

BRAULIO, PERFECTO, GERARDO, DEOGRACIAS, ALL SURNAMED TAGULIMOT AND DOLORES CAPITO, PETITIONERS, VS. QUERUBE MAKALINTAL, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE A...

G.R. No. L-2512. November 28, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

Special civil action to annul the orders of respondent judge of Iloilo province directing the issuance of execution in civil case No. 1251 of his court, wherein these petitioners are defendants in a forcible entry and detainer case coming from the justice of the peace court of Leon, Iloilo.

It appears that having appealed to the court of first instance from an adverse judgment in said litigation, these petitioners found themselves facing a motion for execution, upon the ground that they had failed to submit a bond to answer for the damages of P100.00 assessed against them in the decision of the justice of the peace court; that they objected to the motion arguing, in effect, that it was premature; that the respondent judge granted the motion on June 25, 1948 because "the defendants have not filed a supersedeas bond to stay execution pursuant to section 8, Rule 72 of the Rules of Court"; that thereafter, on June 30, 1948, they filed a bond in the amount of one hundred pesos, which the respondent judge disapproved; that a motion to reconsider was denied on September 18, 1948.

Section 8, Rule 72 of the Rules of Court provides in part:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, * * *. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits."

It is the contention of petitioners that their duty, as defendants, to file the "sufficient bond"—called supersedeas bond does not arise until the justice of the peace has issued a writ of execution, upon proper request. It is also their contention that the motion for execution may only be addressed to, and granted by, the justice of the peace court and not by the court of first instance.

The first point is not supported by the wording of the above-quoted rule. It is furthermore contrary to the practice and procedure approved by this Court in several instances in which it has passed on similar questions.[1]

The second point has likewise no merit. Undoubtedly the justice of the peace may issue execution "immediately"

after the judgment. (Pascua vs. Nable,[2] 40 Off. Gaz., 10th Suppl., 132). But after the perfection of the appeal it is clear that the jurisdiction over the controversy has passed to the court of first instance. Hence motions submitted to that court and granted or acted upon by it under similar circumstances have not been questioned here.[3]

Although in ordinary civil cases "a perfected appeal shall operate to vacate the judgment of the justice of the peace" (sec. 9, Rule 40) Rule 72 sets out a particular procedure in actions on forcible entry and detainer cases and the consequences of an appeal to the court of first instance. It may be deemed an exception to the general rule vacating appealed judgments.

It is true, as urged by petitioners, we have held that the court of first instance may in its discretion give the interested party a reasonable time within which to file a supersedeas bond or to replace a defective one.[4] But no petition for such time was made to the judge. And we have not held that refusal of the court to grant time constitutes in itself unwarranted exercise of power. He has discretion to grant or to deny. In this instance we are not satisfied that, under the circumstances, the petitioners successfully sustained the burden of showing abuse of discretion on the part of the respondent judicial officer.

Wherefore, the petition for certiorari and prohibition is denied, with costs. So ordered.

Moran, C.J., Ozaeta, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Paras, J., concurs in the result.

[1] Felipe vs. Teodoro, 46 Phil., 409; Igama vs. Soria, 42 Phil., 11; Tomboc vs. Court of First Instance of Pangasinan, 46 Phil., 351; Domingo vs. Flordeliza, 37 Phil., 694.

[2] 71 Phil., 186.

[3] Sumintac vs. Court of First Instance, 71 Phil., 445, 16; Tolentino vs. Court of First Instance, 75 Phil., 282; and see cases in note (1). See general, Moran Rules of Court, Vol. II, pp. 258-261.

[4] Tolentino vs. Court of First Instance, 75 Phil., 282; Zamora vs. Dinglasan, 43 Off. Gaz., 1627.

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