

**JOSE QUAN, PETITIONER, VS. THE SHERIFF, CITY OF MANILA,
JUDGE ALBERTO FRANCISCO, COURT OF FIRST INSTANCE, MANILA,
AND FONG LOONG, RESPONDENTS.**

G.R. NO. L-27160. May 30, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

In this original action of certiorari, petitioner seeks to annul the writ of execution issued in Civil Case No. 66910 of the Court of First Instance of Manila, Branch IX, and to order respondents to restore to petitioner the possession of the premises subject matter of the ejectment suit.

On March 7, 1966, herein private respondent Fong Loong, the lessee of a house situated at 644 Misericordia St., Sta. Cruz, Manila, filed an action of unlawful detainer with the City Court of Manila, Branch VI, against herein petitioner Jose Quan, to whom he subleased the basement or lower floor of said premises. The basis of the action was the refusal of petitioner to conform to the increase in the monthly rentals of the premises from P220.00 to P320.00 and to pay the increased rentals thereof, constraining private respondent to terminate the lease as of December 31, 1965; and that in spite of the termination of the lease and the repeated oral and written demands to vacate made by plaintiff upon defendant, the latter refused and failed to vacate the premises or pay the increased rent. Plaintiff prayed the court to order defendant to vacate the premises, pay him the amount of P100.00 per month representing the increase in the monthly rent, from January, 1966 up to such time that defendant vacates, and the sum of P1,000.00 as attorney's fees and costs of suit.

Within the reglementary period, petitioner, as defendant, filed an answer with, counterclaim, to which respondent filed a reply and answer to counterclaim.

After trial, decision was rendered by the City Court on August 4, 1966, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered ordering the defendant to vacate the house and lot situated at 644-A Misericordia Street, Sta. Cruz, Manila, and restore possession thereof to the plaintiff; ordering the defendant to pay the amount of P100.00 representing the increased monthly rent from January, 1966 up to July, 1966 and to pay a monthly rent of P320.00 beginning August, 1966, this amount payable during the first ten (10) days every month until the defendant fully vacates the premises in question; ordering the defendant to pay the plaintiff the sum of P500.00 as Attorney's fees and to pay the costs of suit.

"Defendant's counterclaim is hereby dismissed for failure of the defendant to present evidence in support thereof."

On August 31, 1966, petitioner perfected an appeal to the Court of First Instance of Manila. The case was assigned to Branch IX, presided over by respondent Judge Alberto J. Francisco.

On October 5, 1966, private respondent filed with the said court of first instance a motion for execution of the City Court's judgment, on the ground that petitioner failed to file the necessary supersedeas bond to stay execution

of the judgment. The motion was set for hearing on October 8, 1966. Petitioner did not appear at said hearing. Respondent court, however, held in abeyance action on the motion pending receipt of proof of service to petitioner of copy of the motion for execution. On October 11, 1966, petitioner filed an opposition to respondent's motion, stating therein, among others, that petitioner's counsel called up by telephone that day a certain surety company instructing the latter to prepare for petitioner a supersedeas bond in the amount of P1,300.00 and said counsel was assured that the bond would be ready for signature. Petitioner's counsel assured the court that the supersedeas bond would be filed on or before October 17, 1966, as in the meantime he had to leave for Zambales to attend hearings in two cases. On December 3, 1966, private respondent filed a "Compliance, Manifestation and/or Motion for Preliminary Mandatory Injunction," submitting to the court proof of service to petitioner's counsel of private respondent's motion for execution, and asking the court to issue a writ of execution pending appeal on the ground that petitioner failed to post a supersedeas bond, and, moreover, that it was apparent that petitioner's appeal was only for the purpose of delay, as it has never been disputed that the lease was on a month-to-month basis. The "Compliance, Manifestation and/or Motion for Preliminary Mandatory Injunction" was set for hearing on December 10, 1966, at which time petitioner again did not appear, so the same was deemed submitted for resolution.

On December 16, 1966, respondent Judge issued the order, now complained of, directing the immediate execution of the City Court's judgment on the ground that petitioner's failure to file a supersedeas bond with the City Court before the elevation of the case to the Court of First Instance of Manila entitled private respondent to an immediate execution of the City Court's judgment, as the filing of a supersedeas bond in order to stay execution is mandatory, and that, moreover, the supersedeas bond filed with the Court of First Instance of Manila did not appear to have been approved either by said court or by the City Court.

