they were denied, although on February 7, 1948, Judge Dinglasan, by order, granted the defendants a stay of execution until March 15, but the execution was not carried out until March 22, because of an extension granted by the sheriff himself. We understand from the statements made by both counsel during the oral argument that the barong-barong in question, as a result of the execution of the judgment, had already been demolished, although the materials thereof are still deposited on the lot.

The petitioners claim that respondent Judge Dinglasan acted in excess and abuse of his discretion in granting execution of the judgment, and so brought the case here on certiorari with a petition for a writ of injunction, to restrain the respondent judge "from commanding the sheriff of Manila to carry out its order dated January 27, 1948, as well as to order the stay of execution or rather to revoke its order dated February 7, 1948, and to allow the parties to terminate the hearing of the case pending before it," and also "to restrain the sheriff of Manila to carry out the order in his hand commanding the petitioners to vacate the barong-barong and lot in question."

There is a long line of decisions of this Court holding that the provisions of Rule 72, Section 8, regarding the immediate execution of a judgment in forcible entry or detainer cases are, unless pending appeal, payment is made regularly on or before the 10th day of each month for rent corresponding to the preceding month, mandatory (Cunanan, et al. vs. Rodas,[1] L-1400, L-1406 and L-1407, promulgated on July 30, 1947, and the authorities cited therein; and Ysmael vs. Honorable Court of Appeals,[2] L-1302, July 31, 1947 and authorities cited therein). In the case of Arcega vs. Dizon,[3] L-195, February 20, 1946, the same court, citing the case of Lapuz vs. Court of First Instance of Pampanga (46 Phil., 77, 79) even held that the lower court lacks authority to extend the period within which the rents should be paid from time to time in order to stay execution. If the lower court, where hearing of an appeal in a case of ejectment is pending, may not extend the period within which to make the payment required by law in order to stay execution, then it is clear that said provisions of the Rules of Court are mandatory, and that the respondent Judge in the present case may not and cannot stay execution of the decision of the Municipal Court, after the petitioners had failed to pay the rents as required by law.

In the present case, this failure to pay the rents for the months of November and December, 1947 was wilful and deliberate because, as the defendants-petitioners maintain, the barong-barong in question belonged to them and, therefore, they were not under obligation to pay for the use of the same. The trouble with this claim is that the same does not appear to have been established or substantiated in the Municipal Court, which court, on the other hand evidently found the barong-barong to belong to the plaintiffs-respondents, and after making an ocular inspection of the same found that P10 a month was reasonable rent or compensation for the use of the same by the defendants, plus P7 which the plaintiffs had been paying as monthly rent of the lot to the city. It is obvious that we cannot determine the payment or nonpayment of rent by petitioners-appellants pending appeal in order to stay execution upon the mere claim of ownership of the building by petitioners, yet to be established and proven during the trial. For purposes of payment of the rents pending appeal, we must rely upon and be governed by the decision of the municipal court.

Of course the execution of the judgment does not affect or interfere with the course of the appeal. There the

petitioners-defendants may yet prove during the trial that they have, a right to the lot where the barong-barong formerly stood, although this is rather problematical for the reason that, according to the facts as well as the assertions of the counsel in the course of the oral argument, the plaintiffs-respondents are and had been renting this lot from the City of Manila even before the war and have even obtained a permit from the City Engineer to build a more substantial house in place of the barong-barong, while the petitioners-defendants limit their claim to being merely squatters, although the first ones to come on the lot in question after liberation.

The petitioners further contend that the Municipal Court committed error in awarding the sum of P17.00, as rent, for the reason that the petitioners in their complaint did not ask for rent. We are in no position to verify this claim for the reason that the copy of the complaint in the Municipal Court does not form part of the record. As a matter of fact none of the pleadings in the Municipal Court, as well as in the Court of First Instance, including the decision of the municipal court and the motions filed in the Court of First Instance and the orders issued by the respondent judge, was brought up to this Court for reference. That is the reason why we had occasion to state in the beginning of this decision that the facts are meagre, and we had to rely in great measure upon the allegations contained in the petition and the answer thereto, as well as the statements and assertions made by both counsel during the oral argument. The answer of the respondents to the petition states that although the plaintiffs in the Municipal Court did not ask for rent in their complaint, they have, nevertheless, filed a claim for damages as part of the relief prayed for. It will be observed that Rule 72, section 1, regarding the institution of proceedings in forcible entry and detainer cases, provides that an action may be brought for the restitution of such possession together with damages and costs. The word damages reasonably refers to the "arrears in rent, or as reasonable compensation for the use and occupation of the premises" provided for in section 6 of the same Rule 72, and it is the same rent of P17 awarded by the Municipal Court in its decision in this case. The clause "for the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises" defines the extent of the "damages" to which the plaintiff is entitled, (Moran Rules of Court, Vol. II, p. 253, based on the case of *Veloso vs. Ang Seng Teng*, 2 Phil., 622, 626.)

It is, therefore, clear that the Municipal Court was warranted in awarding P17 as rent, or as reasonable compensation for the use and occupation of the barong-barong and the lot on which it stood, although the petitioners in their complaint only asked for damages.

In view of the foregoing, we hold that the action and order of Judge Dinglasan in giving due course to the execution of the judgment appealed from were both legal and authorized by law. As to the petition for a writ of injunction, it is obvious that it is unwarranted. There is no longer anything that may be restrained. The respondent judge has already ordered execution of the judgment and the sheriff of Manila has already carried out the order and demolished the barong-barong. The petition for the writ of certiorari is dismissed and the petition for the writ of injunction is denied, with costs against the petitioners.

Parás, Actg. C. J., Feria, Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

[1]78 Phil., 800.

[2]78 Phil., 831.

[3]76 Phil., 164.

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