

**MAURECIO BORDEN AND ADELA DE BORDEN, PETITIONERS, VS.
HON AGAPITO HONTANOSAS, PRESIDING JUDGE OF BRANCH XI
(BANTAYAN, CEBU), COURT OF FIRST INSTANCE OF CEBU,
RESPONDENTS.**

G.R. No. L-30335. November 29, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Original petition for certiorari and prohibition to annul the "proceedings of the respondent Judge as the law requires".

On 11 July 1968, Ramon Torralba commenced in the City Court of Cebu an action for ejectment with damages against the spouses Maurecio Borden and Adela de Borden (Civil Case No. R-13060) in that, sometime in 1952, through stealth, strategy, threat and intimidation, he was deprived by the defendants of possession of a portion thereof consisting of about 300 square meters and, despite repeated demands, defendants had refused to vacate the same (Petition, Annex "A").

In their answer, defendants admitted occupancy of the portion of the lot in question, but claimed that they had been paying rentals therefor to the plaintiff from 1953 until 1966, when they decided to lease the property themselves from the provincial government. As affirmative defense, defendants set up lack of jurisdiction, pointing out that under the allegations of the complaint the supposed illegal entry into the land took place more than 12 months from the filing of the case (Annex "B").

The City Court, acting on defendants' prayer for preliminary hearing on their motion to dismiss, under Section 5, Rule 16, of the Rules of Court[1] denied the motion to dismiss on the following findings (Petition, Annex "E", page 3):

"The nature, therefore, of the Complaint is more of an unlawful detainer rather than a forcible entry case and with respect to the former the one year period within which to file an action for unlawful detainer must be counted from the date of the demand and according to the defendants, demand for payment of rental was made within the one year period prior to the filing of this Complaint. (Emphasis supplied)

and ordered the case set for trial on the merits.

After hearing on the merits during which plaintiff's evidence was received ex parte on account of defendants' failure to appear, judgment was rendered for the plaintiff, and defendants were ordered to vacate the premises and to pay plaintiff a monthly rental of P50.00 from 1952 until the time they actually vacate it, plus costs. From this decision, defendants duly perfected an appeal to the Court of First Instance of Cebu (Civil Case No. R-10911).

On 27 November 1968, plaintiff applied to the Court of First Instance for immediate execution of the decision, due to defendants having failed to file a supersedeas bond and to deposit the monthly rentals-in court, as required by Section 8, Revised Rule 70, of the Rules of Court. Granted by the court by order of 9 December 1968, the

execution of the judgment pending appeal was opposed by the defendants in their motion of 15 December 1968. Instead, defendants prayed for a writ of pre-liminary injunction to restrain the City Court and the Provincial Sheriff from enforcing the appealed decision. The motion was based on alleged want of jurisdiction of the City Court, nullity of judgment for lack of due process, and fraud.

Denied by the court in its order of 14 January 1969 (Annex "L"), on the ground that the appealed decision was presumed valid until the contrary is proved and hence, the writ of execution can not as yet be voided before actual reception of evidence, defendants filed a motion dated 19 January 1969 to reconsider the aforesaid denial order. Then, on 27 January 1969, defendants filed another motion, this time for the dismissal of the appeal, on the same ground of lack of jurisdiction.

On 8 February 1969, the court denied the motion for reconsideration and the motion to dismiss for lack of merit.

On 11 February 1969, defendants asked for reconsideration of this order of 8 February 1969, claiming that the denial of the prayer to dismiss the case would be contrary to law and evidence on record. The motion was denied on 18 February 1969, the court holding that the matters raised therein are evidentiary in nature and must be supported by proof.

On 27 February 1969, plaintiff finally filed an urgent motion for a special demolition order to enable the removal of the houses of defendants, informing the court below of the Sheriff's inability to enforce the writ of execution although it had been received by and served on defendants since 12 December 1968.

On 26 March 1969, and before a demolition order could be issued in the case, defendants spouses filed the present petition, and, upon their motion, a temporary restraining order was issued by this Tribunal stopping the hearing by the lower court of Civil Case No. R-10911, until final orders.

Petitioners contend in this proceeding that the respondent judge acted without, or in excess of, jurisdiction in granting the motion of private respondent (plaintiff below) for immediate execution of the decision of the City Court (order of 9 December 1968), and in denying their motions for issuance of a preliminary writ to enjoin execution of said decision and for the outright dismissal of the case (orders of 14 January, 8 and 18 February 1969), all predicated on the alleged lack of jurisdiction of the inferior court.

