

SOCORRO R. TIANGCO, PETITIONER, VS. AGUSTIN LIBORO AND JUDGE OF COURT OF FIRST INSTANCE OF MANILA, BRANCH II, RESPONDENTS.

G.R. No. L-140. December 17, 1945

Ponente: OZAETA, J.

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OZAETA, J.:

The Second Branch of the Court of First Instance of Manila, presided over by Judge Gutierrez David, in its order of November 16, 1945, denied the herein petitioner's motion to suspend the execution of a final judgment in an ejectment suit commenced in the municipal court by the herein respondent Agustin Liboro against the said petitioner, "it appearing in the decision that the major portion of the building in question is occupied by a store and is not solely used for residence and that the defendant has sublet the premises to another person."

In her petition for certiorari the petitioner seeks to annul that order, contending that the respondent judge acted with grave abuse of discretion (1) "because the premises are solely for residential purposes and the defendant has not subleased the premises to another person" and (2) because "the respondent judge failed to comply with the provisions of Act No. 689 by not hearing the parties before denying the petition for suspension of execution."

We find the petition for certiorari to be totally devoid of merit. It appears from the answer of the respondent Agustin Liboro that the decision rendered by Judge Dizon in the ejectment suit on June 29, 1945, which has become final, recites among other things as follows:

"On the question of whether or not the defendant has sublet or assigned the premises in question or any part thereof to anybody without the express consent of the plaintiff, the Court finds likewise in favor of the plaintiff. In fact, the defendant admits that at present the major portion of his premises is occupied by a store belonging to a certain Mr. Pua, although the defendant claims to be the latter's partner in the business. This constitutes a violation of the contract of lease Exhibit A." (Italics ours,)

It also appears from the answer: "That the said motion to suspend the execution of the said judgment was heard and argued before the Second Branch of the Court of First Instance of Manila on November 3, 1945, Moreover, before it was submitted for the resolution of the Court, upon petition of the defendant herself the parties presented their respective memorandums in writing." What counsel for the petitioner undoubtedly means when he complains of lack of hearing is that the respondent judge did not hold a trial to hear witnesses upon the motion for suspension of the execution in order to determine whether or not the building in question was destined or used solely for dwelling and whether or not the defendant had subleased it without the lessor's consent. But those questions are now *res adjudicata*; they have been determined by the court adversely to the defendant in its decision, which is now final and unreviewable.

One of the conditions prescribed in section 5 of Commonwealth Act No. 689 for the suspension of the execution of a judgment in a *desahucio* case is that it be found by the court "that the building or buildings mentioned in the petition are destined solely for dwelling." Section 11 of the same Act also provides that "the lessee shall not

sublease the building or part thereof used as dwelling, without the written consent of the proprietor."

In his oral argument before this Court, counsel for the petitioner contended that the building in question is destined solely for dwelling, as shown by the fact that the plaintiff himself (respondent herein) alleged in his complaint for desahucio that he needed the said building as residence for his family. But the use which the proprietor intends to make of the building in the future is evidently not the thing which the legislator had in mind in enacting section 5 of Commonwealth Act No. 689; it is the use which the lessee is actually making of it—whether solely for dwelling, or also for business or other purposes. If it is the former, suspension of the ouster is authorized; if the latter, no. The manifest intent is exclusively to afford shelter to persons, and not to afford protection to their business also, as against the adjudicated right of the owner of the building immediately to occupy or dispose of it. The trial court found that the building in question, which is located on Rizal Avenue, was not destined by the lessee solely for dwelling but that on the contrary the major portion of it was occupied by the store of a person in whose business the defendant claimed to be a partner.

Moreover, the purpose of the law in authorizing the suspension of the execution for not more than three months is to give the petitioner time to "secure another dwelling house for himself and his family." In the instant case the judgment for ejectment was rendered on June 29, 1945; so, the petitioner has had nearly six months within which to look for another dwelling house. On the other hand, the trial court in its decision expressly found that "the plaintiff is one of the many who lost his residence * * * during military operations * * * in the month of February, 1945"; and "that the plaintiff is in dire need of the premises." Thus even the equity aspect of the case is against the petitioner and in favor of the respondent.

We find that, far from committing an abuse of discretion, the respondent judge acted conformably to the law in denying the petitioner's motion to suspend the execution.

The petition is denied with costs.

Moran, C. J., Paras, Juranilla, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ., concur.

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