

MAXIMA ACIERTO, ET AL., PETITIONERS, VS. VICTORINA G. DE LAPERAL, ET AL., RESPONDENTS.*G.R. No. L-15966. April 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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On February 16, 1959, Maxima Acierto, et al, filed before the Municipal Court of Manila against Roberto Laperal and his wife an action praying that they be allowed to deposit the rentals of the premises they were occupying with the court pending termination of the action, that the court declare that the need for the construction of a building on the occupied premises is not a ground for ejectment under the law, and that it fix a longer period of lease between the parties considering the circumstances obtaining under Article 1683 of the new Civil Code.

Defendants, in their answer, admitted the existence of the lease agreement, but alleged that the same is on a month to month basis, and that on September 1, 1958, plaintiffs were notified to vacate the premises occupied by them but they refused and in view of such refusal defendants gave plaintiffs the requisite 15 days notice to vacate with the warning that if they fail to comply with the demand an action for ejectment would be filed against them. Defendants set up a counterclaim asking for ejectment of plaintiffs.

On April 11, 1959, after trial, the court rendered judgment ordering plaintiffs to vacate the premises occupied by them and each to pay the monthly rental at the rate therein specified from December, 1958 until they shall have surrendered their possession to defendants. In due time, plaintiffs appealed to the court of first instance.

The appeal having been given due course, the court set the case for hearing on June 2, 1959, notice thereof having been received by counsel for plaintiffs on May 26, 1959. On May 29, 1959, plaintiffs' counsel filed a motion for postponement alleging that he had a trial in Castellejos, Zambales on June 2 and 3, 1959, but due to the fact that said motion was not set for hearing by movant and no proof was presented of the allegations contained therein, the court denied the motion and declared the appeal abandoned. From this order, plaintiffs appealed to the Supreme Court. On August 1, 1959, defendants filed a petition for execution of the judgment of the municipal court in view of plaintiffs' failure to deposit the rentals which they were sentenced to pay as required by the rules, which petition was granted on August 20, 1959. And their motion for reconsideration having been denied, plaintiffs interposed the present petition for certiorari alleging that respondent judge has acted without or in excess of his jurisdiction.

The only issue posed in this petition is whether the appeal taken by plaintiffs from the decision of the Municipal Court of Manila to the court of first instance had the effect of vacating said decision as is the ease in ordinary actions as provided for in Section 9, Rule 40, of the Rules of Court.

While in an ordinary action a perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the court of first instance shall stand de novo upon its merits in accordance with the regular procedure in that court as though the same had never been tried before and had been originally there commenced (Section 9, Rule 40), this rule only applies to ordinary actions, and not to

cases of ejectment which are governed by Section 8, Rule 72. This rule sets out a particular procedure that may be deemed to be an exception to the provision of Section 9, Rule 40 (Torres vs. Ocampo, 80 Phil., 36; Taguilimot vs. Makalintal, 85 Phil., 40; 47 Off. Gaz., 2318).

Thus, it has been held that under said Section 8, Rule 72, when the judgment is in favor of plaintiff, it is required that it be executed immediately in order to prevent further damages to him caused by the loss of his possession (Pascua vs. Nable, 71 Phil., 186; Yu Tiong Tay vs. Barrios, 79 Phil., 597; Sumintac vs. Court, 71 Phil., 445; Arcilla vs. Del Rosario, 74 Phil., 445). The defendant may, however, stay the execution (a) by perfecting his appeal and filing a supersedeas bond; and (b) by paying from time to time either to the plaintiff or to the court of first instance, during the pendency of the appeal, the amounts of rents or the reasonable value of the use and occupation of the property as fixed by the justice of the peace, or the municipal court in its judgment (Section 8, Rule 72).

This is the situation herein obtained. Plaintiffs failed not only to put up a supersedeas bond but to deposit the rentals that had become due with the clerk of court thus forcing defendants to petition for a writ of execution. It has been held that the provision of Section 8, taken in relation to that of Section 9, Rule 72, is mandatory (Arcilla vs. Del Rosario, supra, Cunanan vs. Rodas, 78 Phil., 800).

It is true that plaintiffs claim that the action they have instituted is for consignment with a view to securing a judicial declaration that the use of the premises for the construction of a building is not a legal ground for ejectment, and is not for illegal detainer, but it is likewise true that defendants have put up as a special defense the fact that plaintiffs had been notified to vacate the premises after having been given the requisite notice and that, as they failed to do so, they prayed that an order of ejectment be entered against them. This relief was granted by the inferior court. In fact, said special defense was considered by the trial court as partaking of the nature of ejectment.

Considering the law and jurisprudence on the matter, we find no plausible reason for entertaining the claim of petitioners that the trial court committed a grave abuse of discretion in issuing the writ of execution prayed for by respondents.

Wherefore, petition is denied, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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