

**AGUSTIN SANCHEZ AND VICTORINA MUTIA DE SANCHEZ,
PETITIONERS, VS. THE HONORABLE MARIANO A. ZOSA, JUDGE OF
THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL;
PORFIRIA C. YU AND LI...**

G.R. No. L-27043. November 28, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

The spouses Agustin Sanchez and Victorina Mutia de Sanchez filed their special civil action of certiorari in order to set aside (a) the order of the Court of First Instance of Misamis Occidental dated September 12, 1966 (Civil Case No. 2560), directing the execution against the said spouses of the judgment dated April 25, 1966 of the municipal court of Aloran, Misamis Occidental in an ejectment case (Civil Case No. 295) and (b) its order of December 21, 1966 requiring the spouses and their counsel to show cause why they should not be held in contempt of court.

In its decision the municipal court ordered the Sanchez spouses to vacate a lot located at Barrio Centro, Aloran allegedly owned by the spouses Porfiria C. Yu and Liborio Yu, the plaintiffs in the ejectment suit. The Sanchez spouses were directed to remove their house from the disputed lot within thirty days from their receipt of the decision and, should they appeal, they were "ordered to pay to the plaintiffs or deposit with the clerk of court within the first week of every month as reasonable rental for the lot where their house is constructed the amount of five pesos" and the sum of one hundred pesos as damages. There was no adjudication of back rentals.

From that decision, the Sanchez spouses appealed to the Court of First Instance. They paid the docket fee of twenty pesos and the ordinary appeal bond of fifty pesos (Sec. 5, Rule 40 and sec. 5[12], Rule 141, Rules of Court). To stay execution, they deposited in court the sum of one hundred fifty pesos to cover the damages adjudicated by the municipal court and the rentals for ten months, May, 1966 to February, 1967.

The Yu spouses in their motion of August 27, 1966 asked for the execution of the judgment of the municipal court on the ground that the Sanchez spouses allegedly did not pay nor deposit in court the rentals for May to September, 1966 amounting to twenty-five pesos. The Sanchez spouses opposed the motion because, as already stated, they had filed a cash supersedeas bond on May 24, 1966 in the sum of one hundred fifty pesos to cover the damages and rentals adjudged by the municipal court.

The lower court in its aforementioned order of September 12, 1966 held that even granting that the supersedeas bond filed by the Sanchez spouses covered the monthly rentals for May, 1966 to February, 1967, nevertheless, that bond was supposed "to cover the costs, damages and rentals in arrears up to the rendition of the decision only"; that Rule 70 of the Rules of Court "is very clear that current monthly rentals should be paid to the plaintiff or deposited with the Court as decreed by the decision", and that as the rentals for May to September, 1966 were not deposited in court nor paid to the plaintiff, "the Court has no other alternative but to grant the motion for immediate execution" (p. 36, Rollo).

A motion for the reconsideration of that order was denied. The Sanchez spouses filed on October 24, 1966 a "motion to lift the order of immediate execution" on the ground that the municipal court's judgment was void. Respondent Judge denied it in his order of November 5, 1966 wherein the order for immediate execution was reiterated.

On December 5, 1966, while the Sanchez spouses were in Talusan, Malangas, Zamboanga del Sur and while their house was closed, there being nobody staying therein at the moment, the sheriff executed the judgment by removing the contents of the house, placing them on the street and storing them in the municipal building. These personal effects were returned to the Sanchez spouses on December 12, 1966.

Apparently, because the Sanchez spouses returned to their house (they had been occupying the premises since 1929) the trial court, upon the ex-parte motion of the Yu spouses, required them to appear in court on January 7, 1967 and to show cause why they should not be declared in contempt of court.

The instant certiorari petition was filed on January 4, 1967. This Court on January 11, 1967 issued a temporary restraining order, enjoining the trial court from enforcing its orders of September 12 and December 21, 1966.

The issue is whether the Sanchez spouses, after depositing the rentals for ten months, were still obligated to pay to the Yu spouses the current monthly rentals for the same period or to deposit them in court and whether because of their failure to do so the judgment of the municipal court became executory.

