

FELIX ASTURIAS, ET AL., PETITIONERS, VS. GUSTAVO VICTORIANO ET AL., RESPONDENTS.*G.R. No.. L-8817. February 29, 1956*

Ponente: REYES, A., J.

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This is a petition for certiorari to annul an order of execution.

It appears that on June 17, 1948, Nicolas Miras brought an action in the Court of First Instance of Quezon for the recovery of a parcel of land, the complaint, as later amended, alleging that the said land had been conveyed by him by way of mortgage to defendants' predecessor-in-interest and that the defendants were withholding it from him by refusing to allow him to redeem the mortgage. Answering the complaint, the defendants alleged that the conveyance of the land to their predecessor-in-interest was by way of sale with pacto de retro and that the period for redemption had already expired. After trial, the court found for plaintiff, declaring the contract between plaintiff and defendants' predecessor-in-interest to be one of mortgage with usurious interest and therefore null and void, and ordering the defendants to deliver of the land to plaintiff and to pay him the value of the products gathered from the land amounting to P9,670.00, to return the usurious interest paid and to pay the costs. The defendants took steps to appeal but before appeal could be perfected, plaintiff moved for the execution of that part of the judgment which required the delivery of the land to him, alleging that, according to his best information and belief, the defendants were "not solvent enough to meet the damages awarded * * * and those that would accrue during the pendency of the appeal." Defendants objected to the motion for execution, denying that they were insolvent and alleging that their appeal was meritorious and that they had properties to answer for the damages that might finally be adjudged. But notwithstanding this opposition, the court rendered an order granting the motion for execution without specifying any reasons therefor. Reconsideration of the order having been denied, the defendants brought the case here on certiorari to have the order annulled.

Section 2 of Rule 39 provides that "before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order." While this provision gives the court discretion to order execution while an appeal is being perfected, it at the same time requires that there be good reasons for the court's action and that those reasons be stated in a special order. The court's special order in the present case specifies no reason. And while it is held that statement of the reasons by reference is sufficient, as when those reasons appear in the motion for execution and reference thereto is made in the special order as grounds therefor (Moran's Comments on the Rules of Court, Vol. I, 1952 ed., pp. 792-793), the order complained of makes no reference to the reasons alleged by the movant as grounds for immediate execution.

As stated, the Rules give the court discretion to order execution pending appeal. But that discretion must be sound discretion, which must grant such execution only where there are good reasons therefor, the reasons to be stated in a special order as expressly required in the Rules. Compliance with that requirement is important, because unless the reasons for the special order be made known, it would be hard to determine whether judicial discretion has

been properly exercised in the case. The requirement is not to be dispensed With just because the special order for execution also permits a .stay upon sufficient, bond.

In the present case, even were we to suppose that the lower court ordered immediate execution on the strength of the allegation contained in the motion for execution that the defendants were "not solvent enough," the order would still be without sufficient basis because the allegation, of insolvency—which is not under oath—is denied by the defendants and is not supported by proof. The respondent suggests that the lower court might have taken into account the argument made at the, hearing of the motion for execution that the appeal taken in the case was only for purposes of delay. But whether the court did or did not take that argument into account, the fact remains that the order is silent on the point, and; anyway, there is not enough showing that the appeal taken by the defendants was only a dilatory move.

The order complained of being clearly contrary to section 2, Rule 39, the petition for certiorari is granted and the order complained of annulled and set aside,, the preliminary injunction heretofore issued being made permanent. Without special pronouncement as to costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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