

NARCISO BAGTAS, PETITIONER, VS. BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND MARCELO C. SANCHEZ, RESPONDENTS.*G.R. No. L-6050. September 25, 1953*

Ponente: MONTEMAYOR, J.

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Marcelo S. Sanchez, owner of lot No. 22 of the cadastral survey of Caloocan, Rizal, leased a portion thereof to Narciso Bagtas at the rate of P15 a month. In November 1951, Sanchez requested Bagtas to vacate the premises, because he needed the land for his own purposes, giving the lessee thirty days within which to vacate the land, but Bagtas refused to comply with the demand; so on March 14, 1952, Sanchez bought an action against him for illegal detainer in the justice of the peace court of Caloocan, Rizal. After trial, the court rendered judgment in favor of Sanchez and ordered Bagtas to leave the premises and to pay rentals at the rate of P50 a month from December 1951, plus the amount of P500 as attorney's fees.

On July 24, 1952, Bagtas perfected his appeal from the decision to the Court of First Instance of Rizal, and on August 6, 1952, he filed the corresponding supersedeas bond in the amount of P500. In a motion dated August 14, 1952, appellee Sanchez asked the appellate court for immediate execution of the decision appealed from on the ground that defendant-appellant had failed to pay or deposit the rental for the month of August, 1952, which according to him should have been paid on or before the tenth of said month, and because the supersedeas bond filed in the amount of P500 could not cover the rental for August for the reason that the amount due him at the time under the judgment already exceed P900, presumably referring to the rentals from December 1951 to July 1952, aggregating P400 and the attorney's fees awarded him in the judgment in the sum of P500 or a total of P900.

Bagtas contended that the attorney's fees should not be included in the supersedeas bond, and that consequently, said bond was more than sufficient to cover the rentals in arrears, including the month of August. In that belief that the rental for August was already covered by the bond Bagtas deposited only the rentals for September and October, 1952. Respondent Judge Tan of the Court of First Instance of Rizal granted the motion for immediate execution in an order dated August 23, 1952, not because the supersedeas bond was not sufficient to cover the rentals for August but because said rental was not deposited in court or paid to the plaintiff pending appeal. The corresponding writ of execution was issued, and the provincial sheriff levied upon personal properties of appellant and issued the corresponding notice of sale thereof. Bagtas filed the present petition for certiorari to annul the order of August 23, 1952, granting the motion for execution, in the meantime asking that a writ of preliminary injunction be issued to stay execution. Upon petitioner's filing a bond in the amount of P1,000, the writ of preliminary injunction prayed for was issued by this tribunal.

We wish to reiterate the doctrine heretofore laid down by this court that in a forcible entry or detainer case, a supersedeas bond covers only rentals in arrears, up to the elevation of the case to the court of First Instance on

appeal, by the perfection of the appeal, and that in addition to the supersedeas bond, to stay execution during the appeal, the defendant-appellant should deposit in court or pay to the plaintiff the current rentals as they became due on or before the tenth of each calendar month for the preceding month (Rule 72, section 8). As already stated the appeal from the justice of the peace court judgment was perfected on July 24, 1952. So, the supersedeas bond covered only rentals in arrears up to and including the month of July 1952. The rental for the month of August, after the perfection of the appeal will have to be deposited with the court or paid to the plaintiff. This, the appellant failed to do because he believed that his supersedeas bond was still sufficient to cover said month. However, and this the parties and the respondent judge apparently overlooked, for it is not touched upon or raised in the court below or in the certiorari proceedings, when the motion for immediate execution was filed on August 14, 1952, the rental for said month was not yet due. According to Rule 72, section 8, said rental for August could be paid or deposited as late as the tenth of September 1952. It is, therefore, evident that the motion for execution was premature and unfounded and the order of August 23, 1952 of the respondent judge granting it was improper and unwarranted.

In view of the foregoing, the writ of certiorari is granted. The order of August 23, 1952, is set aside, and the writ of preliminary injunction issued is made permanent. No pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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