

REMEDIOS T. FUENTES, PETITIONER, VS. HON. PEDRO JL. BAUTISTA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH III, AND PATRICIA LIZARES, RESPONDENTS.

G.R. No. L-31351. October 26, 1973

Ponente: ANTONIO, J.

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ANTONIO, J.:

In this petition for certiorari and mandamus, petitioner Remedios T. Fuentes seeks: (a) the annulment of the order, dated April 25, 1969, of the respondent Judge, Hon. Pedro JL. Bautista, of the Court of First Instance of Rizal, Branch III, in connection with Civil Case No. 2866-P, denying the motion for execution, and his order, dated July 31, 1969, denying the motion for reconsideration, and (b) the issuance of an order for the immediate execution of the judgment, dated December 27, 1966, in Civil Case No. 6973 of the Pasay City Court, Branch II.

The pertinent facts which led to the issuance of the disputed orders of respondent Judge are as follows:

Respondent Patricia Lizares and her husband, Antonio Garcia, were lessees of petitioner's property located at No. 2443 Park Avenue, Pasay City, on a month-to-month basis in consideration of a monthly rental of P230.00, by virtue of a verbal contract of lease entered into sometime in September, 1959 (par. 2, Annex C of Petition).

On July 25, 1966, petitioner instituted an action for illegal detainer in the City Court of Pasay City, Branch II, against the said spouses Antonio Garcia and Patricia Lizares, as defendants, which case was docketed as Civil Case No. 6973 (par. 2, Petition). Petitioner alleged therein that defendants-spouses, who had been occupying the subject premises since September, 1959 until the date of filing of the complaint, had been in arrears in the payment of rentals for their occupancy of petitioner's aforementioned property, in the amount of P6,305.00 as of May 31, 1966, which they refused to settle despite oral and written demands upon them to pay, and she prayed the city court to order the defendants to vacate the premises and return the possession thereof to petitioner; to pay the rentals in arrears, with legal interest thereon until fully paid, as well as the rentals due petitioner from May 31, 1966 until the defendants vacate the premises; and to pay the costs of the suit (Decision of City Court, dated December 27, 1966).

The summons and a copy of the complaint were served, according to the Sheriff, at No. 2443 Park Avenue, Pasay City, on the defendants-spouses thru their "overseer" Mary Padrolin, on July 30, 1966, and the latter delivered the same to respondent Patricia Lizares on the evening of August 7, 1966.

Petitioner orally moved that the defendants-spouses be declared in default, but respondent Lizares opposed the motion in a pleading dated August 8, 1966, alleging, in substance, that (a) the defendants-spouses had fully paid the rentals due; (b) they had been residing at Moises Padilla, Negros Occidental, since after the elections in 1963; (c) the service of summons on respondent Lizares was not effected in accordance with law, as she was not residing at the subject premises where the summons was served; (d) her co-defendant-husband had likewise not received the summons issued in the case; and (e) the present occupant and/or lessee of the subject premises was Manuel dela Peña. Respondent Lizares then prayed that the motion to declare the defendants in default be denied,

and that an order be issued directing that service of summons be made anew on the defendants in accordance with law. The motion to declare the defendants-spouses in default was denied on August 10, 1966 by the Pasay City Court.

On August 17, 1966, respondent Lizares filed a motion to dismiss on the grounds (1) that the city court has no jurisdiction over the person of the defendants or the subject matter of the action, reiterating the reasons relied upon in her opposition to the motion for default, viz; (b) and (c), and (2) that if defendants-spouses owed the petitioner sums of money for the arrears in rentals, this case is one for collection of a debt, hence, the venue of action should be at the residence of the defendants at Moises Padilla, Negros Occidental (Annex B, Respondents' Memorandum).

