

OSCAR DE LEON, DOLORES DE LEON, HECTOR DE LEON, ROSARIO DE LEON-RAMIREZ, AND EMILIO DE LEON, PETITIONERS, VS. CEFERINO DE LOS SANTOS, JUDGE OF FIRST INSTANCE OF ILOCOS SUR, AND ...

G.R. No. L-1205. May 24, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is a petition to review an order of execution by the respondent judge issued after the record on appeal was submitted but before it was approved. The cause is one over the possession and ownership of a house and lot, and the judgment of the court below declares "the plaintiff absolute owner of the properties described in the complaint and ordered the defendants to restore its possession to the former."

The first ground of attack is grave abuse of discretion. The allegations in the pleadings and the facts disclosed thereby do not sustain the charge. These allegations and these facts, so far from showing an abuse of discretion on the part of the court, satisfy us that there is a good reason for the execution and that the court made proper use of its judgment. Far from acting arbitrarily or capriciously, the respondent judge appears to have exercised his discretion with discrimination and deliberation, ordering, before he decided the motion, an ocular inspection of the house and a report on the condition thereof. The result of the inspection and other factors reasonably warrant, in our opinion, the lower court's order as a suitable measure to preserve the building and protect the interests of the parties.

The petitioners would have Section 9 of Rule 72 of the Rules of Court applied to this case. That Rule refers to the stay of execution in cases of forcible entry and detainer. The applicable Rule is Section 2 of Rule 39. There is no warrant for treating the present case on the same level as a possessory action, as petitioners urge. The parity which is said to exist between the two cases is outweighed by the disparity. Among other differences, we may mention the fact that in a forcible entry and detainer case the rights of the plaintiff are protected by the continued payment of the rents; in the instant case, no damage or compensation for the use of the house is provided in the decision. In a possessory action, the owner of the house retains the right to make repairs that are necessary for its proper preservation; in the present case, the plaintiff is not at liberty to do that. A supersedeas bond is good only "for the performance of the judgment or order appealed from in case it be affirmed." It does not cover damage caused to the property during the pendency of the appeal. The right of the defendant in an ordinary action to stay execution has to be rested on the general principles of law in relation to the peculiar circumstances of the case.

The petitioners question the jurisdiction of the Court of First Instance to issue execution after the submission of the record on appeal. They maintain that after the record on appeal is presented, and even though it has not been approved, the court loses jurisdiction over the cause. Neither reason nor authority supports this view. The construction which the petitioners put on Section 2 of Rule 39 would place it within the power of a losing party to nullify the authority of the court to order execution pending appeal. If the mere presentation of the record on

appeal could prevent the execution of the judgment, the defeated party, to forestall that contingency, could file his notice of appeal, appeal bond and record on appeal, in any form or manner, immediately after the decision is promulgated, or, at the latest, before the other party has had time to prepare a motion for execution and to put it in shape to be acted upon by the court. For the rest, the Rule specifically allows the granting of execution, for good reason, before the expiration of the time to appeal. It does not say, by express terms or implication, that execution may not issue under any circumstance after the record on appeal has been perfected.

The petitioners invite attention to the provision in Section 2 of Rule 39, that the order for execution shall be included in the record on appeal, and reason that this requirement could not be fulfilled if execution be issued after the filing of the record on appeal. But the incorporation of the order of execution into the record on appeal is not indispensable in all cases. The Rule makes it clear that inclusion has to be done only when the issuance of the order of execution precedes the presentation of the record on appeal. This particular provision, by the way, is one more argument for the theory that the time within which the court is authorized to have the judgment executed is the time prescribed for appeal irrespective of the filing of the record on appeal, provided only that the record on appeal has not been approved. It is the approval of the record on appeal that removes the case from the trial court's jurisdiction.

The petition is denied with costs against the petitioners.

Paras, Pablo, Perfecto, and Bengzon, JJ., concur.

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