

**MARIA BAUTISTA, ASISTIDA POR SU ESPOSO, LIM HAY,
RECURRENTE, CONTRA JOSE B. L. REYES Y OTROS, MAGISTRATES
DEL TRIBUNAL DE APELACIONES, SEGUNDA DIVISION, Y CHUA
HONG, RECURRIDOS.**

G.R. No. L-1408. June 11, 1949

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BRIONES, M.:

Se ha interpuesto la presente apelacion por via de certiorari para que revoquemos y dejemos sin efecto la siguiente sentencia del Tribunal de Apelaciones:

"REYES, J. B. L., J.:

"The respondent Maria Bautista obtained judgment in the municipal court of Manila against petitioner Chua Hong, ordering the latter to vacate the premises described in the complaint, to pay rentals in arrears with interest, and to pay P50 a month until the premises were vacated. Chua Hong appealed to the Court of First Instance of Manila, where said case was docketed as civil case No. 105. While said case was pending, one Co Chin tried to intervene, alleging that he was the real lessee of the premises, but his petition for intervention was denied by the respondent judge.

"On November 4, 1946, Co Chin made in said civil case No. 105 of the Court of First Instance a deposit of P150 'as rents for November, 1946, to January 1947, according to the depositor' and on January 20, 1947, he again deposited the sum of P100 as 'rents for February and March, 1947 according to the depositor.' On January 4, 1947, respondent Maria Bautista, through counsel, filed a petition for execution of the judgment of the municipal court alleging that

" '* * * said defendant Chua Hong deliberately failed to pay said monthly rentals, from the month of November, 1946 to this date of the filing of this petition,—there not appearing anything in the records of this case that payments were made by Chua Hong, the defendant herein, for the said period of time, but instead, a certain Co Chin appears to have made payment, although he is not the defendant Chua Hong, and his intervention in this case as party defendant was denied by this Honorable Court.'

"Against the objection of the defendant (Exhibit C) the lower court granted the motion for execution on February 4, 1947. Defendant filed on the next day, a motion for reconsideration, wherein he averred that Co Chin.

" '* * * is willing and ready to credit the deposit made by him in favor of the defendant and for that matter is ready at any time to request the clerk of the Honorable Court to credit said deposit made by him and in his name, in favor of and in the name of the defendant, Chua Hong, as if the same has been originally made and done by said defendant and not by said Co Chin.'

"At the foot of this motion for reconsideration there appears the following notation:

" 'Order

" 'Motion denied. February 15, 1947.

" 'EMILIO PEÑA

" 'Judge'

"The motion for reconsideration was reiterated in a 'motion for lifting the order of execution' filed by petitioner herein, on February 6, 1947, but the respondent judge also denied the same and in the same manner as the motion of February 4, 1947.

"The order of execution having been issued (Exhibit 1) the petitioner obtained from the Clerk of Court, as ex-officio sheriff, an extension of three days from February 18, 1947, because he had filed the petition for certiorari in the case now at bar; but the respondent judge ordered the sheriff to give petitioner only until the 19th of February and instructed that the ejectment be carried out on the 20th (Appendix A to ex-parte motion of February 22, 1947). On the latter date, this Court issued a writ of preliminary injunction to restrain the execution of the order to vacate, but the order arrived late (Appendix B, to ex-parte motion of February 22, 1947).

"The sole question at issue is whether the lower court exceeded its jurisdiction in ordering the execution of the appealed judgment of the municipal court.

"We are of the opinion that, under the facts, the respondent judge acted with grave abuse of discretion, amounting to excess of jurisdiction, in issuing the order complained of, and in refusing to reconsider and set aside the same. It is incontestable that when the order was issued on February 5, 1947, there were on deposit in the office of the clerk of the court where the case was pending on appeal, all amounts due under the judgment of the municipal court up to and including those for March, 1947. Rule 72, section 8, had therefore been complied with.

"The fact that the deposits were made by Co Chin and not by appellant Chua Hong does not alter the case. The deposits were expressly made 'as rents' for November, 1946 to March, 1947; and since there were no rents due except from Chua Hong as defendant-appellant, these deposits must have been made for the latter's benefit. Who made the deposit is immaterial, since by article 1158 of the Civil Code.

"Payment may be made by any person, whether he has an interest in the performance of the obligation or not, and whether the payment is known and approved by the debtor or whether he is unaware of it.

"This article expresses a general rule of obligations, and the creditor can only refuse to accept the performance by the third person 'when the personal qualifications and circumstances of the debtor have been taken into consideration in the creation of the obligation' (article 1161), which certainly was not the case here. Even more, the deposit was not refused, but accepted by the officer in charge.