Private respondent claims that it was only upon receipt of a copy of the aforesaid order of execution that he came to know that there was a supersedeas bond "inserted in the record of the case;" that he was never notified of said supersedeas bond, as no accompanying manifestation or motion was ever filed by petitioner to have the said bond approved by the court; and that up to now petitioner has not asked respondent court to approve the supposed supersedeas bond. On his part, petitioner states that he filed the supersedeas bond on October 14, 1966, or some two months before the issuance of the order of execution on December 16, 1966 and of the writ of execution on December 24, 1966.

On December 27, 1966, petitioner filed a motion to recall the writ of execution and to set the hearing of the case on the grounds that the effect of the perfection of his appeal was to vacate the judgment of the City Court and open the way for a trial de novo before the court of first instance; that he had filed a supersedeas bond in the sum of P1,300.00 on October 14, 1966; and that on December 10, 1966, he filed a "Manifestation and Opposition to Motion for Preliminary Mandatory Injunction," to which he attached the official receipts for all rental payments for the period September to December, 1966, in the amount of P320.00 per month, hence, the issuance of the writ of execution on December 24, 1966 was a mistake. In an order dated January 6, 1967, respondent Judge denied the motion and set the case for pre-trial in view of petitioner's failure to file a supersedeas bond with the City Court. On January 16, 1967, petitioner filed a motion for reconsideration of the January 6, 1967 order, insisting that the perfection of an appeal resulted in the vacation of the City Court's judgment, hence, when the writ of execution was issued, there was no more valid judgment to be executed. He also pointed out that respondent Sheriff acted irregularly and oppressively in padlocking the house located at No. 644 Misericordia St., although both the judgment of the City Court and the writ of execution issued by respondent Court referred definitely to No. 644-A Misericordia St. On January 19, 1967, private respondent filed an opposition to petitioner's motion for reconsideration, claiming that the said motion had become moot and academic by the complete execution of the judgment on January 7, 1967. Private respondent explained that the house at No. 644 Misericordia St. consists of

three floors, the second and third of which were occupied by him, while the basement or first floor was the one sub-leased to petitioner and subject matter of the ejectment case; that in his pleadings and other papers filed with the City Court, petitioner admitted occupying the "basement or first floor of an apartment identified as 644-A Misericordia, Sta. Cruz, Manila," hence, it was clear that petitioner and private respondent were always one in referring to and identifying the basement or first floor of the apartment as 644-A Misericordia St., and, accordingly, no fault could be imputed to the Sheriff. On January 21, 1967, respondent Judge denied petitioner's motion for reconsideration. Hence, petitioner's present petition for certiorari.

Petitioner contends: (1) that after the perfection of his appeal on August 31, 1966, from the judgment of the City Court, the Court of First Instance of Manila could no longer issue a writ of execution, for there was no more valid judgment to be executed, as it ipso facto became vacated pursuant to Section 9, Rule 40 of the Revised Rules of Court; (2) that respondent court could no longer issue a writ of execution after petitioner had posted a supersedeas bond which was neither cancelled nor disapproved by the court; and (3) that the Sheriff could not validly implement a writ of execution by evicting petitioner who was occupying an address different from the address specified in the writ of execution.

We find no merit in this petition.

1. The issue whether an appeal taken from the decision of an inferior court to the court of first instance in a forcible entry or detainer case has the effect of vacating the said decision as is The case in ordinary actions as provided for in Section 9, Rule 40 of the Rules of Court, is already settled. It is already well-settled that a judgment rendered by an inferior court in a forcible entry or illegal detainer case is not vacated by the appeal but it continues in force and may be executed upon failure of the appellant to put up, the supersedeas bond and monthly deposits required by law, during the pendency of the appeal, even if a trial de novo has to be held on the merits of the appeal.[1]

2. Section 2, Rule 70 of the Rules of Court, provides that "(I)f judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from.x x x The supersedeas bond shall be transmitted by the justice's of the peace or municipal court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed."

We have repeatedly held that the requirement of a supersedeas bond is "mandatory"[2] and cannot be dispensed with by the courts, and when said bond is not filed, the duty of the court to order the appealed decision executed is ministerial and imperative. We find no cogent reason why such principle could not be applied here.

In the order of December 16, 1966, granting immediate execution of the judgment of the City Court, respondent judge stated:

"The failure of the defendant to file a supersedeas bond with the City Court before the case was elevated to this Court on appeal entitled the plaintiff to immediate execution of the decision rendered by the lower court. The requirement for the filing of a supersedeas bond, as provided for in Section 8, Rule 70 of the Rules of Court, in order to stay execution is mandatory. Furthermore, the supersedeas bond which was filed with this Court by the defendant does not appear to have been approved by either this Court or the City Court."

