

ENRIQUE A. GARCIA, PETITIONER, VS. EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF MANILA, CIRILO MAPA AND TRANQUILINA MAPA, RESPONDENTS.

G.R. No. L-1239. February 19, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

In the municipal court of Manila, the spouses Mapa, respondents herein, filed a suit in ejectment to compel the herein petitioner, Enrique A. Garcia, to vacate a house designated as 1194 Kusang Loob, Sta Cruz, Manila. Judgment was rendered ordering Garcia to vacate the premises and to pay the Mapas monthly rentals of P40 for the period of August 16, 1946 to September 30, 1946, and to pay "a monthly damage of P150" from October 1, 1946, until he vacates the premises.

From this judgment Garcia appealed to the Court of First Instance and tiled a bond of P100 which was approved by the court. Pending appeal, in the Court of First Instance, Garcia filed a petition either to suspend or to modify the judgment of the municipal court upon the ground, among others, that said judgment fails to fix the true amount of rent that should be deposited during the pendency of the appeal. This petition was opposed by the spouses Mapa. Thereupon, the lower court issued an order excusing Garcia from depositing the monthly rental of P40 for the period from August 16 to September 30 since this was covered by the bond of P100, but ordering him to deposit the amount of P150 for the month of October, otherwise execution would issue.

Now, Garcia files this petition with this Court praying that said order of the lower court be declared null and void, and that a preliminary injunction be issued to withhold its execution. In an order of December 27, 1946, this Court granted the preliminary injunction.

Petitioner Garcia contends that the order of the lower court ordering him to deposit the amount of P150 is illegal and is in excess of its jurisdiction and that under section 8 of Rule 72 he is not bound to deposit an amount as damages. On the other hand, respondents Mapa answer that Garcia has not paid nor deposited any rental at all since August 16, 1946, to date, and hence the deposit of P150 must be made or else execution should issue.

The lower court correctly held that Garcia need not deposit for the period from August 16, 1946, to September 30, 1946, since the rental therefor is covered by the bond of P100. And we hold that the "monthly damage of P150" from October 1, 1946, which seems to represent the damages allegedly sustained by the Mapas for having had to rent another house at a higher price, need not be paid or deposited during the appeal under Rule 72, section 8, for it is not the rent or the reasonable value of the use and occupation of the property. There can be no doubt, however, that the municipal court, in fixing the monthly damage of P150, had included the monthly rental of P40 for it cannot be presumed to have allowed the petitioner to use and occupy the property without obligation whatsoever to pay any rent. Petitioner Garcia should, therefore, have been depositing such monthly rental of P40 during the pendency of the appeal, though his failure to do so can be excused in view of the silence on this point in the lower court's order which merely said a "monthly damage of P150."

In view of the foregoing, the order complained of is set aside and petitioner Garcia is given fifteen days from the date this decision becomes final within which to deposit in the lower court the amount corresponding to rentals at P40 per month for the period from October 1, 1946, to date, and to continue depositing said monthly rental in accordance with section 8, Rule 72, of the Rules of Court, and that his failure to do so will be ground for execution.

It is so ordered, without costs.

Paras, Feria, Pablo, Hilado, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

We concur in the decision penned by the Chief Justice upon the legal doctrine laid down in *Mitschiener vs. Barrios* (76 Phil., 55), as follows:

"As to damages in ejectment cases there are none practically to be adjudicated except the loss of rents or of their equivalent. The Supreme Court has already declared that the only damages recoverable for illegal detainer are reasonable compensation for use and occupancy of the premises, even in cases of usurpation (*Veloso vs. Ang Seng Teng*, 2 Phil., 622). In an action of 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). The measure of damages for forcible entry and unlawful detention of property, whether by a mere intruder or a lessee by contract not fixing the rent, is the same, namely, the reasonable value of the use and occupation (*Igama and Reyes vs. Soria and Nepomuceno*, 42 Phil., 11). 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 and Morales vs. Justice of the Peace of Bocaue*, 33 Phil., 595). Damages may be recovered for the annual yield of the palms on the land, but not for the value of the palm trees cut down (*Santos vs. Santiago and Angeles*, 38 Phil., 575).

"Undoubtedly, these pronouncements of the Supreme Court were taken into consideration by the authors of the Rules of Court when, although in section 1 of Rule 72, plaintiff is authorized to sue for the restitution of possession 'together with damages', in drafting section 6 of Rule 72, as to judgment to be pronounced, the word 'damages' was eliminated, placing, in lieu thereof, the words 'reasonable compensation for the use and occupation of the premises.' Said section reads:

"SEC. 6. Judgment.—If upon trial the court finds that the complaint is not true, it shall render judgment for the defendant to recover his costs. If it finds the complaint to be true, it shall render judgment in favor of the plaintiff for the restitution of the premises, for the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, and for costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party, and award costs as justice requires."

"That is, in an ejectment case, plaintiff may recover either rents or the reasonable compensation for the use and occupation of the premises, loosely designated in sections 1 and 8 of Rule 72 as 'damages', which may be designated also as 'fair rental value of the property.' When rents are adjudged no reasonable compensation for the use and occupation of the property can be adjudicated, while, inversely, when reasonable compensation is adjudged, it is because no rents are adjudicated."

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