"Considering that the purpose of these deposits is to secure the collection of rents by the landlord if the judgment becomes final, it is clear that what matters is that the deposit be made and not by whom it is made. Respondents contend that Co Chin's attempt to intervene in this case having been denied by the lower court, he had no reason for making the deposit; but this precisely shows that the deposit made by him was and could only be intended for the benefit of the defendant, petitioner herein.

"Respondents urged at the hearing of this case that Co Chin might later claim that the money deposited by him is not subject to the orders of the court in the case, since he was not a party thereto. Such possibility is extremely remote and improbable, considering that the deposits made by him would be the sole consideration for the non-execution of the appealed judgment. Furthermore, it appears from the motion for reconsideration of February 4, 1947, that Co Chin was willing to have the amount on deposit credited to Chua Hong's account. This statement certainly negatives any intention to make the claim feared by respondents. While the amount was not actually credited as offered, this was plainly due to the respondent judge's flat denial to entertain the motion to reconsider. At any rate, the money was in the hands of the clerk of court and answered for the rents

due the respondent landlord.

"The Supreme Court has called attention to the necessity of a liberal attitude in the application and interpretation of section 8, Rule 72, considering that the execution of judgment pending appeal is therein made a matter of course, contrary to the rule in other cases (*Mitschiener vs. Barrios*, 42 Off. Gaz., [No. 8] 1908). Following this doctrine it is our opinion that the lower court should have looked at the substance of the deposit made, instead of taking advantage of a technicality regarding the name of the person who made the deposit. More inexcusable it would be to take into account against petitioner, as urged by respondents, that the first deposit appears in a certification bearing the heading '*Maria Bautista vs. Co Chin*, Civil Case No. 105,' when the civil case of that number is admittedly the case of '*Maria Bautista vs. Chua Hong*,' and there is no case against Co Chin; nor can the latter be made responsible for a title that he did not write, or an error of a court employee for whom he (Co Chin) is not responsible.

"The order of execution complained of and all proceedings thereunder are annulled and set aside. And it appearing that the petitioner herein has been ejected, while this case was pending, an order of mandatory injunction will be issued requiring respondents forthwith to restore possession of the premises to the petitioner Chua Hong and to respect his possession, until further orders of this Court. Respondent Maria Bautista to pay the costs of the proceedings. So ordered.

(Sgd.) JOSE B. L. REYES

"We concur:

"(Sgd.) ALEX. REYES

"(Sgd.) JOSE GUTIERREZ DAVID."

En virtud de su primer señalamiento de error, la recurrente arguye que el Juzgado de Primera Instancia procedió correctamente al ordenar la ejecución de la sentencia pendiente la apelación, toda vez que los depósitos de alquileres hechos en la escribanía del juzgado por Co Chin, que no es parte en el asunto, no constituyen un cumplimiento de lo ordenado en la sentencia apelada bajo los términos de la regla 72, sección 8, reglamento de los tribunales y, por tanto, no redundan en beneficio del demandado Chua Hong, que es la verdadera parte interesada en el asunto, para el efecto de suspender la ejecución de la sentencia. Sobre este particular hacemos nuestras las atinadas apreciaciones del Tribunal de Apelaciones transcritas arriba. Ya se consideren los pagos hechos por Co Chin a la luz de los artículos 1158 y 1161 del Código Civil^[1]; ya se tomen como efectuados por dicho Co Chin en concepto de apoderado o agente de Chua Hong y en nombre y representación de este, tales pagos tienen el efecto de suspender la ejecución de la sentencia al tenor de la mencionada regla 72, sección 8, reglamento de los tribunales.

El segundo señalamiento de error tampoco tiene mérito. En acciones de la naturaleza de esta que nos ocupa, el demandado tiene derecho a la posesión de la finca mientras este pendiente la apelación, siempre que vaya pagando o depositando los alquileres devengados dentro de los plazos que provee la ley; y cuando ilegalmente, como en el presente caso, se le priva al demandado de dicha posesión, tiene derecho a que se le restablezca en ella.

Por las consideraciones expuestas, se desestima y sobresee el recurso interpuesto, con las costas a cargo de la recurrente en ambas instancias. Así se ordena.

Moran, Pres., Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, y Montemayor, MM., están conformes.

[1] "ART. 1158.—Puede hacer el pago cualquiera persona, tenga o no interés en el cumplimiento de la obligación,

ya lo conozca y lo apruebe, o ya lo ignore el deudor.

"El que pagare por cuenta de otro podra reclamar del deudor lo que hubiese pagado, a no haberlo hecho contra su expresa voluntad,

"En este caso solo podra repetir del deudor aquello en que le hubiera sido util el pago."

"ART. 1161.—En las obligaciones de hacer el acreedor no podra ser compelido a recibir la prestacion o el servicio de un tercero, cuando la calidad y circunstancias de la persona del deudor se hubiesen tenido en cuenta al establecer la obligacion."

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