

ESTER CRUZ ET AL., PETITIONERS, VS. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.*G.R. No. L-402. August 14, 1946*

Ponente: PERFECTO, J.

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From February to October, 1945, petitioners were occupying, without the knowledge and consent of the owner, the house of Rafael Perez Sanianillo located at 451 Perez, Paco, Manila, hindering the occupation thereof by laborer to whom it was leased in March, 1945. On October 29, they were required in writing to vacate the house and, upon their refusal, they were sued in ejectment, the complaint praying besides the payment of P300 monthly as reasonable value of the use and occupation of the house.

Judge Orisanto dragon of the Municipal Court of Manila rendered a decision on November 27, ordering petitioners to vacate the premises on or before December 31, 1945, and to pay costs. No adjudication was made for the payment of rents or reasonable value of the occupation of the property because the owner condoned the payment thereof.

On appeal, Judge Fernando Jugo of the Court of First Instance of Manila rendered on March 5, 1946, a decision ordering petitioners to vacate the house and to pay costs.

On March 6, the day petitioners received copy of Judge Jugo's decision, plaintiff filed a motion for execution which was not set for hearing, petitioners complaining that this omission is a violation of Sections 4 and 5 of Rule 26 of the Rules of Court, and the respondent judge justifying it under the authority of Sec. 9 of Rule 72.

On March 11, respondent judge issued an order for immediate execution of his decision upon the special reason that defendants were squatters who occupied the house without the knowledge or consent of plaintiff and without any contract of lease.

To stay the execution of Judge dragon's decision, defendants filed a supersedeas bond in the amount of P60 as fixed in an order issued by Judge Jugo on January 7, 1946. On March 12, defendants filed their notice of appeal against Judge Jugo's decision, an additional supersedeas bond in the amount of P180 to stay said decision, and an appeal bond. On the same day they filed a motion for reconsideration of the order granting immediate execution, alleging that the same was issued against the rules, the defendants having already deposited the amount of P180 as additional supersedeas bond to stay the execution of the judgment, and that they have already filed their notice of appeal and appeal bond, invoking to said effect Sec. 8 of Rule 72 and section E of Rule 39.

On March 27, the motion for reconsideration was denied and on March 29 the sheriff of Manila was commanded to proceed with the execution of the judgment.

Alleging that the order for execution of March 11 and the order of March 27, denying the motion for reconsideration, are illegal and were issued with abuse of discretion and in excess of jurisdiction and will set at naught defendants' statutory right of appeal, defendants come to us for relief.

Respondent judge alleges that defendants did not even have the color of right to occupy the premises; that immediate execution before the filing of the appeal is justified under the decision in *Pascua vs. Nable*, (71 Phil., 186); that when execution of judgment was ordered, defendants had not as yet perfected their appeal, and that they have no valid defense and their attempted appeal is purely for the purpose of delay and intended to deprive unjustly respondent Samanillo of his lawful right to possess the house.

The pertinent and applicable provision of Law in this case is that contained in section 9 of Rule 72, which reads:

"SEC. 9. Stay of execution on appeal to Court of Appeals or Supreme Court.—Where defendant appeals from judgment of the Court of First Instance execution of said judgment shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

The provision presupposes three alternative situations, i.e., (a) when no appeal is filed either by plaintiff or defendant; (b) when plaintiff is the one who appeals; and (c) when defendant is the one appealing. Concerning the first two situations, there being no specific directive as to what is to be done, it is presumed that the general rule should be followed — that no execution shall be issued before the decision becomes final and executory. In the third situation, which, is the one we are concerned with in this case, section 9 of Rule 72 indicates two courses of action: 1st, during the time and while defendant has not as yet filed his appeal no execution shall be issued until the period of time for perfecting the appeal has expired and the judgment has become final; and 2nd, where the appeal is filed, the court of first instance may order execution if the defendant does not comply with the condition required by said section, that is, of paying either to plaintiff or into the appellate court the amount referred to in section 8 of Rule 72, consisting of rents due from time to time or the reasonable value of the use and occupation of the premises at the rate determined by the judgment. This means that if defendant complies with the condition, execution shall not be ordered. The evident purpose of the provision is to insure the collection by plaintiff of said amounts in case the appellate court should affirm right to collect them, but in no case to defeat defendants' right of appeal.

