

CARLOS CURILAN, ET AL., PETITIONERS, VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.

G.R No. L-13170. July 31, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for mandamus and certiorari with preliminary injunction seeking to compel respondent Court to deliver to petitioners the sum of P500.00 representing the cash bond they filed incident to the issuance of the writ of preliminary injunction issued in a case pending before said Court.

This petition stems from a case of forcible entry filed by Ismael Sanchez against Carlos Curilan, et al. before the Municipal Court of Butuan City. The case was decided in favor of plaintiff, defendants having been ordered to vacate the property. Defendants failed to perfect their appeal within the reglementary period and so plaintiff asked for execution of the judgment. Defendants filed a petition for relief before the court of first instance which was dismissed for lack of merit. They tried to appeal the order to the Court of Appeals but while action on the appeal was pending defendants filed with the same court a petition for certiorari and prohibition with preliminary injunction alleging abuse of discretion on the part of the lower court. The writ of preliminary injunction was granted upon the filing of a bond in the sum of P500.00. Petitioners put up the bond in cash which was deposited with the Disbursing Officer of the Court of Appeals. In due time the Court of Appeals entered judgment dismissing the petition and dissolving the preliminary injunction, and the judgment having become final the Clerk of Court made an entry of said judgment on January 17, 1957.

On March 4, 1957, petitioners filed a motion to withdraw the cash bond on the ground that the judgment has become final, which was reiterated in a subsequent motion, for the reason that no action has been taken on the first-motion. But on July 5, 1957, respondent Sanchez filed a motion praying for the execution of the bond put up by petitioners to answer for the damages he had suffered arising from the preliminary injunction issued by the Court of Appeals considering that the petition for certiorari has been dismissed for lack of merit. Respondent Court at first granted the motion for withdrawal of the cash bond but it later stayed its order while at the same time it denied the motion of respondent Sanchez without prejudice on his part to file the corresponding action for damages in the lower court. This resolution entered on August 26, 1957 is now the subject of the present petition for mandamus.

It appears that the cash bond of P500.00 was put up by petitioners in relation to the writ of preliminary injunction issued by respondent Court upon their petition in the certiorari case then pending before said court. It likewise appears that the certiorari case was dismissed for lack of merit and the decision became final on January 17, 1957. But notwithstanding the fact that said decision has become final without respondent Sanchez having filed any claim for damages arising from the issuance of the preliminary injunction with notice to the surety, respondent Court entered a resolution allowing Sanchez to file the corresponding action for damages in the lower court. Petitioners now claim that respondent Court in granting such relief to Sanchez has committed a grave abuse of discretion.

Section 9, Rule 60 provides:

"Sec. 9. Judgment to damages against party and sureties.—Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in Section 20 of Rule 59."

Section 20, Rule 59 provides:

"Sec. 20. Claim for damages on plaintiff's bond on account of illegal attachment.—If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before¹ entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court."

It appears from the above provisions that whenever a bond is filed because of the issuance of a preliminary injunction and damages are suffered as a result thereof the claim for damages must be filed "before the trial or, in the discretion of the court, before entry of the final judgment, with due notice to plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof." It likewise appears that such damages may be awarded only upon application and after proper hearing, and shall be Included in the final judgment. And it has been held that this remedy is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to such damages.

It appearing that the decision in the main case has become final and respondent Sanchez has failed to file his claim for damages on time or while his case is still under the control of the court, it follows that his claim to such damages is now lost and the liability of the surety on the bond extinguished.

Wherefore, the resolution of respondent Court entered on August 26, 1957 is hereby set aside in so far as it grants respondent Sanchez the right to file a separate action for damages in the lower court. It is ordered that the cash bond of P500.00 be returned to petitioners. Cost against respondent Sanchez.

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

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