

CARLOS AVENDAÑO, PETITIONER, VS. HON. LADISLAO PASICOLAN, ET AL., RESPONDENTS.

G.R. No. L-18860. November 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On October 25, 1956, the Justice of the Peace of Lubao, Pampanga, rendered judgment in Civil Case No. 145 (Unlawful Detainer), entitled "Tomas D. Salonga vs. Carlos Avendaño, et al." the dispositive portion of which reads—

"WHEREFORE, the defendant Carlos Avendaño is hereby ordered to vacate the premises in question and to restore the possession thereof to the plaintiff Tomas D. Salonga.

"It is further ordered that the defendant Carlos Avendaño pay to the plaintiff Tomas D. Salonga the sum of Two Thousand Pesos (P2,000) Philippine Currency, per annum, from March 1, 1955 up to the restitution of the premises to the plaintiff, as reasonable compensation for the use and occupation of the premises; and costs."

The above judgment was appealed to the CFI of Pampanga and docketed as Civil Case No. 1152. In order to stay the execution of the judgment, a yearly deposit of P2,000.00, was made by petitioner, with the Clerk of the CFI of Pampanga on the following dates:

- a. Nov. 14, 1956, for the agricultural year, 1955-1956;
- b. Jan. 23, 1958, for the agricultural year, 1956-1957;
- c. March 19, 1958, for the agricultural year, 1957-1958;
- d. March 30, 1959, for the agricultural year, 1958-1959;
- e. March 14, 1960, for the agricultural year, 1959-1960;
- f. March 29, 1961, for the agricultural year 1960-1961.

Under date of March 19, 1958, the respondents (Salongas), claiming that petitioner failed to deposit the annual rentals pertaining to the agricultural year 1957-1958, presented with the lower court a motion for immediate execution of the judgment of the JP Court. An opposition was presented by petitioner, alleging among others, that said amount was deposited and while it was not made during the first ten (10) days of March, as required by Section 8, Rule 72, is of no moment, since said Rule does not apply to cases of unlawful detainer involving agricultural lands, including fishponds, when rentals are on the yearly basis. The Court resolving the point, said—

"***, the motion dated March 19, 1958 which was set for hearing on March 22, same year, asking for the immediate execution of the judgment on the ground that the defendants did not make deposits for the year 1958, and it appearing from the answer of defendant Carlos Avendaño dated March 31, 1958 that he has already made a deposit in the sum of P2,000.00 for March 1, 1957 to March 1, 1958, as shown by Official Receipt No. 4502957, the said motion for immediate execution is hereby denied." (Order on May 23, 1958).

Upon the authority of the above Order, the respondent Salongas, withdrew from the Clerk, the sum of P2,000.00.

On March 24, 1959, respondents, again petitioned for the immediate execution of the judgment, claiming that the rentals for the agricultural year 1958-1959 had not been deposited during the first ten (10) days of March, 1959. Petitioner again opposed the motion, invoking the same grounds that he interposed in his opposition to the first motion for immediate execution. On April 13, 1959, respondents Judge issued an Order of the following tenor—

"This is a motion for execution under section 8, Rule 72 of the Rules of Court.

It appears that the yearly deposit of P2,000.00 was made on March 30, 1959, as evidenced by the certificate of the cashier, Annex 'A', instead of on or before March 10, 1959 (See decision of the Justice of the Peace dated October 25, 1956).

Considering that the property is a fishpond and considering further the fact that the motion for execution was filed on March 30, 1959, the court believes that the provisions of section 8, alluded to above, have been substantially complied with.

Motion denied. Hereafter, the defendant shall deposit the said yearly rental of P2,000.00 during the first ten (10) days of March of every year until this case shall have been finally adjudged and decided."

On March 15, 1961, the Salongas presented with the lower Court an Urgent Motion for Immediate Execution of the judgment, for failure of the petitioner to deposit the annual rent of P2,000.00 for the agricultural year 1960-1961 within the first ten (10) days of March, 1961. A corresponding opposition was filed by petitioner, reiterating, once more, his contention that Sec. 8, of Rule 72, does not apply, since the agricultural year 1960-1961 ended in the month of March, 1961, the rental need not be deposited within the first ten (10) days of said month.

On June 7, 1961, respondent Judge issued an Order, pertinent portions of which are reproduced below—

"Upon the facts, it is clear that this is a case where the Justice of the Peace has determined the amount to be paid and the period within which it must be paid, if an immediate execution is to be stayed, that is, P2,000.00 per annum from March 1, 1955 up to the restitution of the fishpond.

