

FELIPE IMPERIAL, PETITIONER, VS. THE ROMAN CATHOLIC ARCHBISHOP OF CACERES, JUDGE PERFECTO R. PALACIO, COURT OF FIRST INSTANCE OF CAMARINES SUR, TENTH JUDICIAL DISTRICT AND THE P...

G.R. No. L-27252. May 22, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case was considered submitted for decision on August 14, 1967, solely on the basis of the allegations in the petition and in the answer thereto, both parties having failed to file their respective memoranda within the time allowed them. On March 16, 1968, however, respondents filed a motion to dismiss, to which petitioner filed his opposition on May 4, 1968.

It appears that petitioner was the lessee of a lot owned by respondent Roman Catholic Archbishop of Nueva Caceres and situated in Naga City, on which lot petitioner had constructed a building used partly for residential and partly for commercial purposes. In an action filed by said respondent against petitioner in the Court of First Instance of Camarines Sur (Civil Case No. 5292) for rescission of the lease contract, judgment was rendered by said court for the plaintiff therein, declaring the contract rescinded; ordering the defendant to vacate the premises and to pay the sum of P500.00 a month for the use and occupation thereof from July 1, 1961; and awarding moral damages and expenses of litigation.

On February 22, 1967 the defendant below, Felipe Imperial, filed the instant petition for certiorari and prohibition with preliminary injunction, alleging that he had appealed to this Court from the judgment aforesaid, but that before his record on appeal was approved the trial Court, upon motion of the plaintiff, issued an order dated May 6, 1966, for the issuance of a writ of execution pending appeal, but allowing the defendant to stay the same by putting up a supersedeas bond in the amount of P40,000.00 and to deposit the amount of P500.00 as monthly rental from the end of February 1966 until final judgment by the appellate court.

We gave due course to the petition but did not grant the writ of preliminary injunction prayed for.

It now turns out, as averred in respondents' motion to dismiss and admitted by petitioner in his answer thereto, that the appeal in the basic case was taken not to this Court but to the Court of Appeals, and that the said appeal was perfected upon approval of the record on appeal on December 10, 1966, months before the instant proceeding in certiorari and prohibition was commenced here.

It is at once evident that the motion to dismiss must be granted, since the questions raised in the petition regarding the order for the execution of the judgment are incidental to the appeal and should be addressed to the Court of Appeals in the exercise of its appellate jurisdiction. No question affecting the jurisdiction of the trial court is involved. If at all, the order of said court now complained of might involve error in judgment but not absence of jurisdiction, having been issued before the perfection of the appeal and before control of the case was lost by

reason thereof. An orderly procedure dictates that all writs incidental to the judgment be issued by the Court of Appeals in which it is now pending review.

The petition is dismissed, with costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro and Angeles, JJ., concur.

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