Respondent Lizares' motion to dismiss was denied, but she was granted five (5) days within which to file her answer. On August 25, 1966, respondent Lizares filed her answer, admitting that she had occupied and taken possession of the subject premises since September, 1959, under a verbal contract of lease, on a month-to-month basis, at a monthly rental of P230.00, but she specifically denied that she and her husband, Antonio Garcia, were still residents therein, claiming that they are presently residing at Moises Padilla, Negros Occidental, where they transferred after the elections of 1963, and, by way of special and affirmative defenses, alleged that the Pasay City Court has no jurisdiction over this case, as respondent Lizares is not residing at Pasay City and has fully paid all rentals due her. As counterclaim, respondent alleged that by reason of petitioner's malicious and unfounded complaint, she was forced to engage the services of counsel to whom she bound herself to pay P500.00 as attorney's fees (Annex C, Respondent Memorandum).

On September 15, 1966, petitioner filed a motion with City Court praying for the issuance of a "partial summary judgment declaring plaintiff Remedios Fuentes to be the lawful possessor of the subject property at 2443 Park Avenue, Pasay City, and ordering the defendants, their relatives * * * to vacate the premises and restore to plaintiff possession thereof * * *." This was opposed by respondent Patricia Lizares on the ground that trial on the merit of this case had already commenced and "the plaintiff had in effect presented evidences (sic), the motion for partial summary judgment as prayed for by the plaintiff is rather too late and improper * * *."

After due hearing, where the parties submitted testimonial and documentary evidence, the Pasay City Court rendered a decision, dated December 27, 1966, ordering respondent Patricia Lizares to pay petitioner Remedios T. Fuentes the sum of Six Thousand Three Hundred Seventy Pesos (P6,370.00), representing the amount of rentals, proved and established to have been unpaid, as of October 15, 1966, the date when respondent and her husband left the premises, to pay the costs of suit, and dismissing defendant's counterclaim (Annex A, Petition).

Under date of February 8, 1967, petitioner filed a motion to correct decision requesting the city court to amend the dispositive portion of its decision by including respondent's co-defendant Antonio Garcia as one of those directed to pay the amount adjudged. This motion was denied on February 20, 1967.

Subsequently, on February 9, 1967, respondent Lizares filed a notice of appeal from the decision of the Pasay City Court, paid the appellate docket fee and posted an appeal bond. On February 21, 1967, the Pasay City Court ordered the records of the case elevated to the Court of First Instance of Rizal, Branch III, Pasay City, and the same was docketed therein as Civil Case No. 2866-P. No supersedeas bond was however filed by respondent Lizares.

On November 5, 1968, petitioner filed in said Civil Case No. 2866-P a motion for execution of the judgment of the Pasay City Court, on the ground that respondent Lizares failed to post the necessary supersedeas bond, pursuant to Section 8 of Rule 70 of the Revised Rules of Court, and therefore the said judgment is immediately executory (Annex B, Petition).

On December 4, 1968, respondent Lizares, in her opposition to the motion for execution, also asked the Court "to dismiss" the case on the argument that "in view of the failure" of the Pasay City Court "to acquire jurisdiction over the defendant Antonio Garcia" said court "did not acquire jurisdiction to try and decide the case" and that the Court of First Instance before which the case was brought on appeal "only acquired jurisdiction to dismiss this case" (Annex C, Petition).

On April 25, 1969, respondent Judge, Hon. Pedro JL. Bautista, issued an order denying petitioner's motion for execution and also stating that "it appearing that defendant Patricia Lizares * * * has raised matters pertaining to jurisdiction," the resolution of the motion to dismiss must be held in abeyance until after the trial of the case, the facts alleged therein not appearing to be indubitable (Annex E, Petition).

Petitioner's motion for reconsideration, dated June 30, 1969 (Annex F, Petition), alleging that because of the failure of private respondent to file the required supersedeas bond, the execution of the city court's judgment becomes mandatory, pursuant to Section 8 of Rule 70 of the Rules, which motion was opposed by respondent Lizares on July 11, 1969, (Annex F-1, Petition), was denied in an order, dated July 31, 1969, of the respondent Judge in the following tenor: "Considering that defendants in the above-entitled case are no longer in possession of the premises in question for which reason there is nothing more to be restored to plaintiff, and considering further that the only issue in this appealed case is the correct amount of the unpaid rentals, the Court is constrained to deny, as it hereby denies, plaintiff's motion for reconsideration of order dated April 25, 1969." (Annex G, Petitions.)

