

ANGEL OTIBAR AND ANASTACIO OTIBAR, PETITIONERS VS. HON. DEMETRIO G. VINSON, JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, JOAQUIN BADIABLE, CELSO INABANGAN, ET AL., RESPONDENTS.

G. R. No. L-18023. May 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

In an action for forcible entry instituted by Anastacio Rocha, predecessor-in-interest of petitioners Angel and Anastacio Otibar, in the Justice of the Peace Court of Carigara, Leyte (Civil Case No. 151) against respondents Joaquin, Maria, and Silvestra Badiable, and Celso Inabangan, judgment was rendered by said court on February 8, 1960 in favor of Rocha against respondents, ordering the latter to vacate the land subject of the action and to deliver its possession to Rocha and to pay the said plaintiff the sum of P50.00 as damages plus P100.00 as attorney's fees. From said decision, respondents appealed to the Court of First Instance of Leyte, presided by respondent Judge Demetrio G. Vinson (Civil Case No. 612), but said appeal was, on June 11, 1960, dismissed by the latter court upon motion of plaintiff, on the ground that the appeal bond was defective. No appeal appears to have been taken from this order of dismissal. The plaintiff, instead of asking for the remand of the case to the Justice of the Peace Court from which it originated, petitioned the Court of First Instance for the immediate execution of the judgment of the court of origin, which motion was granted by the respondent Judge. The Provincial Sheriff fully served the writ of execution on respondents. Respondents, however, refused to deliver possession of the land. On June 25, therefore, Rocha filed in the same Court of First Instance, a motion for contempt against respondents. On July 25, he also filed a motion to garnish the salary check of respondent Celso Inabangan to satisfy the judgment. On July 26, he filed a second motion for contempt and a third motion for contempt on July 27. On July 30, 1960, the respondent Judge in view of the difficulty in identifying the property in question, issued an order requiring the Sheriff "to relocate" said property. On August 16, Rocha filed a fourth motion for contempt. On August 29, he filed an ex parte motion praying that respondents be ordered to abide by the Sheriff's report. On September 20, he filed an ex parte motion for the issuance of a warrant of arrest of respondents. Acting on the latter motion, the respondent Judge issued an order requiring respondents to explain why they should not be punished for contempt. On October, respondent Judge issued another order requiring the Sheriff to "constitute in the place and deliver the land in question to the plaintiff" (Rocha). On October 13, 1960, Rocha filed an urgent ex parte motion for the issuance of a warrant of arrest and another similar motion for warrant of arrest on October 22.

On November 12, 1960, respondent Judge still issued another order requiring a commissioner to conduct an "ocular inspection" of the land in question and to constitute (identify) the same.

On November 28, 1960, Rocha filed a motion, this time praying respondent Judge to order the return of the record of the case to the Justice of the Peace Court of Carigara "for resolution of the questions raised with reference to the execution of the judgment" (of said Justice of the Peace Court dated February 8, 1960), for the reason that

having dismissed the appeal of respondents on June 11, 1960, respondent Judge was deprived of jurisdiction to continue proceeding with the case, and the enforcement of the judgment of the Justice of the Peace Court which has become final and executory has become the exclusive concern of said court (Justice of the Peace Court). Said motion was denied by respondent Judge on January 7, 1961, for lack of merit.

On February 7, 1961, petitioners (claiming to be the legal heirs of Rocha, the plaintiff in the cases below) filed with this Court the present petition for certiorari with mandamus.

In this instance, petitioners claim that respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in deciding to continue with the proceedings in his court notwithstanding his dismissal of respondents' appeal from the decision of the Justice of the Peace Court on June 11, 1960.

The claim is meritorious. Upon the facts of the case, the Court of First Instance either acquired no appellate jurisdiction because the appeal had never been perfected, or if it did, it lost its jurisdiction to proceed with the case upon dismissal of the appeal. The only step left to the Court of First Instance, under the circumstances, was to remand the case to the Justice of the Peace Court for the due execution of the judgment which was revived upon the dismissal of the appeal. (*Capunu vs. Llorente*, 29 Phil. 392; see also *Morco vs. Munoz*, 72 Phil. 270; *Fortuna vs. Vilorio*, 14 Phil. 232, and *Caisip vs. Cabangon*, 109 Phil., 150). In failing to do so and in entertaining Rocha's several motions for execution, contempt, arrest, etc. all filed subsequent to the dismissal of the appeal, respondent Judge acted without or in excess of his jurisdiction and with grave abuse of discretion, remediable by certiorari.

Respondents contend that petitioners, by filing said motions notwithstanding the dismissal of their appeal, are guilty of negligence or laches and, therefore, are estopped or precluded from seeking the present remedy of certiorari and mandamus in this Court. The contention is untenable because jurisdiction can not be conferred by laches or even consent, of the parties, and herein petitioners are assailing the jurisdiction of respondent Judge to issue the various orders aforesaid in the case he had previously dismissed, which question may be raised at any stage of the proceedings (See *Garganta, et al., vs. Court of Appeals*, 105 Phil., 412).

Wherefore, the writs of certiorari and mandamus prayed for by petitioners are hereby granted. Respondent Judge's orders subsequent to his dismissal of the case (Civil Case No. 151, Justice of the Peace Court of Carigara) are set aside and declared null and void, and he is directed to remand the case to the Justice of the Peace Court of Carigara for execution of the latter's judgment dated February 8, 1960. Without costs. So ordered.

Padilla, Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Paredes and Dizon, JJ., concur.

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