

YU SIP, PETITIONER, VS. THE COURT OF APPEALS, THE SHERIFF OF CALOOCAN, RIZAL, AND VICTORIA PASCUAL, RESPONDENTS.*G.R. No. L-2636. March 25, 1950*

Ponente: PADILLA, J.

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The petitioner brought an action to replevy a truck described in the complaint, claiming to be the owner thereof. Upon the filing of a bond in the sum of P4,000, which is double the value of the truck, the sheriff took possession thereof and delivered it to the petitioner. In her answer to the complaint and in her third-party complaint against the petitioner, Ong Kiat Sing, and two guarantors of the latter, Victoria Pascual, one of the two defendants in the replevin case, alleged that she was the owner of the truck which she had leased to Ong Kiat Sing on 20 September 1946 for six months at P10 a day as rental; that the lessee sold it to the petitioner, the plaintiff in the replevin case, and for which sale the former was charged with and convicted of estafa with falsification of public document, and sentenced to suffer imprisonment, to pay a fine, and to indemnify Victoria Pascual in the sum of P2,300. After hearing in the replevin case, the Court declared the defendant and third-party plaintiff the owner of the truck; ordered the petitioner—the plaintiff in the replevin case—to return the truck, or, should the plaintiff be unable to return it, to pay P2,300, its value, to the defendant Victoria Pascual, and in either case, to pay P30 daily from 6 January 1947 to the date of the truck's return or the payment of its full value; directed Ong Kiat Sing to pay P540, the rental of the truck from 1 November to 24 December 1946, and the two guarantors to pay the said sum should their principal Ong Kiat Sing fail to pay it, and costs. From this judgment the petitioner appealed. In the Court of Appeals, the appellee Victoria Pascual asked for the increase in the amount of the bond or for an additional bond of P30,000, alleging that the appeal was frivolous and for the purpose of delaying the execution of the judgment and of allowing the appellant to dispose of his property to defraud her, to which petition the appellant—the herein petitioner—objected. The Court of Appeals granted the petition of the appellee but in the sum of P10,000 only. As the appellant—the herein petitioner—failed to file the bond thus required within the period fixed by the Court of Appeals, the appellee moved for the execution of the judgment rendered in the case. The Court of Appeals granted the motion for execution "without prejudice to the appeal taking its course." A motion for reconsideration of the last resolution was denied.

Petitioner seeks to annul the resolution of the Court of Appeals requiring him to file an additional bond for P10,000, and the one ordering the issuance of a writ of execution, at the instance of the appellee after the appellant, the herein petitioner, had failed to file the required bond within the period fixed by the Court, on the ground that the Court of Appeals had no authority to require the petitioner to increase the amount of the original bond for P4,000 or to file an additional bond for P10,000, and to order execution of the judgment upon failure of the petitioner to comply with the requirement; and that, even if the Court of Appeals had the power to make such requirement, it would constitute an excess of its jurisdiction or a grave abuse of discretion.

The questions raised in the petition filed in this case have become moot, in view of the fact that the judgment in the replevin case had been affirmed by the Court of Appeals; that a writ of execution had been issued therein and

pursuant thereto the sheriff seized the truck from the petitioner and delivered it to the respondent Victoria Pascual; and that the petitioner had no. property with which to satisfy that part of the judgment awarding damages to the prevailing party.

Petition dismissed, the writ of preliminary injunction dissolved, with costs against the petitioner.

Moran, C.J., Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PADILLA, J.:

I certify that Mr. Justice Torres voted for the dismissal of the petition.

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