

FOREMOST ENTERPRISES, INC., PETITIONER, VS. THE COURT OF APPEALS AND ONG SIONG, RESPONDENTS.

G.R. No. L-29917. May 22, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for review of the resolution of the Court of Appeals setting aside the order of the Court of First Instance of Manila, Branch VII, presided by Judge Gregorio T. Lantin, granting execution pending appeal of the decision in Civil Case No. 675-9, entitled "Foremost Enterprises, Inc. vs. Ong Siong", an ejectment case appealed by defendant Ong Siong from the City Court of Manila.

On February 28, 1968, Judge Lantin rendered a decision in the aforesaid case, the decretal portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter and all persons claiming under him to vacate the premises located at 431 Bustillos, Sampaloc, Manila, within a period of 60 days from the date this decision becomes final, to pay the plaintiff the sum of P300.00 a month beginning June 1, 1966 until he actually vacates the premises, to pay attorney's fees in the sum of P200.00 and the costs.

Defendant's counterclaim is dismissed.

SO ORDERED."

On April 2, 1968, Ong Siong filed a notice of appeal, appeal bond and record on appeal. Judge Lantin approved the appeal bond and record on appeal on May 11, 1968. The records were thereafter trans-mitted to the Court of Appeals where the case was docketed as CA-G.R. No. 41984-R.

In the meantime, or on April 3, 1968, the plaintiff, petitioner herein, filed a motion for execution pending appeal, which motion was granted by Judge Lantin in an order, dated April 20, 1968, which reads as follows:

"Upon consideration of the motion for execution pending appeal and the opposition thereto, the said motion is hereby granted.

Let execution of the decision be issued pending appeal."

This order was amended on April 29, 1968 in this wise:

"The order of this Court on April 20, 1968 is hereby amended to read as follows:

Upon consideration of the motion for execution pending appeal and the opposition thereto, the said motion is hereby granted, it appearing that the plaintiff acquired the property in question since April 1966, a demand to vacate the same was made upon the defendant since July 31, 1966, the case was filed in the Municipal Court on August 3, 1966, and it is now almost two years that the defendant has been required to vacate the premises but he

is still occupying the same to the prejudice of the plaintiff who desires to utilize them for its own business purposes.

Let execution of the decision be issued pending appeal."

Two attempts to reconsider the above orders having been rejected, Ong Siong went to the Court of Appeals on a petition for certiorari and prohibition, docketed as CA-G.R. No. 41417-R. Acting on this petition, the Court of Appeals rendered the questioned resolution setting aside the aforesaid orders of execution. Unable to secure a reconsideration of this resolution, plaintiff Foremost Enterprises, Inc. instituted the instant petition for review.

Meanwhile, the appeal on the main case, CA-G.R. No. 41984-R, was dismissed by the Court of Appeals in a resolution dated March 29, 1969. Entry thereof was effected on August 2, 1969.

From the facts narrated above, it is clear that any disquisition and/or disposition of the issue raised in this petition, i.e., whether or not petitioner is entitled to immediate execution of the decision in Civil Case No. 67599 would be a pure academic exercise, considering that the dismissal of Ong Siong's appeal in the main case has rendered said decision final and executory.

WHEREFORE, this petition, being moot and academic is hereby dismissed. No pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., on leave.

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