

JOSE LAUREL AND NICASIA PARANGAN, PETITIONERS, VS. THE HON. ONOFRE SISON ABALOS, JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE AND JULITA LAPUT, RESPONDENTS.

G.R. No. L-26098. October 31, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for mandamus to compel the Court of First Instance of Zamboanga del Norte, presided by the respondent Judge Onofre Sison Abalos, to "immediately order the execution of the judgment appealed from in Civil Case 1356" of the municipal court of Dipolog "without prejudice to the appeal taking its course" in the said CFI, docketed therein as Civil Case 1588.

It appears that residential lot 987 of the Dipolog cadastre and the house built thereon form part of the conjugal partnership of the spouses Juan Bulleras and Pilar Saile and are covered by transfer certificate of title T-220 of the Register of Deeds of Zamboanga del Norte issued in the name of Juan Bulleras. The said spouses are estranged and have been living apart for many years.

Julita Laput, the private respondent in this Court, appears to have "bought" the house from Pilar Saile for the sum of P400, but the only written evidence of the supposed "sale" is a mere certification or notice to third persons that Pilar Saile had sold the house to her. Laput had been living there as tenant even before the "sale" to her, or since 1962, paying to Pilar Saile five pesos monthly rental for the use of the land.

On July 19, 1964 Pilar Saile sold the lot, together with the improvements thereon (see exhibit A), to the spouses Jose Laurel and Nicasia Parangan (petitioners in this Court) for a consideration of P1,600, with full warranty over the property conveyed. Juan Bulleras had no part in the execution of the deed of sale, and the record does not indicate that he had knowledge of or had given his verbal consent to the said transaction. Neither does the document of conveyance appear to have been recorded in the office of the Register of Deeds of the province, although the tax declaration covering the real property was transferred in the name of the vendee, Jose Laurel.

Pilar Saile and the petitioners verbally advised Laput of the sale and asked her to vacate the premises. Failing to do so after having been given sufficient time to look for another place, Laput was required by letter, received by her on November 12, 1964, to vacate the house and lot within twenty days from notice. Laput refused, so the petitioners on December 14, 1964 filed the present action (Civil Case 1356) for illegal detainer against her.

Before the municipal court could decide the illegal detainer case, Pilar Saile on February 11, 1965 instituted an action for reformation of instrument against the petitioners, docketed as Civil Case 1517 of the CF1 of Zamboangadel Norte. She alleged in her complaint that the deed of sale in favor of the petitioners failed to express the real intention of the parties, their true agreement being a sale of only her 1/2 share of the conjugal property. While this action was pending, the Dipolog municipal court decided the illegal detainer case, and ordered Laput to vacate the premises and to pay the petitioners P15.00 monthly rental until she shall have so vacated.

Laput seasonably perfected her appeal from the said judgment, and, after her filing a supersedeas bond, the records of the case were transmitted to the CFI of Zamboanga del Norte, the appeal being docketed therein as Civil Case 1588. This case, like the action for reformation of instrument, was assigned to the same sala presided by the respondent Judge.

On November 29, 1965 the petitioners moved for immediate execution of the judgment appealed from, because Laput had allegedly failed to pay the rentals beginning with the month of August, 1964. This was opposed by Laput who averred substantially that the plaintiffs, herein petitioners, are not entitled to a writ of execution for the purpose of wresting control, possession and dominion over the whole property, because the same being conjugal, the entire property could not have been validly conveyed to them by Pilar Saile (who, as we have already noted, had subsequently filed against the petitioners an action for reformation), and that since the validity of the document of sale relied upon by the petitioners was squarely controverted in the said action, the writ of execution if issued would only aggravate and multiply the issues. Laput therefore asked that action on the motion for execution be held in abeyance pending the final outcome of the action for reformation.

Finding the opposition well taken, the respondent Judge, in his order of December 11, 1965, denied the motion for execution, and instead ordered Laput to post a supersedeas bond in the amount of P500 to answer for rentals that would become due during the pendency of the appeal, which order Laput duly complied with. The petitioners' motion for reconsideration of the above order was denied; hence the present recourse—a petition for mandamus.