And since the Sanchez spouses have been occupying the disputed lot from December, 1966 up to this time apparently without having deposited any additional rentals, it becomes necessary to determine how the litigation should be finally adjudicated.

We hold that the trial court obviously erred in holding that the sum of one hundred fifty pesos deposited by the Sanchez spouses covered only "the costs, damages and rentals in arrears up to the rendition of the decision" in April, 1966 and that the said bond did not relieve the Sanchez spouses of their supposed obligation of paying the current rentals to the Yu spouses or of depositing them in court.

Rule 70 of the Rules of Court provides that "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 municipal or city 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 municipal or city court to exist." (Sec. 8).

To stay execution in an ejectment suit, the defendant should perfect an appeal to the Court of First Instance, file a supersedeas bond and deposit from time to time with the Court of First Instance, during the pendency of the appeal, the current rentals or the reasonable compensation for the use and occupation of the premises. The supersedeas bond answers for the rents or damages down to the time of the perfection of the appeal. It does not answer for the future rents or damages that may accrue during the pendency of the appeal. Such current rents or damages are guaranteed by the periodical deposits or payments to be made by the defendant-appellant. The appeal bond answers for the costs. (See 3 Moran's Comments on the Rules of Court, 1970 Ed., pp. 329-331; Zamora vs. Dinglasan and Hilario, 77 Phil. 46, 54).

To stay execution, the Sanchez spouses not only complied substantially with the aforequoted provisions of section 8 but they did even more than what was necessary. They deposited in advance the future rentals for ten months instead of making monthly deposits as the rentals became due. When they perfected their appeal to the Court of First Instance in May, 1966, they were obligated to post only a supersedeas bond for one hundred pesos

representing the damages adjudged by the municipal court. Their deposit of one hundred fifty pesos covered the damages and rentals up to February, 1967. Their appeal bond of fifty pesos would answer for the costs. Their cash deposit was a good and sufficient supersedeas bond. After making that deposit in court, they had no more obligation to pay the current rentals to the Yu spouses or to the court. It would only be after February, 1967 when they would start depositing the rentals for March and the subsequent months or would pay them to the Yu spouses.

The Sanchez spouses were indisputably entitled to a stay of execution up to February, 1967. It results that the execution ordered by the lower court in its order of September 12, 1966 was premature and uncalled for. It committed a grave abuse of discretion in ordering such execution and in citing the Sanchez spouses for contempt of court.

Generally, certiorari does not lie to question the propriety of an interlocutory order of the trial court. Interlocutory orders ordinarily should be reviewed when an appeal is taken from the trial court's judgment. Not every procedural error or erroneous legal or factual conclusion amounts to grave abuse of discretion. An error of judgment is not necessarily a jurisdictional error.

However, when a grave abuse of discretion was patently committed, or the lower court acted capriciously and whimsically, then it devolves upon this Court in a certiorari proceeding to exercise its supervisory authority and to correct the error committed which, in such a case, is equivalent to lack of jurisdiction (*De Midgely vs. Ferandos*, L-34313, May 13, 1975, 64 SCRA 23, 30; *Manila Electric Co. and Sheriff of Quezon City vs. Hon. Enriquez, etc. and Espinosa*, 110 Phil. 499, 503; *Abad Santos vs. Province of Tarlac*, 67 Phil. 480; *Herrera vs. Barretto and Joaquin*, 25 Phil. 245, 251).

The parties in their pleadings and memoranda discussed the question of title to the lot in litigation. To avoid duplicity of suits, the lower court may pass upon the issue regarding title to the lot which seems to be interwoven with the issue of who is entitled to the de facto possession thereof.

If the Sanchez spouses had not made any deposit of the rentals for the period from March, 1967 up to this time, then the trial court should give them a reasonable time to make the deposit.

WHEREFORE, the trial court's orders of September 12 and December 21, 1966 are reversed and set aside. The case is returned to the lower court for further proceedings in consonance with this decision. Costs against respondents Porfiria C. Yu and Liborio Yu.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion Jr., JJ., concur.

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