Considering the period of ten (10) days fixed in Section 8, Rule 72, is a reasonable period, and considering further that the defendant has been admonished under order of April 13, 1959 to pay the annual rental within ten (10) days from March 1 of every year.

It is hereby adjudged that the deposit made on March 29, 1961 is a direct violation of Section 8, Rule 72, the judgment of the Justice of the Peace court quoted above, and the order of April 13, 1959.

The argument that the agricultural year of the fishpond in question expired on March 31, 1961, is untenable. As aforesaid, the date of payment has been specifically fixed in the judgment of the justice of the peace, and said date and no other date, shall prevail.

The case of Cruz vs. Judge Dollete has no application as the facts are entirely different.

WHEREFORE, let a writ of execution issue immediately upon the judgment of the justice of the peace rendered in this case, dated October 25, 1956."

A writ of execution was correspondingly issued, but the effects thereof were suspended per order of respondent Judge dated June 13, 1961. On July 17, 1961, petitioner presented a Motion for Reconsideration against the Order of June 7, 1961, which was denied on August 31, 1961.

Petitioner claiming that the Order of June 7, 1961 constitutes a violation of his rights and that the implementation

thereon would work grave and irreparable injury to him; that it had been issued with grave abuse of discretion, for which there is no other plain, adequate and speedy remedy in the ordinary course of law, he brought the matter to this Court, on a petition for Certiorari with Preliminary Injunction. The petition was given due course and ordered the issuance of a writ of preliminary injunction upon the posting of a P2,000.00 bond. Respondents answering the petition, called the attention of this Court, to the fact that during the pendency of the instant proceedings in this court, the CFI of Pampanga rendered judgment in Civil Case No. 1152 on July 19, 1961 (petition was submitted on September 13, 1961), ordering petitioner herein to vacate the fishpond and to pay P2,000.00 from March 1, 1960 until he leaves the premises. The appeal of petitioner with the Pampanga CFI was dismissed for having been filed out of the reglementary period. The motion for reconsideration directed against the dismissal of the appeal was also denied on January 22, 1962, and the corresponding writ of execution based upon a final judgment was issued by the respondent Court. Respondents maintain, under the above set of facts, that the issue raised in the petition (the propriety of the writ of execution pending appeal), has become moot and academic and that hearing on the petition would be out an empty gesture and waste of time. Petitioner did not file any pleading to counteract these allegations of the answer, and did not appear during the hearing set on June 18, 1962, thus showing lack of interest on his part to further prosecute this case.

We do not believe that the JP Court, in ordering that the plaintiff should pay the respondents, rentals in the amount of P2,000.00 per year, "from March 1, 1955, up to the restitution of the premises", that it intended the payments should be made on the first ten (10) days of the month of March. Such date, in our opinion, is merely the starting point of petitioner's liability to pay. Moreover, section 8, Rule 72, insofar as execution of judgments in unlawful detainer cases, involving fishponds, is concerned, finds no application. We said—

"* * From this rule it appears clear that the immediate execution of the judgment can only be demanded if the defendant fails to pay on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. This rule contemplates payment of a monthly rental the failure of which would give rise to execution, and not the payment of rental in any other manner. In the present case, the rental fixed by the justice of the peace court is not monthly but yearly, and this is understandable considering the fact that the property subject of the lease is a fishpond. The court can take judicial notice that fishpond is operated on a yearly basis because by its very nature the harvest accrues only once a year with rare exceptions and generally the rental is computed on a yearly basis. It is for this reason that the justice of the peace court fixed a rental of P2,750.00 a year as the reasonable value of the use and occupation of the fishpond in litigation. Such being the case, it is our opinion that Section 8, Rule 72 cannot be invoked as basis for the execution of the judgment of the justice of the peace court. As it now appears the rental fixed by the court is not yet due and, therefore, the order of execution issued by the respondent judge is premature." (De la Cruz vs. Hon. Dollete, et al., 96 Phil., 797; Off. Gaz., 51 OC, p. 1826, April 1955).

As the facts obtaining in the case at bar comes within the purview of the above quoted legal pronouncements, We hold that the lower court erred in having the immediate execution of the judgment of the JP Court.

However, inasmuch as our ruling will no longer benefit the petitioner, since a final judgment on the merits of the case had been rendered by the lower court which ordered his ejectment from the premises in question, and for which a writ of execution has been correspondingly issued;

The petition is hereby dismissed, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepción, Barrera, and Makalintal, JJ., concur.

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