Hence, the present special civil action for certiorari and mandamus, wherein petitioner alleges that the denial of her motion for execution and motion for reconsideration constitutes a grave abuse of discretion amounting to lack or excess of jurisdiction, and/or an unlawful refusal by respondent Judge to perform a duty specifically enjoined upon him by Section 8, Rule 70, of the Revised Rules of Court, and prays that the said order of respondent Judge denying the motion for execution be annulled and another entered ordering the immediate execution of the appealed judgment in Civil Case No. 6973 of the Pasay City Court.

In the answer of respondents to this petition, they asserted that: (1) the Pasay City Court had "no authority to decide the case upon the failure (sic) to join respondent's husband as an indispensable party to the case" and (2) a supersedeas bond is not necessary to stay execution in the instant case for: (a) the main purpose of the appeal is to seek judicial declaration of the nullity of the judgment of the city court; (b) the moment defendant surrenders possession of the premises, the case partakes of the nature of an ordinary civil action for collection of a sum of money, and therefore an appeal from the judgment of the city court therein requires no supersedeas but only an appeal bond; (c) since the purpose of the execution is to restore the petitioner to the possession of the premises in question which had already been done before judgment was rendered, there is nothing more to execute; and (d) the only remaining issue is whether or not there are rentals in arrears which would require the presentation of evidence by both parties, a question entirely distinct and independent of possession, and to require respondent to file a supersedeas bond before the Court of First Instance has finally determined the amount of rentals in arrears, would be premature as it is only after such final determination that a writ of execution can issue.

I

It is not disputed that petitioner's complaint is one for unlawful detainer over which the Pasay City Court has original exclusive jurisdiction^[1] instituted against the spouses Patricia Lizares and Antonio Garcia. It is well-settled that what determines the jurisdiction of municipal or city courts in a forcible entry and detainer case is the nature of the action pleaded in the complaint. If the facts therein alleged constitute forcible entry and detainer, the municipal or city court may validly try and decide the case, regardless of whether the facts are not proved at the trial.^[2]

In the case at bar, the averments in the complaint filed with the Pasay City Court sufficiently show that the action is one for unlawful detainer. There cannot be any question that the Pasay City Court had jurisdiction over the subject matter of the action. It is, therefore, pertinent to inquire whether or not the City Court has lawfully acquired jurisdiction over the person of the defendants-spouses.

According to the record, summons upon the defendants-spouses was duly served pursuant to the provision of Section 8, Rule 14, of the Rules, by leaving copies of the summons at said defendants' dwelling house or residence with some person of suitable age and discretion then residing therein. While it is true that respondent Patricia Lizares contended that they were no longer dwelling at the subject premises at the time, it was found as a fact by the City Court on the basis of the evidence, that said spouses left the subject premises only on October 15, 1966, or months after the summons was served and when said private respondent Patricia Lizares had already filed her answer with the City Court in the aforesaid unlawful detainer case. Moreover, it is admitted by respondent Patricia Lizares that she actually received from her "maid", Mary Padrolin, on August 7, 1966, copies of the summons and of the complaint and with the filing of her answer with counterclaim for damages, she thereby submitted to the jurisdiction of the court.[3] Since it has not been shown that the said spouses were living apart from each other, it is reasonable to hold that the service of the summons was also effective in so far as her husband to whom the summons was also directed, was concerned.

Thus in *Duran v. Angco*,[4] where the municipal policeman who served the summons did not find the defendant in his usual place of abode, but was informed by his wife that the defendant was in another place, and there was no adequate assurance that he could be served there, We ruled that the wife was a person of sufficient discretion to accept service of summons on behalf of her husband.

We explained the rationale of the rule in *Montalban v. Maximo*,[5] thus:

"This construction is but fair. It is in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction as desired by defendant here. Under the rules, a plaintiff, in the initial stage of suit, is merely required to know the defendant's 'dwelling house or residence' or his 'office or regular place of business' and no more. He is not asked to investigate where resident defendant actually is, at the precise moment of filing suit. Once defendant's dwelling house or residence or office or regular place of business is known, he can expect valid service of summons to be made on 'some person of suitable age and discretion then residing' in defendant's dwelling house or residence, or on 'some competent person in charge' of his office or regular place of business. By the terms of the law, plaintiff is not even duty-bound to see to it that the person upon whom service was actually made delivers the summons to defendant or informs him about it. The law presumes that for him.