In the meantime, the CFI of Zamboanga del Norte rendered its decision in Civil Case 1517, declaring null and void ab initio the deed of absolute sale, exh. A, and ordering Pilar Saile to return to the spouses, Jose Laurel and Nicasia Parangan, the sum of P1,600, which the latter had paid as consideration of the sale. (This decision is at present on appeal and still pending resolution in the Court of Appeals.) As a consequence, the CFI of Zamboanga del Norte, upon proper motion, by its order dated March 23, 1968, allowed Pilar Saile to intervene in Civil Case 1588 (the illegal detainer case appealed to the said court and still pending resolution by it).

On the other hand, after being informed of the decision of the lower court in Civil Case 1517, Laput filed with this Court a manifestation, dated April 7, 1969, with appropriate annexes, to apprise this Court of the aforementioned decision. In view thereof, by resolution dated April 28, 1969, this Court required the petitioners "to comment, within 10 days from notice hereof, on the manifestation of respondent Laput that supervening facts have rendered this petition for mandamus moot and academic," which requirement (to comment) the petitioners have failed to comply with.

The resolution of the present petition, therefore, hinges on the issue of whether the petitioners are entitled to immediate execution of the decision in the illegal detainer case, in the light of the prevailing facts and of the supervening events narrated above.^[1]

The pertinent portion of Section 8, Rule 70 of the Rules of Court reads:

"Sec. 8. Immediate execution of judgment. How to stay same.— If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond, approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist."

Under this rule, judgment in favor of the plaintiff must be executed immediately in order to prevent further damage to him arising from continued loss of possession. However, the defendant may stay execution (a) by

perfecting an appeal and filing a supersedeas bond, and (b) by paying promptly from time to time either to the plaintiff or depositing with the court of first instance the adjudged reasonable value of the use and occupation of the property. This rule is mandatory, the exception being when the delay is due to fraud, accident, mistake or excusable negligence.[2]

In proceedings for unlawful detainer the only issue is who between the litigants has a better right to the physical possession of the property. The question of title or ownership is not involved.[3] Unlike an ordinary civil case, an action for unlawful detainer is a special civil action which is intended to be summary in character.[4] It is distinct from an ordinary civil case in the sense that while in the latter case a perfected appeal operates to vacate the judgment of the inferior court,[5] in an unlawful detainer action, notwithstanding the perfection of an appeal, the judgment of the inferior court remains in force and may be executed at anytime prior to rendition of judgment by the court of first instance.[6]

Upon the foregoing tenets, the petitioners would have been entitled as a matter of right to the possession of the property in controversy, and as a matter of law to the execution of the decision of the inferior court in the illegal detainer case, upon the failure of Laput to pay or deposit the monthly rentals as they fell due. Consequently, if it is true that Laput failed to pay the rentals from August, 1964, the petitioners would no doubt be entitled to immediate execution of the judgment of the inferior court, without prejudice to the appeal taking its course. It would thus appear at first blush that the respondent Judge committed a grave abuse of discretion in denying the petitioners' motion for immediate execution.

But inescapable material facts and circumstances supervened. As already stated, an action for reformation of the deed of sale was filed by Pilar Saile against the petitioners while the appeal in the illegal detainer case was pending before the respondent Judge. This must have given pause to the respondent Judge, with the result that he refrained from issuing the writ of execution sought by petitioners, as he doubted the propriety, if not the validity, of the decision of the municipal court.[7] Nonetheless, in his order of December 11, 1965, the respondent Judge, at the same time that he denied the motion for immediate execution, required Laput to post a supersedeas bond of P500 to answer for the rentals that would become due, while the appeal pends, which the latter obviously complied with.

Under the peculiar environmental circumstances thus obtaining, the import of which will hereinafter be more fully explained, the action taken by the respondent Judge may be considered as a legally permissible exception to the mandatory requirements of Section 8, Rule 70 (formerly Rule 72) of the Rules of Court, which rule, as interpreted by this Court,[8] operates to deprive the trial court of authority to accept a bond instead of cash payments. In *Price, Inc. v. Rilloraza*, supra, however, the rule was somewhat relaxed when this Court set aside the writ of execution issued by the trial court despite the filing of a bond by the defendant to guarantee the payment of rentals falling due during the pendency of the appeal. In the phrase of this Court—

"...the execution of the decision of the justice of the peace court would ruin the business of Price, deprive it of the possession of a building probably worth not less than P50,000, which is its property, until otherwise declared in Case No. 2582—and this has not been done as yet—and may cause irreparable injury to Price.

