

HONESTO CORONEL Y ALEJANDRO BANDA, RECURRENTE, CONTRA BIENVENIDO A. TAN, JUEZ DE PRIMERA INSTANCIA DE RIZAL, LUCIO M. Tanco, JUEZ DEL JUZGADO MUNICIPAL DE LA CIUDAD RIZAL, EDU...

G.R. No. L- 2151. November 05, 1948

Ponente: PABLO, J.

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PABLO, J.:

Los recurrentes piden en una solicitud original de interdicto prohibitorio y avocacion que este Tribunal declare nula y de ningun valor la orden de 8 de Abril de 1948 del Juzgado Municipal de la Ciudad de Rizal que dispone la demolicion de sus casas y la orden de 17 de Marzo de 1948 del Juzgado de Primera Instancia de la provincia de Rizal que denego la peticion de un interdicto prohibitorio preliminar.

Los hechos son los siguientes: En las causas de desahucio Nos. 127, 128, 129, 130, 131, 133, 134 y 135 del Juzgado Municipal de la Ciudad de Rizal por convenio de las partes interesadas se dicto sentencia del tenor siguiente "Que todos y cada uno de los demandados reconocen el derecho del demandante expuesto en las demandas y por consiguiente los demandados estan dispuestos en desalojar el terreno del demandante, pero sujeto a esta condicion que los demandados desalojaran el terreno del demandante en cuestion en o antes del 31 de Diciembre de 1947 sin que estos demandados tenga la obligacion de pagar renta alguna hasta dicha fecha."

En 15 de Marzo de 1948, los recurrentes presentaron una solicitud de injunction y certiorari con una peticion de interdicto prohibitorio preliminar en el Juzgado de Primera Instancia (C. C. No. 63) para impedir la ejecucion de la demolicion de sus casas dispuesta por la orden del Juzgado Municipal de 13 de Febrero de 1948. La peticion de interdicto fue denegada por el Hon. Juez Tan en 17 de Marzo de 1948 y otra mocion enmendada del mismo tenor fue denegada en 19 del mismo mes.

En 8 de Abril de 1948, otra vez el Juzgado Municipal de la Ciudad de Rizal ordeno la demolicion de las casas de los recurrentes y estos pidieron la reconsideracion de las sentencias de 17 y 19 de Marzo del Hon. Juez Tan, peticion que fue denegada en 13 de Abril.

En 17 de Abril, los recurrentes presentaron en la escribania de este Tribunal el presente recurso y a pesar de que se ordeno la expedicion de un interdicto prohibitorio preliminar bajo prestacion previa de una fianza de P200.00, los recurrentes no han hecho nada; en 30 del mismo mes, el Juez del Juzgado de Primera Instancia de Rizal sobreseyó la causa No. 463 de interdicto prohibitorio y avocacion fundándose en que la segunda orden de demolicion de las casas ya fue ejecutada por el sheriff. Esta orden de sobreseimiento ha quedado firme. Como se puede impedir la ejecucion de una orden ya previamente ejecutada? Por su propia desidia, los recurrentes han perdido ya su derecho, si alguna vez lo han tenido, de pedir una orden de Interdicto.

Si hemos dado curso a la solicitud fue porque habia alegaciones prima facie que justificaban la expedicion de un interdicto prohibitorio preliminar. Puesto que los recurrentes han permitido, sin hacer uso de los remedios legales

de que podlan disponer, la ejecucion de la orden del Juez Municipal de 8 de Abril de 1948 y por su abandono permitieron que la orden de sobreseimiento del Juzgado de Primera Instancia en el asunto de certiorari e injunction de 30 de Abril de 1948, haya quedado firme, toda cuestion sobre la legalidad o no de la ejecucion y la consiguiente responsabilidad civil que pudieran tener algunos de los recurridos ya es academica.

Se sobresee la solicitud con costas.

Paras, Bengzon, Tuason y Montemayor, MM., estan conformes.

Moran, Pres., conforme en el resultado.

DISSENTING AND CONCURRING:

FERIA, J.:

I dissent from the ratio decidendi of the decision, but I concur in the dismissal of the petitioner's action.

This is not an action of injunction and certiorari, but of prohibition and certiorari, with a petition for preliminary injunction in order to preserve the status quo of the case during the pendency of the proceeding. The preliminary injunction was granted by this Court, but through the failure of the petitioner to file a bond in time the judgment of the respondent Municipal Judge of Rizal City was executed.

In deciding the merits of the case this Court dismisses the petition on the ground that the order of dismissal by the Court of First Instance of Rizal having become final, and the order complained of having been already executed, the execution of said order can no longer be enjoined or prohibited, and the petitioner has lost his right, if any, to secure a preliminary injunction.

The present action, not being an action of injunction nor of prohibition only, with which the decision seems to confuse, but also of certiorari on the ground that the respondent judge exceeded his jurisdiction in ordering the execution of the order complained of, the execution of said order did not necessarily abate the certiorari proceeding which seeks the annulment of said order, so that the petitioner may claim damages if he is entitled to any, from the other respondent. The decision is not therefore in accordance with law in dismissing the petitioner's action on the above mentioned ground. The decision may be dismissed, however, on a different ground. The petitioner had originally filed a special civil action of certiorari and prohibition with the Court of First Instance of Rizal against the Municipal Judge of Rizal City, and the said Court of First Instance dismissed the petition. But the petitioner, instead of appealing from the decision of this Court, has filed the present original action of certiorari and prohibition.

The law does not allow the filing of two original special civil actions, one with the Court of First Instance and another with the Supreme Court which has concurrent jurisdiction with the former to take cognizance of such an action, as we have already held in several cases decided by this Court. And the reason is that, otherwise, the party may proceed with the case in the court which has rendered or may render a decision favorable to him and dismiss the other, or both courts may render two contradictory decisions. The only proper step for the petitioner to have taken in the present case was to appeal from the decision of the Court of First Instance.

The petition is therefore dismissed with costs.

PERFECTO AND BRIONES, JJ.:

We concur in this opinion.

Se sobresee la solicitud.

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