

C. N. HODGES, PETITIONER, VS. HON. FRANCISCO ARELLANO, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND WILLIAM C. PFLEIDER, RESPONDENTS.

G.R. No. L-13162. August 31, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of mandamus.

On 13 February 1954 C. N. Hodges and William C. Pfleider entered into a "contract to sell," whereby the former promised to sell to the latter two parcels of land containing a total area of 2,660.535 sq. m. more or less (Lots Nos. 1 and 3, plan No. 11-13650), situate in Asia, Cauayan, Occidental Negros, for and in consideration of the total sum of P90,273.73, payable in installments as follows:

P273.73 on Feb. 13, 1954,
5,000.00 on or before May 31, 1955
6,000.00 on or before May 31, 1956
7,000.00 on or before May 31, 1957
8,000.00 on or before May 31, 1958
8,000.00 on or before May 31, 1959
10,000.00 on or before May 31, 1960
10,000.00 on or before May 31, 1961
12,000.00 on or before May 31, 1962
12,000.00 on or before May 31, 1963
12,000.00 on or before May 31, 1964,

with interests at the rate of ½% a month on the unpaid balance and to deliver possession thereof upon the signing of the agreement and payment of the first installment agreed upon (Annex A). On 28 January 1956 the petitioner executed a notarial act cancelling, annulling, resolving and/or rescinding the contract to sell for failure of the respondent William C. Pfleider to comply with the terms and conditions of their contract and demanding from the latter the possession of the parcels of land within fifteen days from receipt thereof (Annex B). On 13 March 1956 the petitioner brought in the Justice of the Peace Court of Asia, Occidental Negros, a detainer action praying that the latter be ordered to vacate, return or surrender to the former the possession of the parcels of land, to pay the sum of P450 every month as a reasonable compensation for the use or occupation thereof beginning 6 February 1956 until possession thereof shall have been restored to him, with interest at the legal rate, and the additional sum of P100 for attorney's fees, and the costs of the suit, and for any other just and equitable relief (Annex C). After hearing, the Court rendered judgment ordering the respondent Pfleider to—

(a) Vacate and surrender the possession of Lots Nos. 1 and 3 of plan II—13650-Amd, of the Cadastral Survey of Negros Occidental, situated in barrios Alim and Manalimsim, Municipality of Asia, to the plaintiff C. N. Hodges;

(b) Pay the plaintiff the sum of P450.00 a month for the use and occupation of the premises beginning February 6, 1956 until the same are delivered to the plaintiff, with legal rate of interest from April 18, 1956 until fully paid;

(c) Pay to the plaintiff the sum of P100.00 for attorney's fees and to pay the costs. (Annex D)

After receipt of a copy of the judgment, the petitioner filed a motion for immediate execution pursuant to section 8, Rule 72 (Annex E). On 25 May 1957 the court granted the motion and issued the writ of execution (Annex F). However, before the writ could be enforced, the respondent Pfleider had appealed to the Court of First Instance (Civil No. 4438). There the petitioner again filed a motion for immediate execution of the judgment of the justice of the peace court (Annex G). On 29 July 1957 the respondent Pfleider filed a "motion to dismiss with preliminary injunction," on the ground that the complaint states no cause of action; that the justice of the peace court had no jurisdiction to try the original case; and that the petitioner is barred by the principle of res adjudicata (Annex H). The petitioner filed an answer thereto (Annex I). On 7 September 1957 the Court entered an order dismissing the petitioner's complaint on the first ground invoked by the respondent Pfleider, because the latter's failure to pay the former did not give him the right to rescind the contract to sell by himself alone (Annex J). The petitioner filed a motion for reconsideration (Annex K), the respondent Pfleider, an answer thereto (Annex L) and the petitioner, a reply to the respondent's answer (Annex M). On 28 October 1957 the Court denied the petitioner's motion for reconsideration (Annex N).

Claiming that he is left without a plain, speedy and adequate remedy in the ordinary course of law, the petitioner prays that the respondent judge be ordered to reinstate his case, to issue an order of execution of the judgment rendered by the justice of the peace court or that the other respondent be ordered to file a supersedeas bond in the sum of P6,300, and to pay the sum of P450 monthly from 6 April 1957 until the case shall have been finally decided and costs; and that he be granted other just and equitable relief.

The writ prayed for is granted only when "there is no other plain, speedy, and adequate remedy in the ordinary course of law." The petitioner had the plain, speedy and adequate remedy of an appeal from the order of dismissal entered by the respondent court.

The writ prayed for is denied, with costs against the petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, JJ., concur.

Paredes, J., took no part.

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