"Upon the other hand, although the rentals for April, May and June, 1954, have not been paid or deposited in cash, a bond has been given to guarantee its payment. Besides, Price has offered to make said cash deposit, if authorized by the court to do so. It may not be amiss to add that Price, is, to all appearances, more than sufficiently solvent to pay the sum of P1,200 represented by said rentals, and must have been paying or depositing the amount of the rentals for the months following June, 1954. Hence, Camus would suffer no possible damage if Price were not allowed to deposit in cash said sum of P1,200.

"In conclusion, in issuing the order complained of as well as the writ of execution, despite the strong equities

in favor of Price and the dubious legality or propriety of the decision of the justice of the peace court, respondent Judge has committed a grave abuse of discretion."

In subsequent cases, to obviate possible misconception about the application of Section 8 of Rule 70, this Court took pains at length to explain that this provision (regarding immediate execution of the judgment of inferior courts in cases of unlawful detainer can be availed of only if no question of title is involved and the ownership or the right to the possession of the property is an admitted fact. Through Mr. Justice Labrador, this Court said in *De los Reyes vs. Castro, et al.*:^[9]

"... The provision for the immediate execution of a judgment of the justice of the peace court in actions of unlawful detainer under Section 8 of Rule 72 of the [old] Rules of Court, is not applicable to an action of detainer like the present, where there is no immediate urgency for the execution because it is not justified by the circumstances. This view is based on the history of the action of forcible entry. This action originated in the English common law where it was originally in the form of a criminal proceeding whereby lands or properties seized through the use of force could immediately be returned. In time, this action was transformed into a civil one and was applicable in those cases where a person has been dispossessed of an estate by force or intimidation and the law desires that the possession he has lost be returned to him in a summary proceeding. In the course of time the action was extended to cases where tenants refused to deliver property rented by them to their landlords in spite of the existence of contract obligations to surrender possession of the property leased. (*Peftalosa vs. Tuason*, 22 Phil. 303, 315-317; 2 Moran, 1952 ed. 286-289).

"It is the opinion of the writer that inasmuch as the property now subject of litigation was originally sold only with right to repurchase to the plaintiff, so that the plaintiff was not really and originally the owner and possessor of the property, and since there are reasonable grounds to believe that the contract entered into between them was not one of lease but one of loan with mortgage of the property, the right of the plaintiff to the immediate possession of the property is not apparent, clear or conclusive, and neither should his right to the immediate execution of the property allowed until opportunity to settle the question of ownership is had. In other words, the writer of the opinion holds that while Section 8 of Rule 72 is applicable also in cases of unlawful detainer, the immediate execution it provides for may be availed of only if no question of title is involved and the ownership and the right to the possession of the property is an admitted fact."^[10]

In the case at bar, the CFI of Zamboanga del Norte, in its decision in Civil Case 1517, declared the deed of sale, the basic prop of the petitioners' asserted right to possession of the property in question, null and void. Thereafter, the same court, on proper motion allowed Pilar Saile, the owner-vendor of the property, to intervene in the illegal detainer case pending appeal in the same court. By the intervention of the owner who is also the petitioners' vendor, the illegal detainer case was virtually converted into a contest between the petitioners and Pilar Saile, thereby relegating Laput into the background. This was undoubtedly the reason the respondent Judge, having knowledge of all the facts involved in the present controversy, denied the motion for immediate execution and, instead, required Laput to post a supersedeas bond in the amount of P500. As to who between the petitioners and the intervenor Pilar Saile is entitled to the rentals, is a question that has to await final decision on the appeal in the illegal detainer case, which in turn will depend on the final decision that will be rendered in the action for reformation of instrument.

Until the Court of Appeals shall have finally adjudged for the petitioners in the action for reformation of instrument, their right to the immediate possession of the property in question can not be said to be clear or conclusive. The inconclusiveness of the petitioners' so-called "right" is further accentuated when we recall that Juan Bulleras (husband of the vendor Pilar Saile) had absolutely no participation in the sale to the petitioners, and he therefore retains, and may at any time appear to assert, his ownership and his right to the possession of his 1/2 share in the said real property.

Because "as a general rule mandamus is not a writ of right and its allowance or refusal is a matter of discretion to be exercised on equitable principles and in accordance with well-settled rules of law," and "it should never be used to effectuate an injustice, but only to prevent a failure of justice,"[11] the environmental circumstances in the present case do not compellingly warrant issuance of the writ prayed for.[12]

Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment.[13]

The assertion by Laput of "ownership" of the house she is occupying, the appeal pending in the Court of Appeals from the decision in Civil Case 1517 which declared null and void from the beginning the deed of sale in favor of the petitioners, the latter's unexplained silence in the face of the manifestation filed by Laput informing this Court of the supervening occurrences, and their failure to submit their comment as required by this Court, are strong and sufficient additional reasons, cumulatively, to justify the dismissal of the present petition.

