

HANS GALEWSKY AND FRED REDFERN, PETITIONERS, VS. RAMON DE LA RAMA AND EULALIO GARCIA, JUDGE OF FIRST INSTANCE OF RIZAL, PASAY BRANCH, RESPONDENTS.

G.R. No. L-1572. November 21, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari filed by the petitioner against the respondents on the ground that the respondent Judge Eulalio Garcia has acted without or in excess of jurisdiction or with grave abuse of discretion in ordering, upon motion of the other respondent, to deposit the monthly rents of P450 found to be due from the petitioner to said respondent, during the pendency of the appeal taken by the petitioners from the judgment of the justice of the peace of Pasay (Rizal City) to the Court of First Instance of Rizal.

The order of the respondent judge which, according to the petitioners, was entered by the court without or in excess of jurisdiction or with grave abuse of discretion, reads as follows:

"Acting upon the motion for immediate execution, dated July 15, 1947, filed by counsel for the plaintiff; upon the motion ex-parte for preliminary attachment, dated July 16, 1947, filed by counsel for the plaintiff and upon the motion for extension of time to deposit the rents due, dated July 15, 1947, filed by counsel for the defendants;

"The Court, in the interests of justice and equity, hereby grants the defendants, a non-extendible period of five (5) days, counted from tomorrow, July 22, 1947, within which to deposit with the Clerk of Court of Rizal, all of the rents due in this case.

"The motion for the issuance of a writ of preliminary attachment in this case is hereby denied.

"It is so ordered."

The petitioners now contend that the requirement that the monthly rental of P450 found by the justice of the peace of Pasay (now Rizal City) to be due from the petitioners-defendants to the respondent-plaintiff, and which the respondent judge ordered the petitioners to deposit during the pendency of the appeal, is erroneous or contrary to the provision of section 2 of Act No. 689, as amended by Republic Act No. 66, and therefore the respondent judge acted without or in excess of jurisdiction or with grave abuse of discretion in ordering the monthly deposit of said amount.

There is no question that the justice of the peace of Pasay (Rizal City) had jurisdiction to try and decide the action of illegal detainer filed by the respondent Ramon de la Rama against the petitioners, and did not act in excess thereof or with grave abuse of discretion in rendering judgment in the case. The question whether or not the judgment of the said justice of the peace which sentenced the petitioners to pay the said amount of monthly rent to the said respondent is in accordance with the law of the case, does not involve question of jurisdiction or discretion of said justice of the peace.

Appellate court of first instance has the ministerial duty to order the execution of the judgment of the inferior court which has jurisdiction to render it notwithstanding the pendency of the appeal, should defendant fail to pay plaintiff or the court the amount of monthly rent found to be due by the court a quo to appellee from appellant under said section 8, Rule 72. The Court of First Instance of Rizai presided over by the respondent judge had no power to inquire into the merit of the judgment of the inferior court which adjudicated the amount of monthly rental due from defendants to plaintiff, before ordering the execution of said judgment upon the appellants' failure to make the payment or deposit required by law. Only upon deciding the appealed case on the merits may the appellate court pass upon whether or not the inferior court erred in not applying the provision of section 2, Act No. 689, as amended by Republic Act No. 66.

In view of all the foregoing, it is evident that the respondent judge did not act without or in excess of jurisdiction or with grave abuse of discretion in rendering the order quoted above, of which the petitioners complain; the respondent judge did not do but comply with the ministerial duty of the court to order the execution of the inferior court's judgment upon failure of the defendants-appellants to make said deposit.

Therefore the petition is denied with costs against the petitioners.

Moran, C.J., Pablo, and Bengzon, JJ., concur.

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