"It is immaterial then that defendant does not in fact receive actual notice. This will not affect the validity of the service (72 C.J.S., p. 1054). Accordingly, the defendant may be charged by a judgment in personam as a result of legal proceedings upon a method of service which is not personal, 'which in fact may not become actual notice to him,' and which may be accomplished in his lawful absence from the country. (126 A.L.R., 1486). For, the rules do not require that papers be served on defendant personally or a showing that the papers were delivered to defendant by the person with whom they were left. (*Smith vs. Kincaid*, 249 F. 2d 243, 245, citing *Milliken vs. Meyer*, supra; *U.S. vs. Stabler*, 169 F. 2d 995, 997; *Maier vs. Deam*, 137 N.E. 2d 149).

"Reasons for the views just expressed are not wanting. A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business

associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business."

It is, therefore, evident that the Pasay City Court acquired jurisdiction not only over the person of respondent Patricia Lizares but also over that of her husband, Antonio Garcia. It is worthwhile to note that in the pleadings submitted by respondent Lizares, either with the Pasay City Court or in the Court of First Instance of Rizal, she always included the name of Antonio Garcia as a party-defendant in the caption of said pleadings. The circumstance that the Pasay City Court did not adjudge defendant Antonio Garcia jointly liable with the respondent Patricia Lizares, for the payment of the rentals in arrears of the premises in question, can not detract from the fact that the aforesaid defendant, Antonio Garcia, was actually impleaded as a party defendant in said proceedings.

Having shown that the Pasay City Court had acquired jurisdiction in the ejectment case over the subject matter and on the persons of the defendants therein, the subsequent events such as the departure of said spouses from the subject premises on October 15, 1966, or the failure of said court to include the other defendant Antonio Garcia in its judgment, can not change the nature of the action, much less divest the court of its jurisdiction over the case. It is well-settled that jurisdiction once acquired continues until termination of the case, and it is not affected by the subsequent alteration of the facts.[6]

II

In refusing to issue the writ of execution, respondent court asserted that "defendants * * * are no longer in possession of the premises in question for which reason there is nothing more to be restored to plaintiff, and considering further that the only issue in this appealed case is the correct amount of unpaid rentals the Court is constrained to deny . . . plaintiff's motion for reconsideration . . ." It must be noted that the judgment of the Pasay City Court did not order the restoration of the premises, since it is admitted that on October 15, 1966, during the pendency of the case, respondent Lizares and her husband had already vacated the premises. All that it ordered is the payment of the sum justly due as arrears of rent in the amount of P6,370.00.

The execution of the judgment is not only for the restoration of the possession of the premises leased but also for the payment of the rents due as determined by said judgment.[7] The defendant may, however, stay the execution of the decision of the municipal or city court (a) by perfecting his appeal and filing a supersedeas bond, approved by that court, 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; and (b) by depositing from time to time, with the Court of First Instance, during the pendency of the appeal, the amount of rents or the reasonable value of the use and occupation of the property as fixed by the municipal court or city court in its judgment.[8]

A supersedeas bond, "has for its purpose to secure payment of the rents, damages and costs that may have been adjudged in the appealed judgment, which bond becomes unnecessary if defendant deposits in court the amount of back rentals fixed in the judgment. In other words, the supersedeas bond answers only for back rentals as fixed in the judgment and not for those that may accrue during the pendency of the appeal which are guaranteed by the periodical deposits to be made by defendant".[9] The requirement for the filing of a supersedeas bond is mandatory,[10] and cannot be dispensed with by the courts.[11] When the supersedeas bond is not filed, the duty of the court to order the execution of the appealed decision is ministerial and imperative,[12] and the execution of the judgment shall then issue immediately.[13]

In the instant case, while respondent Patricia Lizares had perfected her appeal to the Court of First Instance of

