

FELICIDAD CASTUERAS, ET AL., PETITIONERS, VS. HON. FROILAN BAYONA, ET AL., RESPONDENTS.*G. R. No. L-13657. October 16, 1959*

Ponente: BAUTISTA ANGELO, J.

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On November 13, 1957, Celso Bautista, et al., filed an action for ejectment against Felicidad Castueras, et al., before the Municipal Court of Manila wherein after trial, judgment was rendered in favor of plaintiffs against defendants as follows: Felicidad Castueras was ordered to remove the building and other structures she had built on the land in question and to pay the sum of P48.00 as rental in arrears, the sum of P24.00 a month until she vacates the property, and the sum of P50.00 as attorney's fees, and the costs of action; Isidro Mangahas, to remove the building and other structures he had built on the land and to pay the sum of P56.00 as rental in arrears, the sum of P38.00 a month until he vacates the property, the sum of P50.00 as attorney's fees, and the costs of action; Ignacio Martinez, to remove the building and other structures he had built on the land, to pay the sum of P52.00 as rental in arrears, the sum of P26.00 a month until he vacates the property, the sum of P50.00 as attorney's fees and the costs of action; and Aurelio Siao, to remove the building and other structures he had built on the land, to pay the sum of P60.00 as rental in arrears, the sum of P30.00 a month until he vacates the property, the sum of P50.00 as attorney's fees, and the costs of action. Defendants in due time appealed to the court of first instance who, besides putting up the required appeal bond, deposited with the clerk of court the amount of P216.00 representing the aggregate amount of the rentals in arrears covered by the judgment and began depositing with the same clerk the amount of monthly rentals that may become due as ordered by the municipal court.

On January 20, 1958, plaintiffs filed a motion for immediate execution alleging that defendants have not filed a supersedeas bond as required by the rules, which motion was opposed by defendants. The court denied the motion. Again, on February 18, 1958, plaintiffs reiterated their motion for immediate execution alleging that the amount of P216.00 defendants had deposited with the clerk of court cannot take the place of supersedeas bond because it does not cover the attorney's fees adjudged by the municipal court in the amount of P200.00, which motion again was opposed by defendants. This time the court granted the motion and ordered the immediate execution of the judgment.

Defendants filed a motion for reconsideration which was denied and, accordingly, the court issued the corresponding writ of execution, and upon petition of plaintiffs, gave the latter authority to collect the amount deposited by defendants with the clerk of court to cover the rentals in arrears which were adjudicated in the judgment. Alleging that the trial court, Hon. Froilan Bayona presiding, has acted in excess of its jurisdiction or with grave abuse of discretion in issuing the order of immediate execution as well as in authorizing plaintiffs to collect the deposit made with the clerk of court, defendants interposed the present petition for certiorari with preliminary injunction. Section 8, Rule 72, of the Rules of Court provides in part:

"If 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 down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment,"

It would appear that if judgment is rendered against defendant, execution may issue immediately, unless an appeal has been perfected and defendant to stay execution files a supersedeas bond "to pay the rents, damages, and costs down to the time of the final judgment of the action, and unless, during the pendency of the appeal, he pays the amount of rent due from time to time." And it has been held that a supersedeas bond is unnecessary when defendant has deposited in court the amount of all back rentals adjudged in the final judgment rendered by the justice of the peace or municipal court (*Mitschiener vs. Barrios* 76 Phil., 55; *Sogueco vs. Natividad*, 80 Phil., 829). Here defendants did not file any supersedeas bond but instead deposited with the clerk of court the amount of all the back rentals adjudged to plaintiffs by the municipal court. The question that now arises is: For what items does a supersedeas bond stand for under Section 8, Rule

This point needs to be clarified because in the decision herein involved defendants were ordered to pay not only the back rentals but also attorney's fees in the aggregate amount of P200.00. Apparently, considering the wording of Section 8, the purpose of a supersedeas bond is to answer for the payment of (a) rents, (b) damages and (c) costs, down to the time of the final judgment of the action. There is no difficulty with regard to the first item, for the same refers to the back rentals that may be found due from defendants. There can also be no doubt with regard to the third item because the costs can easily be ascertained. Where difficulty may arise is with regard to the nature and meaning of the second item which refers to damages.

Apparently, the words rents and damages are used interchangeably in Section 8 of Rule 72 for in ejectment cases no other damages can be adjudicated except the loss of rents or their equivalent. The loss may refer to the rents when the latter are fixed in the contract, and the rent takes the form of damages when the same is not fixed and has to be determined by the court considering the reasonable value of the use and occupation of the premises.

Thus, this Court has declared that the only damages recoverable for illegal detainer are the reasonable compensation for the use and occupation of the premises (*Veloso vs. Ang Seng Teng*, 2 Phil., 622). In another case, this Court held that in an action for forcible entry and detainer the damages consist in a reasonable compensation for the wrongful use and occupation of the premises, the legal measure of damages being the fair rental value of the property (*Sparrevohn vs. Fisher*, 2 Phil., 676). And still in another case, this Court held that ordinarily the amount allowed as damages may be presumed to be the reasonable value of the use-of the land as fixed by the court (*De Castro vs. Justice of the Peace*, 33 Phil., 595; See also *Igama and Reyes vs. Soria and Nepomuceno*, 42 Phil., 11; *Santos vs. Santiago and Angeles*, 38 Phil., 575).

Former Chief Justice Moran, on the other hand, makes the following comment as to the nature of damages that may be recovered in an action for forcible entry and detainer. Thus he comments: "But what is the character of these 'damages'? Since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, its use and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of

the property, and he cannot be declared as such in an action for forcible entry and detainer Damages to property may be recovered only by the owner in an ordinary action" (3 Moran, Comments on the Rules of Court, 1957 ed., p. 301; underlining supplied).

Tested by the rulings and precedents above referred to, it may be safely stated that the damages that may be recovered in an action for ejectment within the meaning of Section 8, Rule 72, refer to the reasonable compensation for the use and occupation of the property to which the plaintiff is entitled which generally is measured by the fair rental value of the property. It cannot refer to other kind of damages which are foreign to the enjoyment or material possession of the property. Consequently, the attorney's fees in question cannot be considered as damages more so when we consider that when the present Rules of Court were approved on July 1, 1940 attorney's fees could not yet be recovered as damages but only as costs (Section 6, Rule 131; *Jesswani vs. Dialdas*, et al., G. R. No. L-4651, May 12, 1952; *Tan Ti vs. Alvear*, 26 Phil., 566). The right to collect attorney's fees as damages was recognized only when the new Civil Code was approved on August 30, 1950 (Art. 2208).

Since attorney's fees cannot be considered as damages within the meaning of the rule and defendants had already deposited the back rentals as a substitute for the supersedeas bond, the trial court erred in ordering the immediate execution of the judgment.

Wherefore, petition is granted. The pertinent orders of respondent court are hereby set aside, with costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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