

AMANDA IÑIGO, PETITIONER, VS. GUILLERMO CABRERA, JUDGE OF THE MUNICIPAL COURT OF MANILA, AND LUISA DE LA FUENTE, RESPONDENTS.

G.R. No. L-1032. November 23, 1946

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioner Amanda Inigo is the defendant in an ejectment suit in the Manila municipal court (civil case No. 1954), wherein respondent Luisa de la Fuente demands the return of the premises known as No. 138-B Guipit, Sampaloc, leased to the former by the previous owner, Felixberto Iral. The new proprietress desires to occupy that apartment. After hearing the parties, the respondent judge rendered on August 27, 1946, a judgment ordering defendant (petitioner herein) to vacate, and to pay the plaintiff "the sum of P22, which is the reasonable value of rent of said premises for the period of June 9 to 30, 1946, and the further sum of P100 monthly, by way of damages, beginning July 1, 1946 until the defendant vacates and surrenders to the plaintiff the premises in question, plus the costs of suit." (Appendix D.)

In a motion for reconsideration, Amanda Inigo vigorously objected, among other things, to the award of 100-peso monthly damages; but the respondent judge declined to reconsider. Consequently, she announced and perfected her appeal to the Court of First Instance.

Foreseeing the probability that during the pendency of the litigation in the appellate court she could not make monthly one-hundred-peso deposits, and believing that the order of ejectment would then be inevitably carried out, petitioner instituted this special civil action for certiorari to annul that judicial order, alleging and arguing that it is in excess of jurisdiction or constitutes a grave abuse of discretion.

The respondents made answer sustaining the validity of the disputed directive. They assert, furthermore, that certiorari does not lie, because petitioner has a plain remedy by appeal.

In the light of our controlling decisions,[1] it might be contended that the award for damages in the illegal detainer case was improper and erroneous. However, specific pronouncement on the point becomes unnecessary, because of the pendency of the ejectment proceedings in the Court of First Instance of Manila, wherein any mistake on the matter could be expeditiously corrected.

On the other hand, it is fundamental in this jurisdiction that, generally, the writ of certiorari will not issue whenever there is a remedy by appeal.[2] And this principle appears to be decisive against the herein petitioner.

As to the contention that such appeal is insufficient to protect her rights because the ejectment order might "at any time be executed for her failure monthly to pay the 100-peso damages, it is enough to indicate that, under the Rules of Court,[3] she is not required periodically to make such deposit, for the reason that the pleadings and decision in the municipal court show, and respondents' attorney admits, that the amount does not represent a finding by the court on the reasonable rentals or compensation for the use of the premises. Furthermore, the same

attorney said at the hearing of this petition, that knowing such amount to be real damages—not rentals—he had no intention to ask for execution of the removal order should petitioner fail periodically to make one-hundred-peso payments.

In view of the foregoing considerations, the petition for certiorari is denied. No costs.

Moran, C. J., Paras, Feria, Pablo, Hilado, Briones, Padilla, and Tuason, JJ., concur.

[1] *Veloso vs. Ang Seng Teng* (2 Phil., G22), *De Castro vs. Justice of the Peace of Bocaue* (33 Phil., 595), *Mitschiener vs. Barrios* (11 Off. Gaz., 1901).

[2] *Herrera vs. Barretto* (25 Phil., 245), *Macasieb vs. Court of First Instance of Pangasinan* (34 Phil., 404), *Tirabol vs. Diaz* (44 Phil., 587), Rule 67 section 1.

[3] Rule 72, section 8.

CONCURRING

PERFECTO, J.:

Petitioner complains against the decision of the municipal court of Manila in which, besides ordering her to vacate the premises in litigation and to pay the plaintiff "the sum of P22, which is the reasonable value of rent of said premises for the period of June 9 to 30, 1946," she is sentenced to pay "the further sum of P100 monthly by way of damages beginning July 1, 1946, until the defendant vacates and surrenders to the plaintiff the premises in question."

Upon the facts in this case and in the light of what this court has declared in *Mitschiener vs. Barrios* (42 Off. Gaz., 1901), as to what damages may be adjudicated under Rule 72, it is evident that the granting of the "further sum of P100 monthly by way of damages," after the respondent court itself has declared that the sum of P22, "is the reasonable value of rent of said premises for the period of June 9 to 30, 1946," which means one peso a day, appears evidently arbitrary, illegal, and adjudicated in excess of the court's jurisdiction.

The record shows that respondent court had stated, at the hearing of petitioner's motion for reconsideration, that the above "further sum of P100 monthly" was granted to discourage petitioner from appealing from its judgment. The avowed purpose of the arbitrary and illegal adjudication of the "further sum of P100 monthly" only serves to worsen the arbitrariness so brazenly committed. Our laws, including the Constitution, guarantee the right of appeal, and any judge trying to defeat or even discourage it, by legal or illegal methods, violates the solemn commitments of his oath of office and becomes an obstruction to a fair administration of justice and, by his disregard of the law, a menace to orderly government.

Feeling that the administration of justice in town and city courts is unsatisfactory, the drafters of the Constitution inserted the mandate that all judges of inferior courts must have been admitted to the practice of law (section 8, Article VIII, of the Constitution) as one of the minimum requirements. The desideratum would be that they should have the personal character and qualities that will make them deserving to sit in any court, no matter how high it may be, and for said purpose give them the corresponding increased salary. Thus the possibility of such a wanton arbitrariness as the one the petitioner complained of will be reduced to the minimum. Let it be remembered that it is in city and town courts where the majority of the unfortunate citizens who can not afford to obtain relief against judicial arbitrariness have to appear.

At the hearing of this case, the attorney for respondents had expressly admitted that the amount does not represent

the finding of the court on the reasonable rentals or compensation for the use of the premises, and upon such admission made the express commitment that he had no intention to seek the execution of the order to vacate the premises should petitioner fail to pay plaintiff or deposit to the court the sum of P100 monthly in question, admitting that petitioner is not duty bound, under Rule 72, to make said payment or deposit to stay execution of the judgment pending her appeal.

The petition having been filed to ward off any order that any of the lower courts may issue for her to vacate the premises in case she failed to pay or deposit the monthly sum in question, the purpose of her petition has been attained with the express commitment made by the attorney for respondents, above mentioned, without which we would have voted to grant the petition. We, therefore, agree to and concur in the dismissal of the petition.

The dismissal should not encourage the perpetration of the arbitrariness, such as is depicted in this case. We will not countenance any kind of arbitrariness, much less if committed by a judicial officer.

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