Rizal, she has not posted a supersedeas bond to answer for the payment of the back rentals amounting to P6,305.00 as of October 15, 1966, as fixed in the judgment of the City Court, in order to stay the execution of the appealed judgment much less has she asked for time to do so. Her failure to comply with said requirement is therefore a ground for the outright execution of the judgment upon petition of the prevailing party. As heretofore stated the duty of the court to issue the writ under such circumstances became ministerial.[14] Hence, it is clear that respondent Judge gravely abused his discretion in refusing to order the execution of the judgment of the Pasay City Court upon the failure of respondent Patricia Lizares to post the necessary supersedeas bond.

WHEREFORE, the writs of certiorari and mandamus prayed for are granted. Accordingly, the questioned orders, dated April 25 and July 31, 1969, are set aside and respondent Judge is hereby ordered to issue a writ for the execution of the judgment rendered by the City Court of Pasay City in Civil Case No. 6973, with double costs against respondent Patricia Lizares.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

[1] Section 88, Judiciary Act of 1948, as amended.

[2] Lizo v. Carandang, 75 Phil. 649; Vencilao v. Camarenta, L-24308, September 30, 1969; 29 SCRA 473.

[3] Tenchavez v. Escaño, L-19671, July 26, 1966, 17 SCRA 674.

[4] L-23561, August 28, 1967, 20 SCRA 1127.

[5] L-2297, March 15, 1968, 22 SCRA 1070.

[6] Insurance Company of North America v. United States Lines Co. L-21021, May 27, 1966, 17 SCRA 301; Lampay v. Judge Moscoso, L-14723, May 29, 1959.

[7] Acierto v. Laperal, L-15966, April 29, 1960, 107 Phil. 1088; Sison v. Bayona, L-13446, Sept. 30, 1960, 109 Phil. 557.

[8] Sec. 8, Rule 70, Revised Rules of Court; Romero v. Pecson, 83 Phil. 308; Villaroman v. Abaya, L-4833, March 21, 1952; De la Cruz v. Burgos, L-28095, July 30, 1969, 28 SCRA 977.

[9] Aylon v. Jugo, 78 Phil. 816; University of Sto. Tomas v. Ocampo, 85 Phil. 144; Hilado v. Tan, L-1964, August 23, 1960; Bagtaas v. Judge Tan, L-6050, September 25, 1953; Sison v. Bayona, L-13446, September 30, 1960; Acibo v. Macadaeg, supra.

[10] Yu v. Barrios, 79 Phil. 597; Acibo v. Macadaeg, 11 SCRA 449.

[11] U.S.T. v. Ocampo, 85 Phil. 144; Sison v. Bayona, supra; Acibo v. Macadaeg, supra; De la Cruz v. Burgos, supra.

[12] Igamo v. Soria, 42 Phil. 11; Tombo v. CFI of Pangasinan, 46 Phil. 851; Gillena v. Borja, 53 Phil. 379; Cora v. Rodas, 79 Phil. 595; De Pages v. Canonoy, L-18588, October 31, 1962, 6 SCRA 583; Acibo v. Macadaeg, supra, 11 SCRA 446; Clemente v. Court of Appeals, L-18686, January 24, 1967, 19 SCRA 74; De la Cruz v. Burgos, supra, 28 SCRA 977; Prieto v. Lucidine, L-9673, Aug. 21, 1956; Arcilla v. Del Rosario, 74 Phil. 445; Cunanan v. Rodas, 78 Phil. 800; Ang Ching Gi v. De Leon, 79 Phil. 580; Galewsky v. De la Rama, 79 Phil. 583; Lee Tian Po & Co. v. Rodas, 81 Phil. 395; Pangilinan v. Pela, 89 Phil. 122; Laurel v. Abalos, L-26098, Oct. 31, 1969, 30 SCRA 281.

[13] Pascua v. Nable, 71 Phil. 186.

[14] De Pages v. Canonoy, *supra*; Acibo v. Macadaeg, *supra*; De la Cruz v. Burgos, *supra*; Clemente v. Court of Appeals, L-18686, Jan. 24, 1967, 19 SCRA 74.

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