

JOSE PIO BARRETTO, IN HIS CAPACITY AS MANAGER OF THE ORIENTAL SAWMILL, PETITIONER, VS. N. ALMEDA LOPEZ, JUDGE OF MUNICIPAL COURT OF MANILA, JOAQUIN GARCIA, SHERIFF OF FIRST INST...*G.R. No. L-1869. May 27, 1949*

Ponente: PARAS, J.

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In an ejectment case (No. 2337) between respondent Manuel Tambunting (as plaintiff) and petitioner Jose Pio Barretto (as defendant), the respondent judge of the municipal court of Manila on April 7, 1947, rendered judgment ordering the herein petitioner to restore to respondent Manuel Tambunting the premises described in the complaint and ordering said petitioner to pay to said respondent the sum of P300 as damages for the use and occupation of the premises in question, plus the sum of P500 as cost of the garage removed by said petitioner, and the costs. The petitioner duly appealed from the judgment of the respondent judge of the municipal court to the Court of First Instance of Manila, wherein the appeal was docketed as civil case No. 2561. In the latter court petitioner Barretto and respondent Tambunting filed on June 10, 1947, an agreement, reciting that they had come to a satisfactory settlement of their litigation; that the petitioner was withdrawing his appeal; that respondent Tambunting waived his right to collect the sum of P800 awarded in the judgment of the municipal court; that respondent Tambunting allowed petitioner to occupy the land in question for an indefinite period of time; that the agreement could be terminated only after six months' notice on the part of said respondent; that petitioner was to pay respondent Tambunting the sum of P130 from April, 1947. Said agreement was signed by the parties and their respective attorneys. On June 28, 1947, the Court of First Instance of Manila issued an order approving the withdrawal of petitioner's appeal. On September 30, 1947, respondent Tambunting filed with the municipal court in the ejectment case (No. 2337) a motion for the issuance of an alias writ of execution on the ground that petitioner had failed to pay the rental specified in the agreement filed in the Court of First Instance of Manila. Accordingly, on November 5, 1947, the respondent judge of the municipal court of Manila ordered the issuance of an alias writ of execution against the petitioner, for the recovery of the sum of P390 as rentals from August to October, 1947. A writ of execution was actually issued on December 15, 1947, covering, however, the sum of P650 as rentals from August to December, 1947.

It appears that the failure of the petitioner to pay to respondent Tambunting the rental stipulated in the agreement of June 10, 1947, was due to a notice received by the petitioner from one Angel de Leon Ong, claiming the right to collect the rental for the land in question and warning the petitioner that the respondent Tambunting had no right to collect said rental. Indeed, the petitioner, under date of September 29, 1947, instituted in the Court of First Instance of Manila a complaint in interpleading (civil case No. 3722) against Manuel Tambunting and Angel de Leon Ong, with a view to determining which of the two is entitled to the rental due from the petitioner.

Alleging that the respondent judge of the municipal court had acted in excess of her jurisdiction and with grave abuse of discretion in issuing the writ of execution of December 15, 1947, the petitioner has filed the present

petition for certiorari and prohibition for the purpose of having said writ of execution annulled. Said petition is meritorious. The agreement filed by the parties in the ejectment case created as between them new rights and obligations which naturally superseded the judgment of the municipal court. Said agreement, which was filed in the Court of first Instance of Manila, contained no prayer for relief, although the Court of First Instance of Manila, upon acting on said agreement, issued an order on June 28, 1947, approving the withdrawal of petitioner's appeal. It is obvious, however, that the stipulations contained in the agreement were not reduced to a formal decision, capable of being judicially executed. The filing of said agreement put an end to the ejectment case, and this is contemplated by section 8 of Rule of Court No. 40, providing that at any time after the perfection of an appeal from a judgment of the municipal court to the Court of First Instance, parties may adjust their controversy by agreement in writing, signed by both parties and lodged with the municipal court; and if the case has already been transmitted to the Court of First Instance, the compromise agreement shall be transmitted to the clerk of the latter court who shall file the same and enter a memorandum thereof upon his docket, and no further proceedings shall thereafter be taken in the action.

The decision of the municipal court which, in the first place, contained no order for the payment of any rental cannot of course be the subject of execution since said decision was waived by respondent Tambunting in the agreement of June 10, 1947. Moreover, there is another reason why execution is not in order. The bona fide filing by petitioner of the complaint in interpleading against respondent Tambunting and Angel de Leon Ong should at least be considered as a proper excuse on the part of the petitioner to pay to respondent Tambunting the rental fixed in their agreement. The case of *Pagkalinawan vs. Rodas* (80 Phil., 281), offers some analogy. In said case, the decision of the respondent judge ordered the petitioners to pay rentals directly to the respondent Manuel Tambunting and provided for their ejectment in case of default. In connection with an interpleader suit filed by the petitioners in the Court of First Instance of Manila, said rentals were deposited with the clerk of court, of which fact the respondent judge was duly informed by the petitioners. We held that such deposits constituted a bona fide compliance with the decision of the respondent judge justifying the stay of execution.

In the case now before us, the respondent judge was apprised of the complaint in interpleading in civil case No. 3722, and although there is an indication that said case was disposed of adversely against the petitioner, the latter would interpose a timely appeal.

The petition is hereby granted, and the orders of the respondent judge of November 5, 1947, and the writ of execution of December 15, 1947, are set aside. The writ of preliminary injunction heretofore issued is made permanent. So ordered, with costs against the respondent Manuel Tambunting.

Ozaeta, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PARAS, J.:

I certify that the Chief Justice voted in favor of this decision.

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