

PLACIDO PEREZ, PETITIONER, VS. HON. ENRIQUE FERNANDEZ, JUDGE, COURT OF FIRST INSTANCE OF DAVAO, AND APOLONIO PAGARAN, RESPONDENTS.*G.R. No. L-8898. May 23, 1956*

Ponente: CONCEPCION, J.

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On September 1, 1954, judgment was rendered in civil case No. 34 of the Justice of the Peace Court of Bansalan, province of Davao, entitled "Apolonio Pagaran vs. Placido Perez", for forcible entry, sentencing Perez to vacate the land involved therein and to pay Pagaran a monthly rental of P20 for the use and occupation thereof, as well as the costs. Soon later, or on September 9, and September 13, 1954, Perez filed, respectively, his notice of appeal to the Court of First Instance of Davao or on November 10, 1954, Pagaran filed representing the rentals and on appeal bond for P80 for the use of said land, for May (when the action was commenced), June, July and August, 1954. When the case was already pending in the court of first instance, or on November 8, 1954, Pagaran filed therein a motion, dated November 8, 1954, for the immediate execution of said judgment, upon the ground that Perez had neither paid nor deposited the rentals for September and October, 1954, which, pursuant to section 8, of Rule 72, of the Rules of Court became due and payable on October 10, and November 10, 1954, respectively. On November 22, 1954, Perez deposited in court the sum of P40, representing the rentals for September and October, 1954. It would seem, also, that the rentals for the succeeding months were, thereafter, deposited in due time. However, on January 22, 1955, the Court of First Instance of Davao, presided over by respondent Judge, Hon. Enrique Fernandez,, issued an order authorizing the execution of the judgment of the justice of the peace court, as prayed for in Pagaran's motion, dated November 8, 1954. A reconsideration of this order having been denied, Perez instituted the present action for certiorari, against respondent Judge and Pagaran, predicated upon an alleged abuse of discretion on the part of said respondent Judge. Upon the filing of the petition for certiorari and of the corresponding bond, we issued a writ of preliminary injunction restraining the respondent Judge from executing the afore-mentioned judgment of the justice of the peace court of Bansalan.

It is urged by Perez that, in issuing the order of January 22, 1955, respondent Judge had abused his discretion, for: (1) Pagaran had impliedly waived his right to the execution of said judgment because he failed to appear at the hearing of his motion, dated November 8, 1954, and had allegedly accepted the rentals subsequently paid by Perez, although the same took place after the expiration of the time provided therefor by the Rules of Court; and (2) Perez had not been "properly served" with notice of said motion "in the manner prescribed in the rules of court". There is no merit in this pretense.

To begin with, the failure to appear at the hearing of a motion implies, neither a waiver, nor a withdrawal thereof. At any rate, on November 13, 1954, when the motion for execution of the judgment was called for hearing, Atty. Rose M. Lauron appeared for Atty. Godofredo Corrales, as counsel for Pagaran.

Moreover, the motion, copy of which was served upon Perez, contained a notice to the effect that it would be

submitted for resolution "on Saturday, November 13, 1954, at the usual session hour in the morning". In fact, Atty. Vicente Duterte appeared for Perez at the hearing of said motion and argued thereon.

Again, the rentals for October and November were not paid to Pggaran. Perez merely deposited the corresponding sum with the clerk of court, who accepted the same without the knowledge or consent of Pagaran.

Lastly, Perez admits that the rentals for September and October were deposited on November 22, 1954, altho pursuant to section 8, of Rule 72, of the Rules of Court, said rentals fell due on October 10 and November 10, 1954, respectively. It is well settled that, upon failure of the defendant in a forcible entry case, who has appealed from an adverse decision of the justice of the peace or municipal court, to pay or deposit the rentals adjudicated in said decision within the period set forth in said provision of the Rules of Court, it becomes the ministerial duty of, the court of first instance to order the execution of the aforementioned decision (*Galewsky vs. De la Rama*, 79 Phil., 583; *Ang Ching Ci vs. De Leon*, 79 Phil, 580; *Lee Tian Po & Co. vs. Rbdas*, 81 Phil., 395; *Pangilinan vs. Pena*, 89 Phil., 122). Hence, respondent Judge had merely complied with a duty imposed upon him by law.

Wherefore, the petition is dismissed and the writ of preliminary injunction heretofore issued hereby dissolved, with costs against petitioner Placido Perez. It is so ordered.

Paras, C, J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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