ACCORDINGLY, the instant petition is dismissed. No pronouncement as to costs.

Conception, C. J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando and Teehankee, JJ., concur.

Barredo, J., concurs in separate opinion.

[1] The supervening facts and events are, specifically, the filing of the complaint to reform the instrument (deed of sale), the intervention of the CFI by Pilar Saile in the illegal detainer case, and the decision in the CFI in Civil Case 1517 declaring the deed of sale, exh. A, null and void.

[2] 3Moran, Comments on the Rules of Court (1963 ed) 298-299; Acibo vs. Macaraeg, et al., L-19710, June 30, 1964, citing Sison vs. Bayona, et al., L-13440, Sept. 30, 1960. See also Acierto vs. Laperal, L-15966, April 29, 1960, 58 O.G. 4853.

[3] 3 Moran, Comments on the Rules of Court (1963 ed) 271-272.

[4] Gonzales vda. de Palanca, et al. vs. Chua Keng Kian, L-26430, March 11, 1969.

[5] Ricohermoso vs. Enrique and Riconermoso, 85 Phil. 88.

[6] Torres vs. Ocampo, 80 Phil. 36; Acierto vs. Laperal, supra; Gonzales vda. de Palanca, et al. vs. Chua Keng Kian, supra.

[7] Price, Inc. vs. Rilloraza, L-8253, May 25, 1955, 97 Phil. 957.

[8] Ysrael vs. Court of Appeals, 78 Phil. 831; see also 3 Moran, Comments on the Rules of Court (1963 ed) 304-305.

[9] 100 Phil. 831, 836.

[10] Cf. "A court, or the judge thereof, has the power temporarily to stay execution of its judgment whenever it is necessary to accomplish the aims of justice. (33 C.J.S. 312.) The mere pendency of another court proceeding is not necessarily a ground for a stay. However, an execution will ordinarily be stayed pending the termination of other proceedings connected with the principal case. (Id., 314.) Other ground of relief from an execution refers to

facts occurring subsequent to the judgment. (Chua A. H. Lee vs. Mapa, 51 Phil. 624.)" (Pascual, et al. vs. Tan, et al., 47 O.G. No. 6, 2861, 2862).

[11] Marcelo Steel Corporation, et al. vs. The Import Control Board, et al., 48 O.G. 117, 120.

[12] Section 3 of Rule 65 of the new Rules of Court authorizes the issuance of a writ of mandamus when any person "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no plain, speedy and adequate remedy in the ordinary course of law."

It is essential that for the writ of mandamus to issue, the petitioner has a legal right to the thing demanded and that it is the imperative duty of respondent to perform the act required (Gonzales vs. Board of Pharmacy, 20 Phil. 367, 375). Indeed, the legal right of the petitioner to the thing demanded must be well-defined, clear and certain (Villamor, et al., vs. Lacson, et al. L-15845, Nov. 28, 1964). Likewise, the corresponding duty of the respondent to perform the required act must also be clear and specific (Llanto vs. Dimaporo, et al., L-21905, March 31, 1966). This must be so because mandamus will not issue in doubtful cases, as it simply commands the exercise of a power already possessed or to perform a duty already imposed (Alzate, etc. vs. Aldana, etc., et al., L-18085, May 31, 1963, citing cases).

A municipal judge may not be compelled to issue a writ of execution of his final judgment in an ejectment case where facts and circumstances warrant suspension of execution (Abellana, et al. vs. Hon. Dosdos, etc., et al., L-19498, Feb. 26, 1965).

[13] Lee vs. Mapa, 51 Phil. 624, 628, 629; Bantug vs. Roxas, et al., 73 Phil. 13, 19; Cunanan vs. Rodas, et al., 78 Phil. 800, 801. See also Li Kim Kho vs. Sanchez, et al., 46 O.G. 3655, 3657; Pascual, et al. vs. Tan, et al., 47 O.G. 2861, 2862; Cebu Portland Cement Company vs. Varela, et al., 49 O.G. 4314, 4316; De los Reyes vs. Castro, 53 O.G. 3060, 3062, 3063.