Petitioners' insistence on the dismissal of the appealed case, allegedly because of lack of jurisdiction of the city court that rendered the original decision, due to the filing of the case beyond one year from dispossession, can not be sustained, since the City Court made findings that defendants had been paying rentals from 1953 to 1966, and that plaintiff had sent demands to vacate, both verbal and written, upon the defendants. Whether or not there was proper demand, or whether the case was instituted within the one-year period, computed from the date of last demand[2], is, therefore, a matter of evidence. The respondent judge, in the exercise of his discretion, denied the prayer for immediate dismissal of the case, deferring action on the jurisdictional issue until after evidence has been received on the matter. This action by the court is allowed by Section 3 of Revised Rule 16.

We find no abuse of discretion attending the issuance of the disputed orders of the respondent judge, which could have prejudiced the petitioners. On the contrary, if there was any error of law committed by the respondent judge at all, it is in his being patient with herein petitioners, by acting on the various pleadings filed by the latter and holding off the immediate execution of the decision of the City Court, notwithstanding the explicit provisions of Section 8 of Rule 70 of the Revised Rules of Court which authorizes immediate execution of judgment in a forcible entry or detainer case, if decided adversely to the defendant, even if said judgment is on appeal. Under the said provision of the Rules, such execution, when prayed for by the plaintiff, can only be stayed if the defendant (a) shall perfect an appeal and file a sufficient supersedeas bond, and (b) shall pay to the plaintiff or deposit in the

court of first instance the rentals or the reasonable amount fixed for the use and occupation of the property.[3]

In this case, it is not denied that petitioners had failed, not only to post a supersedeas bond but also to pay the monthly rentals adjudged by the City Court for their use of the property, which failure makes it mandatory upon the lower court to order the immediate execution of the decision.[4] In fact, even delayed payment of the rentals alone, unless excused by mistake, accident or fraud[5], would have already rendered the function of the court of executing the judgment, ministerial and imperative.[6] Consequently, the denial by respondent judge of petitioners' motion for an order to restrain enforcement of the decision is in order.

True it is that if the City Court actually lacked jurisdiction, the defendants-appellants (now petitioners) would not be under obligation to file a supersedeas bond nor deposit the rentals. But having chosen to raise the issue of jurisdiction by appeal from the judgment to vacate, instead of by certiorari from the order denying their motion to dismiss for lack of jurisdiction, petitioners as appellants are perforce bound by Rule 70 governing such appeals from a judgment of ejectment as previously discussed. Nor do we see any substantial prejudice to appellants in the application of Section 8 of Rule 70, since neither the supersedeas bond nor the deposit of rentals constitutes a deprivation of property or rights, and the Court of First Instance had correctly denied the prayer for demolition of appellants' house pending determination of the merits of the jurisdictional question raised by petitioners. Otherwise, a party ordered evicted could easily evade the rule on super-sedeas bond and deposit of rentals by setting up on appeal an issue of jurisdiction, however unmeritorious, to the prejudice of the winning party.

WHEREFORE, and subject to the condition that no order of demolition shall be issued until and unless the jurisdiction of the City Court is affirmed, the petition is hereby dismissed and the restraining order heretofore issued is ordered dissolved, with costs against petitioners.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] "Section 5. Pleadings grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

[2] Sy Oh vs. Garcia, L-29328, 30 June 1969, 28 SCRA 735; DBP vs. Canonoy, L-29422, 30 Sept. 1970, 35 SCRA 197; also Racaza vs. Susana Realty, Inc. L-20330, 22 Dec. 1966, 18 SCRA 1172; Calubayan vs. Pascual, L-22645, 18 September 1967, 21 SCRA 146.

[3] Sison vs. Bayona, 109 Phil. 557; Acierto vs. Laperal, 107 Phil. 1088; Romero vs. Pecson, 63 Phil. 308, and cases therein cited.

[4] Arcilla vs. Del Rosario, 74 Phil. 445; Cunanan vs. Rodas, 78 Phil. 800; also Laurel vs. Abalos, L-26098, 31 October 1969, 30 SCRA 281.

[5] Cunanan vs. Rodas, supra.

[6] Pangilinan vs. Peña, 89 Phil. 122; Galewsky vs. De la Rama, 79 Phil. 583; Basilio vs. Natividad, 80 Phil. 52; De la Cruz vs. Burgos, L-28095, 30 July 1969, 28 SCRA 977.

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