

CO TIAC, PETITIONER, VS. FELIPE NATIVIDAD, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, JOAQUIN GARCIA, SHERIFF OF CITY OF MANILA, AND DOMINGO LAO, RESPONDENTS.

G.R. No. L-1457. January 28, 1948

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to review an order of execution and to restrain the Honorable Felipe Natividad as Judge of the Court of First Instance of Manila, the City Sheriff, and Domingo Lao, from carrying out that execution, issued in case No. 71052 of that Court entitled "Domingo Lao, plaintiff, vs. Co Kay, defendant."

The antecedents of the case as disclosed by the record are as follows: Under date of June 26, 1945, Domingo Lao brought an action in the municipal court for unlawful detainer of a warehouse (bodega) said to be located at 528 Elcano St, Manila, alleging that the property had been leased prior to February, 1945, to a certain Co Fiac on a month-to-month basis at a monthly rental of P40 payable In advance. It was further alleged that on or about the month of February 1945, Co Fiac, without giving any notice to the plaintiff, left the premises, and his whereabouts were unknown at the time of the filing of the complaint; that in the same month, the defendant, without obtaining the prior permission of the plaintiff, began to live in the said premises, telling the plaintiff that he was Co Tiac's relative; that the defendant, notwithstanding repeated demands, refused to vacate said premises. There are other allegations, under a second and a third cause of action, which have no bearing en the case.

On July 24, 1945, Judge Vicente Bautista of the Municipal Court gave judgment for the plaintiff. The defendant having appealed to the Court of First Instance, the parties, before trial, submitted a stipulation in accordance with which the latter Court rendered judgment on February 21, 1946. The important terms of the stipulation provided that the defendant was to continue occupying the premises in question until and not later than August 31, 1946, at the same monthly rental of P50.

The defendant refused to vacate the premises on the date above stipulated, and on September 3, 1946, the counsel for the plaintiff moved for the execution of the judgment and execution was issued.

On the 6th of September, the Sheriff made a return on the writ of execution, informing the court that the warehouse at No. 528 was occupied by another person and was not the subject of litigation. The Sheriff further informed the court that the building involved in the suit was No. 534, which, he said, was occupied by one Co Tiac, and that Co Kay, according to his information, resided on Villalobos street. Consequently, on the 18th of September, counsel for Domingo Lao moved to correct the order of execution by changing the number of the building from 528 to 534. On the 21st the Hon. Alfonso Felix, Judge, amended the judgment in the manner requested, saying that there was no question as to the identity of the property in litigation and that the confusion in numbers was only a clerical error.

On September 25, 1946, Co Tiac, the present petitioner, through counsel filed an "Urgent Motion to Quash Execution", asserting that he had been the lessee and occupant of the bodega for a period of ten years, having

leased it from Mrs. Ignacia Lao as co-administratrix of the estate of the deceased Albina de los Santos. He reasoned that he had not been a party to the case and heard of it for the first time a few days ago, when, he said, a deputy sheriff and Domingo Lao examined the premises and spoke something about wrong numbers. Co Tiac also assailed the legality of the amendment of the judgment which, he averred, was made "after the lapse of over five (5) months from the date the decision had already become final." He finally alleged "that the plaintiff is not the real party in interest and has no capacity whatsoever to file this suit".

On October 5, Judge Felix appointed the deputy clerk of Branch VII of the Court of First Instance, to receive the evidence which the parties might present and to submit such evidence to the court for proper action, evidence which, the court said, was necessary before the motion of Co Tiac to quash might be acted upon. The court set October 11, 1946, for the taking of such evidence. Because of objections to the appointment of a commissioner and a renewal of the petition for execution filed in the midst of the hearing, the taking of evidence was not finished on October 11. On the 19th of October the court denied the objections of the execution creditor and ordered the reception of evidence continued on October 26 "to determine whether Co Tiac is a squatter or not". Andres Concepcion, deputy clerk, submitted on December 4, 1946 all the evidence, oral and documentary, taken by him and the matter was argued orally before Judge Felix on December 26. After that hearing Judge Felix was appointed to the Court of Appeals apparently before he could decide the incident just mentioned. For this reason, the respondent Judge, Judge Natividad, as the new Judge of the Seventh Branch, reset the matter for January 18. On the 30th, Judge Natividad denied the motion to quash the execution, on the ground that "the movant, Co Tiac, is not a party in this case, either as plaintiff, or as defendant, or as intervenor." The court expressed "the opinion that said movant has no personality to intervene in this case at this stage of the proceedings and to ask for the quashing of the writ issued for the execution of the judgment rendered therein, which is now final and executory."