CONCURRING

BARREDO, J.,

I vote in favor of the judgment in this case, but I would ask to be permitted to voice a few observations regarding certain points resolved in the main opinion ably penned by my esteemed colleague, Mr. Justice Castro.

I can agree that as a remedy in equity, mandamus may be allowed or refused as a matter of discretion, and it is only because, by and large, it cannot be said that under the peculiar circumstances of this case, the court a quo has gravely abused its discretion, that I hesitantly join my brethren in dismissing the herein petition.

Viewed, however, from the angle of correct procedure, I am of the considered opinion that the trial court has departed from well established rules and concepts.

The principal procedural issue in this case is this: In a case of unlawful detainer or ejectment, may the trial court, be it an inferior court or a court of first instance, refuse to issue a writ of execution of its judgment in favor of the plaintiff and ordering the defendant to vacate, even if the defendant has failed to pay the rentals or rental value fixed by the court and payment of which is required by Section 8 of Rule 70, only because there is another case involving the title to the property involved pending in another court? I simply cannot see how this question can be answered in the affirmative in the light of the unequivocal provision of the Rules on the matter and the strict

adherence thereto that has been observed by this Court in many previous cases. "It has been held that the provisions of Section 8 (of Rule 70) taken in relation to that of Section 10 is mandatory, the only exception being when the delay in paying the required rentals is due to fraud, accident, mistake or excusable negligence" (3 Moran, Comments on the Rules of Court, p. 299, 1963 ed.). Moran further cites a host of decisions in support of the following statement: "Failure of the defendant to deposit on time the monthly reasonable value of the use and occupation of the property or the rents fixed in the judgment, is a ground for execution of such judgment (Igama v. Soria, 42 Phil. 11; Tombo v. Court of First Instance of Pangasinan, 46 Phil. 851; Guillena v. Borja, 53 Phil. 379; Cura vs. Rodas, 79 Phil. 595; Pangilinan v. Peña, L-4143, May 28, 1951), the duty of the court to order such execution being ministerial (Galewsky v. De la Rama, 79 Phil. 583; Ang Ching Gi v. De Leon, 79 Phil. 580; Lee Tian Po. & Co. v. Rodas, 81 Phil. 395; Pangilinan v. Pefia, supra; Perez v. Fernandez, 53 O.G. 109), and imperative. (Basilio v. Natividad, 80 Phil. 52; Menes v. Dinglasan, 81 Phil. 470; Pangilinan v. Pefta, supra; Estacio Vda. de Posadas v. Nieve, et al., L-7026, March 30, 1954; Medalle Vda. de Padayang v. Camacho, et al., L-7165, Aug. 25, 1954; Acierto v. Laperal, L-15966, April 29, 1960) The filing of the supersedeas bond does not relieve the appellant from paying or depositing the current rents. (Vda. de Mendoza v. Palacio, 77 Phil. 539; Bogayong v. Sanchez, 79 Phil. 591; Romero v. Rodas, 80 Phil. 136) It has been held that the mere filing of a petition for certiorari and prohibition does not ipso facto relieve the appellant of his obligation to make the monthly deposits. (Hernandez v. Peña, L-2777, promulgated May 19, 1950) Neither is such obligation affected by the fact that the ownership of the landlord on the leased premises is pending final determination in another case. (Gaerlan, et al. v. Martinez, et al., 47 O.G. 3483)" Withal, he adds, also upon the authority of decided cases, "The Court of First Instance has no jurisdiction to allow extensions of time for such deposits. (Lapus v. Court of First Instance of Pampanga, 46 Phil. 77; Arcega v. Dizon, 76 Phil. 164; Ysrael v. Court of Appeals and La Perla de la India, 78 Phil. 831; Meneses v. Dinglasan, supra; Carbungco v. Amparo, 83 Phil. 638; Trivino v. Gubatan, et al., L-3556, Jan. 31, 1950) Neither has the court authority to accept a bond instead of the cash deposits. (Ysrael v. Court of Appeals, supra) A deposit made out of time though prior to the order of the court cannot be accepted as an excuse for not ordering execution of the judgment (Lim Ching v. Sandoval, G. R. No. L-49227, Aug. 4, 1944); and so with a deposit made after the motion for execution was filed (Meneses v. Dinglasan, supra; see also Carbungco v. Amparo, 83 Phil. 638; Coingco v. San Jose, L-4583, July 30, 1951; Estacio Vda. de Posadas v. Nieve, et al., supra). In a case however, it has been suggested that delay in making the deposits based upon reasons similar to those mentioned in Rule 38 as grounds for relief may not be ground for execution (Zamora v. Dinglasan [Res. on Motion for Recon.] 77 Phil. 46; Yu Phi Kim v. Amparo, 47 O.G. Supp. [12]93). For instance, in one case, the deposit was late, but the lower court excused the delay because it was due to an honest belief that the supersedeas bond had covered both past and future rents - as therein expressly stipulated - and that, after all, appellant's right to remain in his quarters was still pending determination in the Court of Industrial Relations. In so doing, the lower court acted with justice and equity and only followed the precedent established in previous cases (Cebu Portland Co. v. Varela, 49 O.G.)."

