

ENRIQUE BRIAS, PETITIONER AND APPELLEE, VS. PACIFICO VICTORIANO AND HON. VICENTE BAUTISTA, JUDGE OF MUNICIPAL COURT OF MANILA, RESPONDENTS AND APPELLANTS.*G.R. No. L-279. March 29, 1946*

Ponente: HILADO, J.

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This is an appeal by Pacifico Victoriano and the Hon. Vicente Bautista, Judge of the Municipal Court of Manila, from the decision of the Court of First Instance of Manila, Judge Mamerto Roxas presiding, dated November 1, 1945 in civil case No. 71183 of said Court of First Instance, wherein Enrique Brias, as petitioner, instituted what he denominated certiorari proceedings against the said Pacifico Victoriano and Hon. Vicente Bautista, as such municipal judge, to annul an order dated August 11, 1945 entered by the said municipal judge in civil case No. 11-927 of the said municipal court (Exhibit H), which proceedings in effect also involved a prayer for a writ of mandamus to compel the respondent judge "to revoke his order of July 28, 1945 suspending the writ of execution and enforcing his order of execution of July 23, 1945."

On July 11, 1944, the municipal court of Manila, Judge Guillermo Cabrera presiding, rendered its decision (Exhibit A) in civil case No. 11-927, for ejectment and recovery of rents, brought by Enrique Brias, as plaintiff, against Pacifico Victoriano, as defendant, whereby said defendant was ordered to pay the rents for the following months commencing with July, 1944 as they fall due, plus the amount of P10 monthly to amortize the sum of P597.50 to which the rents in arrears amounted, and to vacate the house in question in case of non-fulfillment in the payment of the said obligations. Under the holding of the majority of this court in favor of the validity of judicial proceedings in the Japanese-sponsored courts during the Japanese occupation of the Philippines—with which the writer has never agreed but which he nevertheless has to respect—this judgment of Judge Cabrera should be considered valid. After the liberation of Manila, believing that the record of that case had been destroyed, Enrique Brias lodged in the same municipal court a new action of ejectment and recovery of rents in relation to the same house. In this second action the defendant Pacifico Victoriano filed a motion to dismiss, alleging the pendency of the former case, which motion was disposed of by Hon. Almeda Lopez, another judge of said municipal court, by ordering the dismissal of the complaint in the new case (Exhibit B). The aforesaid judgment of Judge Cabrera having become final, Enrique Brias under date of July 20, 1945 filed a motion (Exhibit C) asking for the execution of the said judgment, and Judge Bautista, granting the motion, ordered the execution of the judgment on July 23, 1945. But upon petition of the defendant Pacifico Victoriano, based upon the allegation that he had not violated the conditions of the judgment of Judge Cabrera, respondent Judge Bautista by order dated July 28, 1945 (Exhibit D) quashed the writ of execution dated July 23, 1945. During the hearing of the motion for execution before respondent Judge Bautista in the old case, respondent Pacifico Victoriano filed a motion praying that in view of the fact that the petitioner was attempting to revive the new case, all proceedings be suspended relative to the execution of the judgment of Judge Cabrera until such time as petitioner shall have definitely elected his remedy, that is, whether he chooses to continue the new case or to seek the execution of

Judge Cabrera's judgment in the old one. Respondent Judge Bautista thereupon entered his order (Exhibit H) dated August 11, 1945, already mentioned, and held in abeyance all proceedings connected with petitioner's petition for execution of the aforesaid judgment of Judge Cabrera "until the plaintiff chooses the course of action he will take either to reinstate civil case No. 609 (later case), or abandon the present case." Enrique Brias, not agreeing with said order dated August 11, 1945, filed a petition for certiorari (and in effect also for mandamus) with the Court of First Instance of Manila, seeking the annulment of the same order, alleging that the respondent judge of the municipal court of Manila had entered the said order without jurisdiction, at the same time praying that said judge be required to revoke his order dated August 28, 1945 quashing the writ of execution, and that he reinstate his order of July 23, 1945 decreeing the execution of the judgment of Judge Cabrera.

His Honor, Judge Mamerto Roxas, of the Court of First Instance of Manila, held that the above-mentioned judgment of Judge Cabrera having become final, the power of the judge thereover was limited to decreeing its execution in accordance with its terms. He consequently held that the respondent municipal judge had no jurisdiction to suspend all proceedings for the execution of Judge Cabrera's judgment so long as petitioner has not definitely elected his remedy; and that the judge should confine himself to determining whether or not in accordance with the terms of Judge Cabrera's judgment and the facts bearing on the conditions of said judgment, its execution should be ordered.

In view thereof Judge Roxas set aside respondent Judge Bautista's order of August 11, 1945, and denied the petition for the revocation of the order of July 28, 1945 and the reinstatement of the order of July 23, 1945, both herein above mentioned, on the ground that before respondent Judge Bautista can order the execution of the judgment of Judge Cabrera he should first determine whether or not the defendant (herein respondent Victoriano) has violated any of the conditions expressed in the same judgment.

This decision of Judge Mamerto Roxas is in accordance with the law applicable to the facts of the case.

Wherefore, the judgment of Judge Mamerto Roxas complained of upon this appeal is affirmed without special pronouncement as to costs. So ordered.

Ozaeta, Be Joya, Perfecto, and Bengzon, JJ., concur.

Judgment affirmed.

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