We shall decide only the questions put in issue in this instance. It is our view that the respondent Judge did not exceed his jurisdiction or abuse his discretion in entering the order now being challenged. Without determining the correctness of the ground on which the order was rested - that one who is not a party to a case may not move for a stay or vacation of execution - the error if any committed by His Honor on this score is, in our opinion, unimportant and not reversible. The denial of the motion to quash was legal and proper for another reason. Inasmuch as this was a possessory action Co Kay was rightly sued as defendant, and Co Tiac's omission from the complaint did not render the judgment or execution ineffective.

The rule governing the matter of who should be made defendants in a suit for forcible entry and detainer or for unlawful detainer is stated in 22 Am. Jur., 936:

"As a general rule, every person who has participated in the acts complained of is a proper party defendant, provided he remains in possession of the property, because, since the proceeding is to recover possession, there is no doubt that it is not maintainable against a person not in possession when it was commenced. even though he was guilty of a forcible entry, and although at some time prior to the beginning of the proceeding and after he made the entry he might have been a proper and even necessary party defendant. The best test by which to determine who should be parties defendant, therefore, is to inquire who were guilty, either in person or by agents, of the acts amounting to the forcible entry, and who remain in possession, so that a judgment in favor of the plaintiff may not be sufficient to afford him complete relief unless they are removed from the premises. It has previously been pointed out that the capacity in which an entry was made or possession held is immaterial in so far as the liability of the possessor is concerned, whether he is an agent, lessor, lessee, owner, or corporation."

Corpus Juris (Vol. 26, p. 836), citing *Leaño vs. Leaño*, 12 Phil., 508, among American decisions, says:

"Except as otherwise provided by statute, an action of forcible entry and detainer may be maintained only against one in possession at the commencement of the action, and not against one who does not in fact hold the

land."

This is in harmony with section 1, Rule 72, of the Rules of Court. This rule does not require that the lessee or the person who committed the forcible entry should be made a party even though his whereabouts be unknown. The doctrine is doubly applicable in the present case because there are emphatic allegations, supported by Co Kay's pleadings in the main case and not denied by the petitioner, that Co Tiac is Co Kay's brother and associate in business at 534 Elcano Street and that Co Kay informed the lessor that Co Tiac had been killed by the Japanese, an information which subsequent developments showed Co Kay knew to be false. And that Co Tiac had knowledge of the deception, if he was not a party thereto, is attested by the fact that he, Co Tiac, was found residing at the place in question when the sheriff came to carry out the judgment; also by the allegation, likewise undisputed, that Co Tiac falsely testified before the clerk of court, explaining his alleged absence, that he went to China in 1944 and returned to the Philippines in July, 1946. We say this testimony is perjury, first, because we take judicial notice of the fact that it was extremely difficult, if not impossible, for a Chinese not connected with the Japanese Army to leave the Philippines for China in 1944, and, second, because no reason was given why Co Tiac should have visited his country, granting that he could have done so, at that perilous time. In the second place, one of the exhibits Co Tiac presented at the investigation, his alien certificate of registration, discloses that on November 3, 1945, he presented himself at the Immigration Bureau in compliance with the existing rules and regulations.

Forcible entry or unlawful detainer is a summary proceeding, intended to provide an expeditious means of protecting actual possession or right to possession of property. Title is not involved. This aspect of the action and pretended death or absence of the petitioner differentiate the instant case from *Omaña vs. Gatulayao* 40 Off. Gaz., No. 11, p. 2227 and other decisions cited by the petitioner. The theory of the plaintiff is inconsistent with the special, summary character and purposes of an unlawful detainer proceeding. Under such theory, a lessee who unlawfully withholds possession of the leased property, or one who has taken possession of a property by force, could defeat or retard the recovery of such possession by hiding. Summons by publication would not fully satisfy the object of the law.

The circumstances disclosed by the allegations and exhibits give warrant to the charge that the petitioner absconded or concealed his whereabouts in the belief that by so doing he could frustrate the anticipated action for eviction. He put forward his brother or partner to fight the case out, and when the fight was all over for Co Kay, whose efforts had earned for him more than one and one-half valuable years of possession, Co Kay disappeared from the scene and Co Tiac emerged, resurrected from the grave to take up the cudgels. What is more, he would not start where his partner and kin left off; he would have all the issues fought over again. Unluckily for the petitioner, law and justice can not be circumvented and outwitted so easily.

