

CECILIO BUENAVENTURA, PETITIONER, VS. EMILIO PEÑA, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.*G.R. No. L-1335. July 30, 1947*

Ponente: PARAS, J.

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The petitioner, Cecilio Buenaventura, is the plaintiff in civil case No. 971 of the Court of First Instance of Manila, wherein he sought to obtain a judicial declaration upholding his right over the occupancy and lease of stalls Nos. 1162 and 1495 of the Quinta Market, and an order restraining the defendants therein from ousting him from said market stalls. A writ of preliminary injunction was issued by the respondent Judge, Hon. Emilio Peña, directed against Mayor Valeriano Fugoso and his co-defendants. After trial, said respondent Judge rendered a decision declaring the respondent Domingo Coquiart to be the lawful occupant of the stalls in question, and setting aside the writ of preliminary injunction aforementioned. From this decision the petitioner has appealed, but prior to the expiration of the period for appeal, the respondent Domingo Coquiart, one of the defendants in civil case No. 971, filed an urgent motion for execution based mainly on the following grounds:

"It is to be remembered that Domingo Coquiart has long been deprived of the occupancy of Market Stalls Nos. 1162 and 1495, Quinta Market, Manila, consequently depriving, him for so long a time of the only means of support for himself and his family. Each day of delay in the execution of the judgment means a corresponding day of difficulty on his part and that of his family in procuring the necessary provision for their support. Aside from the fact that plaintiff has several other stalls in the Quinta Market, Manila, besides the two stalls in question that he is illegally occupying he has already profited so much from the said market stalls in question at the expense of the defendant Domingo Coquiart, the lawful occupant of the same. Nobody should be allowed to enrich himself at the expense of another."

This motion was granted by the respondent judge, and the order to that effect was entered at the foot of the second page of said motion.

In the present petition for certiorari, the petitioner contends that the order of the respondent judge directing immediate execution of his decision in civil case No. 971 constitutes a grave abuse of discretion on his part, there being no good reasons therefor.

Under section 2 of Rule 39 of the Rules of Court, the trial court may, in its discretion, order execution before the expiration of the time to appeal, upon good reasons to be stated in a special order. The sufficiency of the reasons for ordering such execution is naturally to be determined by said court; and we will not substitute our own way of thinking for that of the trial court with reference to such matters, if its discretionary power is to have any meaning.

Of course, interference by this Court may be in order, if it be shown that there has been an abuse of discretion or that "since the issuance of the order, conditions have so far changed as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not, or could not have been, contemplated by the trial judge at the time of the issuance of the order." (Moran, Comments on the Rules of

Court, Vol. 1, 2d ed., p. 644, citing *Calvo vs. De Gutierrez*, 4 Phil., 203; *Case vs. Metropole Hotel and Restaurant*, 5 Phil., 49; *Gamay vs. Gutierrez David*, 48 Phil., 768.) In the case at bar, however, we cannot hold that the fact that the respondent Domingo Coquiart has long been deprived of the possession of the market stalls awarded to him by the decision in civil case No. 971, and the consequent loss on his part of the benefits that should daily accrue to him by occupying said stalls, are reasons not good enough for ordering immediate execution. And the cogency of such reasons are not affected by the lack of any finding in the decision in said case as to damages.

There is another ground making the present petition untenable. The decision in civil case No. 971 set aside the writ of preliminary injunction issued at its commencement. Under section 4 of Rule 39 of the Rules of Court, unless otherwise ordered by the trial court, a judgment dissolving or denying an injunction shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal, although said court, in its discretion, may restore such injunction during the pendency of the appeal upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party. In the instant case, the respondent judge not only did not restore the writ of preliminary injunction dissolved in his decision, but expressly ordered its execution and refused to allow the herein petitioner to file a supersedeas bond. In the absence of such injunction, the defendant City officials in civil case No. 971 could have proceeded with the ouster of the petitioner from the stalls in question. Indeed, there is really nothing to be executed under the decision which merely determined who has a better title to said stalls; and the order of the respondent judge now complained of, can only be interpreted to mean as an authorization for the City authorities to carry out, with the aid of the sheriff, the said ouster.

The petition is hereby dismissed, and writ of preliminary injunction heretofore issued accordingly dissolved. So ordered, with costs against the petitioner.

Moran, C.J., Feria, Pablo, Hilado, Bengzon, Hontiveros, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Petitioner filed a complaint against the Mayor of Manila and other city officers to restrain them from ousting plaintiff from stalls 1162 and 1495 in the Quinta Market. The complaint is dated October 18, 1946. Domingo Coquiart filed an answer claiming to be the rightful occupant of said stalls. The other defendants filed an answer praying for the dismissal of the complaint. On January 30, 1947, respondent judge rendered decision declaring Coquiart the lawful occupant of the stalls, with costs against the plaintiff.

On February 12, 1947, Coquiart moved for the execution of the judgment "by authorizing the sheriff of Manila to eject Cecilio Buenaventura and his representatives from market stalls Nos. 1162 and 1495, Quinta Market, Manila, in order that Domingo Coquiart can immediately occupy" them. Plaintiff filed an opposition to said motion on February 20, 1947. Respondent judge issued an order of execution addressed to the sheriff of Manila to the following effect:

"Now, therefore, we command you to cause the plaintiff Cecilio Buenaventura to forthwith vacate the stalls Nos. 1162 and 1495 of the Quinta Market, Manila, and that defendant Domingo Coquiart have restitution of the same."

The above writ was issued upon respondent judge's order of February 21, 1947, consisting of two words, "Motion granted," written in the second page of the motion for execution filed on February 12, 1947.

The power of the lower court to order execution of judgment before the expiration of the time to appeal is

regulated by section 2 of Rule 39, where it is provided that execution may be issued "upon good reasons to be stated in a special order."

This provision appears to have been violated as in the two words "Motion granted" written by respondent judge there is no reason stated at all, whether good or bad, in support of the issuance of execution.

This clear violation of law is more than enough ground why said order should be set aside, and so we vote.

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