The present case presents an instance in which, by plaintiff's express renunciation, no adjudication has been made in the decision for defendants to pay any rent or any amount as reasonable value of the use and occupation of the house. Defendants are thereby placed in the privileged situation of not having to comply with any condition to secure the stay of the execution. Their situation can not be worse than the situation of a defendant who, being under obligation to comply with such a condition, effectively fulfills the obligation required thereto.

The fact that defendants are designated as "squatters" because they came to occupy the house without any lease contract and without the knowledge and consent of the owner, does not make them less entitled to the benefits of the law to which even those who, in the words of section 1 of Rule 72, take possession of any land or building "by force, intimidation, threat, strategy," are entitled. From the facts, it can be gathered that petitioners occupied the house in question by stealth, a means certainly not worse than, not even as bad as, force, intimidation, threat, or strategy.

The allegation that at the time the execution was ordered, defendants had not as yet perfected their appeal, has no validity upon our pronouncement to the effect that, whether to issue or not to issue an order of execution, the lower court must have to wait until the appeal is filed, if at all, otherwise appellants will be deprived, of their statutory time within which to appeal and will compel them to engage in a race with the court, whether they file their appeal first and before the court issues the order of execution, with the result that appellants will be always placed in the losing end, as they can never be in a better position than the court to foresee when the decision will be rendered and promulgated.

The last allegation to the effect that defendants have no valid defense to the action and their appeal is purely dilatory has nothing to do with the application of section 9 of Rule 72.

For all the foregoing, the lower court's order of March 11, 1946, decreeing immediate execution of the lower court's decision, having been issued against the rules, is set aside, without pronouncement as to costs.

Paras, Feria, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

MORAN, C.J.:

I concur in the positive part.

CONCURRING AND DISSENTING

HILADO, J.:

I agree that under normal conditions the Court of First Instance in forcible entry or unlawful detainer cases appealed to it has no power to order the execution of its judgment during the reglamentary period for interposing an appeal before the defendant interposes his appeal. It "will be noted that the exception established by section 9, Rule 72—that the judgment should not be executed—precisely refers to the period after the appeal of the defendant has been interposed, so that the execution of the judgment before the interposition of such appeal may well render the exception nugatory. In the present case, for instance, if by the execution of the judgment prior to the interposition of the defendants' appeal the latter had been ousted from the house, and the Tabacalera had moved in, that execution, which would have been converted into a past event, could not have been stayed anymore even if it should be held that the defendants were entitled to a stay. The exception "unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided" relates back to the general rule that execution shall not be stayed "where the defendant appeals * * *". But, under the special facts and circumstances of this case, as hereinbelow explained, I am of opinion that petitioners, as defendants in the Court of First Instance, were not entitled to the exception or to the stay of execution sought by them.

When I say normal conditions, I mean when, as contemplated in section 9, Rule 72, a judgment has been rendered by the Court of First Instance and the defendant appeals therefrom and the judgment contains a determination of the amounts which the defendant should pay by way of rents or the reasonable value of the use and occupation of the premises, so that the defendant and appellant may be in a position to comply with the condition to which the section subjects the exception established by it, namely, the stay of execution, by paying said amounts either to the plaintiff or into the appellate court as provided for in the preceding section.

But the following special facts and circumstances in the instant case, in my opinion, placed it out of the purview of the exception provided for in said section 5:

The plaintiff in the courts below, who is the present respondent Rafael Perez Samanillo, condoned in favor of the defendants therein, the present petitioners, the payment of the rent or the reasonable value of the use and occupation of the premises, such condonation having been made in the Municipal Court as well as in the Court of First Instance (Decision, Municipal Court, pp. 2-3 of respondent judge's answer; decision, Court of First Instance, p. 4, *ibid.*). It is very clear from the proceedings, particularly the allegations of the respondent judge's answer which has been duly verified by his counsel, and whose allegations are deemed to have been admitted by petitioners under the ruling in *Evangelista vs. De la Rosa* (76 Phil., 115), that petitioners, as defendants below, accepted and benefited by such condonation. In view of said condonation and said acceptance, the judgments of

the two lower courts naturally do not contain any finding or determination as to rents or the reasonable value of the use and occupation of the premises in question. This fact thus consented to and taken advantage of by petitioners, as defendants, renders it now impossible for them to pay, to quote the textual words of the exception in section 9, Rule 72, "either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided". The impossibility of fulfilling this condition renders it impossible for petitioners, as defendants, to invoke the exception of stay of execution which is made dependent upon such fulfillment.