The same order states that petitioner filed with respondent court on October 14, 1966 a supersedeas bond in the amount of P320.00.

While Section 8 of Rule 70 requires the filing of a supersedeas bond with, and its approval by, the inferior court, it

has been held that the court of first instance which has acquired jurisdiction over the case by the perfection of the appeal has the power to permit the appellant to present the supersedeas bond which he failed to submit to the inferior court.[3] In this case, while petitioner filed a supersedeas bond with the court of first instance, the same was not only filed belatedly without the court's approval but it was also insufficient. The bond must be sufficient "x x x to enter the action in the Court of First Instance and to pay the rents, damages and costs accruing down to the time of judgment." (Sec. 8, Rule 70 of the Revised Rules of Court.)

The supersedeas bond filed by petitioner is insufficient to cover the total of the accrued differential is from January, 1966, up to July, 1966, and the sum of P500.00 adjudged as damages. Besides, respondent court has found — and petitioner concedes — that the supersedeas bond filed by petitioner was not approved either by the City Court or by respondent court. The court's approval is explicitly required by Section 8 of Rule 70 and is necessary to render the bond efficacious. The absence of any manifestation or motion to accompany petitioner's supersedeas bond is indicative of the fact that no effort was even exerted by petitioner to have it approved by the court.

Petitioner having failed to comply with one of the conditions in Section 8 of Rule 70 for the stay of execution of the judgment in the ejectment case, it became mandatory upon respondent court to issue a writ of execution.[4]

3. Finally, we also find no merit in petitioner's third assignment of error.

It should be noted that the house located at 644 Misericordia Street, of which private respondent is the lessee consists of three floors, the basement or first floor of which was sub-leased by private respondent to petitioner, while the second and third floors are occupied by private respondent. It has been the practice between the two parties, since the beginning of their relationship as lessor and lessee, to refer to the first floor or the portion of the house at 644 Misericordia Street sub-leased to petitioner, as 644-A Misericordia St. Thus, in his complaint private respondent refers to himself as the "lessee of that certain-house and lot situated at 644 Misericordia St.," and petitioner as a "resident of 644-A Misericordia St." In his answer to the complaint, petitioner admits the truth of these allegations, and in the counterclaim portion thereof he admits occupying as lessee "the basement (floor)" of the building, and he further avers that private respondent "neglected the repairs of the leakage of the water coming from the upper floors where he is staying." In the memorandum submitted by him before the City Court, petitioner refers to the premises rented by him as "the basement or first floor of an apartment identified as 644--A Misericordia, Sta. Cruz, Manila." In his motion for reconsideration before the City Court, petitioner again refers to the premises leased by him as "the basement or the first floor . . . identified as No. 644-A." When, therefore, the decision of the City Court ordered "the defendant to vacate the house and lot situated at 644-A Misericordia Street, Sta. Cruz, Manila and restore possession thereof to the plaintiff," and the writ of execution correspondingly ordered respondent Sheriff "to cause the defendant Jose Quan to vacate the premises in question located at 644-A Misericordia St., Sta. Cruz, Manila, and to place plaintiff in possession of the same," it was clearly understood by all and sundry that both courts were referring to the first floor of the house located at 644 Misericordia Street then leased and occupied by petitioner. In the premises, respondent Sheriff correctly implemented the aforesaid writ of execution.

WHEREFORE, the present petition for certiorari is denied, with costs against petitioner.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] Trial de novo is already abolished under Rep. Act No. 6031, approved August 4, 1969, except if the case was tried in a city or municipal court before the latter became a court of record.

[2] *Acibo vs. Macadaeg*, 11 SCRA 447; *Sison vs. Bayona*, 109 Phil.. 557.

[3] *Igama, et al. vs. Soria, et al.*, 42 Phil., 11, 14; *Tolentino vs. CFI of Manila et al.*, 75 Phil., 282, 283-84; *Mitschiener vs. Barrios, etc., et al.*, 76 Phil., 55, 63--64.

[4] *Lapuz vs. CFI of Pampanga, et al.*, 46 77, 79; *Peck vs. Concepcion, etc., et al.*, 74 Phil., 653, 657; *Centeno vs. Gallardo, et al.*, 93 Phil., 63, 65; *De la Cruz vs. Burgos*, 28 SCRA 977.

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