The two cases cited by Mr. Justice Castro, namely, Price vs. Rilloraza and De los Reyes vs. Castro do not, in my humble view, appear to be controlling upon the present case. In the Price case, this Court held that whether or not Price was under obligation to pay the rentals, considering that there was prima facie showing that the other party, Camus, had committed breach of the lease contract, was a prejudicial question in the ejectment cases. Indeed, such alleged breach by Camus of the lease contract was a proper defense in the ejectment case, only that it could not be alleged therein because the action for specific performance, in which it was also a defense, was already pending when the ejectment case was filed. Consequently, the Price ruling cannot apply to a case wherein what is alleged to be pending resolution in another case or court is the question of title, which cannot be properly raised as a defense in an unlawful detainer case (Sevilla vs. Tolentino, 51 Phil. 333).

I take it, from a study of the existing jurisprudence on the matter, that mere allegation of the defense of title in the answer does not deprive the inferior court of exclusive original jurisdiction over an unlawful detainer case, but the moment it appears from further developments and the evidence presented at the trial that the title to the premises in question is inextricably involved, it is the duty of the court to dismiss the case, in favor of the filing thereof as a proper action for recovery of title in the Court of First Instance. In other words, my point is that if, in the case at bar, the court felt that the question of title was necessarily involved, it should have dismissed the ejectment case and let the plaintiff file the corresponding action on the title, instead of allowing the case to continue as an ejectment or deshaucio case, only to violate later on the most fundamental principle in ejectment cases that the same is entirely independent of any case involving the title to the premises.

The other case of *De los Reyes* involved a question of title between the landlord and the tenant, unlike in the present case wherein the issue of ownership is between the landlord, as purchaser of the premises, and the seller thereof who has sued the former for rescission of the sale. I can understand why if there is a question of title between the landlord and tenant and the position of the landlord is not patently clear, there should be hesitation to immediately execute a judgment in an unlawful detainer case favorable to the landlord. What is not clear to me is why should we extend the *De los Reyes* ruling even to cases wherein the title of the landlord is being questioned not by the tenant but by a third party, as in this case, where there is still the aggravating circumstance that Saile was herself, together with the Laurels, the one who informed Laput about the sale. As a matter of fact, I am not even convinced of the soundness of the *De los Reyes* ruling, if only because it tries to draw a distinction in the application of Section 8 of Rule 70 which is not warranted by the clear and unmistakable language of the provision. It is admitted in the said decision that Section 8 applies to unlawful detainer cases as well as to those of forcible entry, but the qualification is made that it may apply to the former "only if no question of title is involved and the ownership and right to the possession of the property is an admitted fact." I am afraid, this qualification cannot be justified. Not one word of the provision is open to any doubt or miscomprehension. None suggests the possibility of distinction. Thus, no room exists for interpretation or construction. And it is fundamental in ejectment cases that the question of title is immaterial and the only issue to be decided therein is that of factual possession. If the prosecution of an unlawful detainer case cannot be affected by another action involving title, why should the immediate execution of the judgment in such ejectment case be susceptible to suspension by reason of the pendency of another case involving title?

At any rate, I see no reason for sanctioning the procedure adopted by the trial court of allowing the intervention by Saile in the ejectment case when this was already in the appellate stage in the Court of First Instance. How can there be an intervention for the first time in the appeal in the Court of First Instance when there was none in the inferior court? Besides, this Court has already ruled that an intervention for the purpose of asserting ownership cannot be allowed in an ejectment case for obvious reasons. (*Tavera Luna Inc. v. Noble*, 67 Phil. 340).

I would like to have these points clarified once and for all in a proper case wherein the equities are not as strong for the defendant as in this case where mandamus cannot lie.

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