Section 9, Rule 72, manifestly was intended to afford the plaintiff a summary remedy for recovering possession of the premises by allowing the execution of the judgment in his favor before the expiration of the period for appeal in case the defendant appeals therefrom, but at the same time, it was deemed just to afford the defendant a counter-remedy in the form of stay of execution conditioned upon his paying either to the plaintiff or into the appellate court the amounts representing the rents or reasonable value of the use and occupation of the premises as found or determined in the judgment. Now, this provision not only intends to treat both parties with equal justice, taking into consideration the equities of the case, but should be understood to require them to deal justly with each other. No other construction would seem to be sound.

Guided by this criterion, I can see no other just solution than to deny to the present petitioners, as defendants, the right to a stay of execution in the Court of First Instance. That they can not pay either to the plaintiff or into the appellate court any amount as rents or the reasonable value of the use and occupation of the premises "as found by the Judgment" is, of course, beyond question. Consequently, they are not in a position to fulfill the condition for obtaining a stay of execution according to the terms of Section 9 of Rule 72, and they find themselves in that impossibility by voluntary choice—by consenting to and benefiting by the condonation generously granted, them by the corner of the premises, if they intended, to appeal from an adverse judgment of the court and to petition for a stay of execution of that judgment if they were bound to know that under said section 9, Rule 72, in order to obtain such stay, they must pay either to the plaintiff or into the appellate court the amounts found and determined in the judgment as due by way of rents or the reasonable value of the use and occupation of the premises, and to be fair and just to the owner who was tendering them his generosity, they should have declined the condonation and requested the court to make its findings and determination so that when the time came, they could make the corresponding payment of said amounts as provided by the rule. Instead of doing this, they accepted the condonation, thereby consenting to the court not making any finding or determination as to rents or reasonable value of the use and occupation of the premises, and now insist that they have a right to a stay of execution of the judgment against them, of course, without fulfilling the condition of paying such amounts either to the plaintiff or into the appellate court. The situation would not have been essentially different had petitioners, as defendants, told the owner of the house: "You have condoned payment by us of all rent or reasonable value of the use and occupation of your house: we have voluntarily accepted and benefited by the condonation, thereby rendering it impossible for us to pay either to you or into the appellate court the rents or the reasonable value of the use or occupation by us of your house; but we insist upon continuing said use and occupation during the entire period of our appeal without paying such rent or reasonable value: the fault lies with you in condoning their payment."

It seems to me that to allow petitioners to have their way is to permit and sanction their perpetrating a positive injustice upon the other party, which could not have been the intention of section 9 of Rule 72.

The holding in *Lunsod vs. Ortega*, (46 Phil. 664), is, in my opinion, inapplicable here for the very vital difference between said case and this one consisting in the fact that in the *Lunsod* case the unlawful entry and detainer case (civil case No. 861 of the Justice of the Peace of San Pablo) did not involve any question of rent or reasonable value of the use and occupation of real estate, the land therein involved being one with a coconut

plantation and the action being for its possession, the payment of P150 as the value of the coconuts appropriated by the defendants, plus damages caused by the latter to the coconut plantation.

The deposit by petitioners of a total of P240.00 by way of "supersedeas bond" would not alter my position, firstly, because a supersedeas bond is uncalled for in section 9 of Rule 72 for the purposes of a stay of execution; and secondly, because petitioners have not at least shown that P240 would be sufficient to guarantee the payment for the reasonable value of the use and occupation by them of the house in question during the seventeen months which have already transpired since said use and occupation began and during the pendency of their appeal.

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