

FAUSTINO FULGENCIO, PETITIONER VS. FELIPE NATIVIDAD, JUDGE OF THE NINTH BRANCH OF THE COURT OF FIRST INSTANCE OF MANILA, MARIA APE, VENANCIO ALCANTARA AND THE SHERIFF OF MANILA,...

G.R. No. L-1808. February 14, 1948

Ponente: PADILLA, J.

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PADILLA, J.:

For failure of the petitioner to file a supersedeas bond and to pay or deposit the amount fixed in the judgment rendered by the municipal court as monthly rental or as reasonable compensation for the use and occupation of a lot and the house erected thereon during the pendency of the appeal, the respondent court, upon motion, ordered the execution of the judgment.

Petitioner seeks to annul the writ of execution by this original action, on the alleged ground that the judgment of the municipal court ordered executed is null and void; that the execution of said judgment must of necessity be null and void; and that the respondent court in ordering the execution of the judgment exceeded its jurisdiction and committed a grave abuse of discretion.

It is alleged that the question of jurisdiction was raised in the answer filed by the petitioner in the detainer case, in which he pleaded that, before the complaint for detainer was filed against him, he had brought an action in the proper court to compel the respondents Alcantara and Ape and their predecessors in interest, the Litonjuas, to re-sell to him the lot and the house erected thereon upon payment of the repurchase price—the sum of P45.000 in Japanese war notes (Civil Case No. 2563 Court of First Instance of Manila; Exhibit D).

Whether the petitioner is entitled to repurchase the lot and the house erected thereon, is the controversy that will have to be decided by the Court of First Instance of Manila in civil case No. 2563. By bringing such action, petitioner admits that he had sold the lot and the house erected thereon. Granting that petitioner has the right to repurchase, the property, he cannot invoke it until after the competent court shall have rendered judgment as prayed for by him. Hence the allegation in the detainer case that he had brought an action in the proper court to compel the re-sale to him of the lot and the house erected thereon, did not raise the question of title to the property and for that reason did not remove the case from the jurisdiction of the municipal court. As already stated, the plea of another pending action to compel the re-sale to the petitioner of the property involved in the detainer case is an admission that the title thereto is not vested in him. Such being the case, the municipal court had jurisdiction to try and decide the detainer case. The petitioner appealed from the judgment rendered by the municipal court, and the appeal is now pending in the respondent court. It is in this last mentioned court where the writ of execution complained of was issued, because the petitioner had failed to file a supersedeas bond and to pay or deposit the amount fixed in the judgment rendered by the municipal court as monthly rental or as reasonable compensation for the use and occupation of the premises during the pendency of the appeal. The respondent court, in ordering the execution of the judgment referred to for failure of the petitioner to file a supersedeas bond and to pay or

deposit monthly rental, did precisely what the rules of court require it to do. Lack of means is the excuse given by the petitioner for his failure to file a supersedeas bond and to pay or deposit the amount fixed in the judgment rendered by the municipal court as monthly rental or as reasonable compensation for the use and occupation of the premises during the pendency of the appeal; but such an excuse is belied by his avowed ability to pay the repurchase price of the property, as alleged and offered by him in the action to compel respondents Alcantara and Ape and the latter's predecessors in Interest, the Litonjuas, to re-sell the property to him, unless he intend or propose to pay the P45,000 offered for the repurchase of the property by means of Japanese war notes.

If, as claimed by the petitioner, the amount fixed by the municipal court as monthly rental or as reasonable compensation for the use and occupation of the premises is illegal, because it violates the House Rental Law, the question may be raised and the illegality corrected by the Court of First Instance to which the case has been brought on appeal, or criminal charges may be preferred against the law violators; but granting for the sake of argument that the amount fixed by the municipal court as monthly rental or as reasonable compensation for the use and occupation of the premises is illegal, such an illegality does not have the effect of divesting the last named court of the jurisdiction it had to try and decide the detainer case.

Petition denied, with costs against the petitioner.

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

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