

ENRIQUE BAUTISTA, PLAINTIFF AND APPELLANT, VS. MAXIMO BAKOD, DEFENDANT AND APPELLEE.*G.R. No. L-2871. December 26, 1950*

Ponente: PADILLA, J.

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On 28 March 1939, in civil case No. 7036 of the court of first instance of Laguna entitled "Maximo Bakod, plaintiff versus Enrique Bautista, defendant," judgment was rendered declaring the plaintiff the owner of a parcel of land described in the complaint and the house erected thereon and, upon payment or deposit by the plaintiff of the sum of P500 in the office of the clerk of court, ordering the defendant to deliver the possession of the house and lot to the plaintiff, without pronouncement as to costs (Annex A). On 16 May, the plaintiff asked that a writ of execution be issued (meaning the delivery of the possession of the lot and house subject of the litigation), he having deposited on 13 May the sum of P500 in the office of the clerk of court, as evidenced by O.R. No. 625917 issued on that date (Annex D). On 19 May, the plaintiff excepted to the order denying his motion for new trial and announced his intention to have the judgment reviewed by the Court of Appeals (Annex E). On 20 May, the court denied the petition for the issuance of a writ of execution, as prayed for by the plaintiff, on the ground that it was premature, the court having set aside the judgment rendered on 28 March 1939, only insofar as it made no finding or pronouncement on the counterclaim of the defendant, and ordered the reopening of the case to afford the defendant an opportunity to prove his counterclaim (Annex F). On 24 September 1940, the court of first instance of Laguna rendered a supplemental judgment ordering the plaintiff to pay the additional sum of P516.02, for expenses incurred by the defendant in the reconstruction or remodelling of the house (Annex B). On 26 October 1940, the plaintiff appealed from the original judgment of 28 March 1939 and from the supplemental judgment of 24 September 1940, as amended by an order of the court of 3 October 1940, only insofar as the trial court failed to order the defendant to pay a reasonable compensation for the use and occupation of the house and lot from the date of the occupation by the defendant to the date of the delivery of possession thereof (Annex C). On 30 October 1943, the Court of Appeals rendered judgment holding that the defendant was bound to pay P20 monthly as a reasonable compensation for the use and occupation of the house and lot from 12 November 1937 until the date of the delivery of possession thereof, which may be deducted from the sum of P495.02, the value of the improvements the plaintiff had to pay to the defendant, as directed in the supplementary judgment of 24 September 1940 and amendatory order of 3 October, the same year (Annex G). As already stated, on 13 May 1939, the plaintiff deposited in the office of the clerk of court the sum of f 500 which was turned over to the provincial treasurer on 27 May following (par. 4 of the Stipulation of Facts). Up to 4 February 1948, the defendant had not withdrawn the said deposit and had not filed any motion for the execution of the original judgment in the case (par. 9 of the Stipulation of Facts). On 27 November 1947, the defendant brought an action against the plaintiff to revive the judgment rendered in civil case No. 7036. The docket number of the action for revivor is 9033 of the same court. On 4 February 1948, the court dismissed the com-plaint for the revival of judgment, on the ground that upon the facts stipulated by the parties there is no cause of action for reviving the judgment rendered in civil case No. 7036, because the plaintiff therein, defendant herein, had deposited P500 in

the office of the clerk of court, as directed by the judgment rendered in said case. From the judgment dismissing the complaint for revivor this appeal has been taken.

As there is no question of fact involved in the appeal, the Court of Appeals certified it to this Court.

The reason for the filing of the complaint in the last case (No. 9033) is that the plaintiff, the defendant in the previous case No. 7036, has not received payment of the sum of P500 and lawful interest thereon from 28 March 1939 (par. 6 of the complaint), and the period of five (5) years already has elapsed since judgment had been rendered in the case. The plaintiff in the case for revival of judgment is laboring under a misapprehension. The judgment, which the plaintiff seeks to revive so that, according to him, it may be executed, already had been complied with by the defendant, the plaintiff in the former case, by the deposit of P500 made on 13 May 1939 (see par. 4 of the Stipulation of Facts). Hence, the judgment, as far as that phase of it is concerned, had been fully complied with and no writ may be issued for the execution of that part of the judgment already complied with. The appeal is obviously frivolous.

The judgment appealed from is affirmed, with treble costs against the appellant.

Moran, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

MOEAN, C. J.:

Mr. Justice Paras voted for affirmance.

Judgment affirmed with treble costs.

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