In view of what has been said, it matters not, in our judgment, that the respondent Judge did not look into the status of the petitioner — whether he was a lessee or a squatter — as Judge Felix had proposed to do. This question seems to us immaterial. Having absented himself or concealed his identity, he cannot be heard to complain that he was not included in the action. A party will not be allowed to take undue advantage of a situation created by his own fault, especially if it is deliberate, to the detriment of his opponent.

The petition is dismissed with costs.

Perfecto, and Briones, JJ. concur.

DISSENTING

PARÁS, J.:

In a deshaucio case filed by Domingo Lao against Co Kay for the possession of accesoría or apartment No. 528 Elcano, Manila, judgment was rendered for the plaintiff and against the defendant which became final on February 21, 1946. When the sheriff, upon motion of the plaintiff, proceeded to execute the judgment, he found in the premises another person and learned that Co Kay was living at No. 115 Villalobos, Quiapo, Manila, Plaintiff Domingo Lao, however, indicated that the apartment or accesoría in question is No. 534 Calle Elcano which was occupied by petitioner herein, named Co Tiac. When the sheriff tried to oust him upon request of the plaintiff, Co Tiac sought the protection of the court, alleging that he was never a defendant in the case and that the apartment occupied by him has not been the subject of any judicial action. He claims that to oust him under the circumstance would be to deprive him of his right without due process of law, especially because he has been occupying said place for about ten years under a lease contract from one Ignacio Lao, a fact admitted by the plaintiff in his complaint.

Inasmuch as the plaintiff alleged that there was privity between Co Kay and petitioner Co Tiac and that the latter is acting in bad faith, the court, then presided over by Judge Alfonso Felix who decided the case on the merits, ordered that evidence on said privity be presented before the clerk of court as commissioner. Evidence from both parties was received and the report of the commissioner was subsequently submitted. Judge Natividad, who succeeded Judge Alfonso Felix after the latter had been promoted to the Court of Appeals, without examining the evidence presented before the commissioner or his clerk, however, immediately issued an order of execution stating that Co Tiac, the herein petitioner, has no personality in the case, not being a party plaintiff or party defendant, and that, therefore, he cannot by any means intervene or stop the execution of the judgment.

We have already held, following *Omaña vs. Gatulayao*, 40 Off. Gaz., No. 11, p. 2277, that "La sentencia dictada en presente asunto es in personam y como tal sólo es obligatoria para las partes y no para extraños. (Artículo 44, párrafo b, Regla 39). Si el recurrente Anacleto Santiago, que no fué parte en la causa por desahucio, era poseedor de buena fé de la finca en cuestión, la sentencia dictada en dicha causa no podía ejecutarse válidamente contra él. Se puede insistir, sin embargo, en la ejecución de la sentencia si se prueba que el poseedor es simplemente un causahabiente, o un huesped, o un agente del ejecutado en el propósito fraudulento de frustrar la sentencia; en tal caso, debe haber un procedimiento en el Juzgado de Primera Instancia que expidió la orden de ejecución para la dilucidación del carácter de la posesión del ocupante extraño." (*Santiago vs. Sheriff of Manila*, 44 Off. Gaz., 863) This doctrine was reiterated in *Gozon vs. De la Rosa*, 44 Off. Gaz., 1225. As these two recent cases relate to ejectment cases, there is absolutely no reason for not giving them application, even if, as the majority seem to allege, the decision in *Omaña et al. vs. Gatulayao* does not fit in forcible entry or unlawful detainer cases which are summary in nature. In *Gozon vs. De la Rosa*, the lower court did, not wait for the intervention of the actual possessors, but it took initiative of summoning them for investigation as to the character of their possession, and we in effect sustained the procedure. At any rate, it is clear that an actual possessor, who was not a party to the ejectment suit, must be heard.

In the present case, we cannot hold that there is privity between the petitioners and Co Kay, because the respondent Judge did not pass upon the evidence presented by the parties on the point, and his order denying petitioner's motion to quash the execution is based solely on the erroneous ruling that the petitioner "has no personality to intervene in this case at this stage of the proceedings and to ask for the quashing of the writ issued for the execution of the judgment rendered therein, which is now final and executory."

I therefore vote to grant the petition and to order the respondent Judge to decide the propriety of proceeding with

the writ of execution only after he shall have passed upon the evidence relative to the alleged privity between the petitioner and Co Kay.

HILADO, J.:

I concur in this dissent.

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