

CHINESE COMMERCIAL PROPERTY COMPANY, PLAINTIFF AND APPELLEE, VS. ESPERANZA P. MARTINEZ, ET AL., DEFENDANTS. GLICERIO JOCO, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-18565. November 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal^[1] taken by defendants Esperanza Martinez and Glicerio Joco from the order of the Court of First Instance of Camarines Sur (in Civil Case No. 3307), finding them guilty of indirect contempt of court under Section 3 (b), Rule 64, of the Rules of Court and sentencing each of them to suffer imprisonment for 1 month, for their failure to vacate the property belonging to plaintiff Chinese Commercial Property Co. Inc. at Naga City.

The records disclose that on October 17, 1955, plaintiff filed with the Municipal Court of Naga City a complaint against defendants, for illegal detainer of certain real property, namely, Door No. 6 of a building located at General Luna St., Naga City belonging to plaintiff. To this complaint, defendants filed their answer on November 23, 1955, alleging among others, that said Door No. 6 is their exclusive property. After trial on the merits, the municipal court rendered a decision dated January 9, 1956, the dispositive part of which reads:

"* * * the Court renders judgment in favor of the plaintiff, ordering the defendants Esperanza P. Martinez and Glicerio A. Joco to vacate the commercial store or Door No. 6 in the building known as the Chinese Commercial Property Company Building at General Luna St., City of Naga, and to restore the possession thereof to the plaintiff Chinese Commercial Property Company, Inc., and to pay the amount of P1,400.00 as accrued rental plus P200.00 monthly, from the month of November, 1955 until the possession of the premises is delivered to the herein plaintiff, and to pay the costs."

From this decision, defendants within the reglementary period for appeal, duly filed their notice of appeal (to the Court of First Instance of Camarines Sur), an appeal docket fee, and a supersedeas bond, to stay the Immediate execution of said decision of the municipal court. The records of the case, having been forwarded to the court of first instance, defendants duly filed their answer to the reproduced complaint, reiterating that the premises in question are their exclusive property.

On July 18, 1956, the court of first instance issued the following order for immediate execution of the decision of the municipal court:

"Considering that the defendants in this case failed to pay either to the plaintiff or to the Court the amount of P200.00 as monthly rental of the premises in question, from the time that the decision was rendered, and after the defendants perfected their appeal from the judgment of the Municipal Court of the City of Naga, it is ordered that writ of execution be issued against the defendants, considering that the supersedeas bond posted by the said defendants is only to cover the accrued rentals of P1,400.00 and the expenses mentioned in the decision, and not to cover the payment of the future rentals of the premises in question."

The writ of execution issued by the clerk of court having been returned unserved by the ex-officio City Sheriff of

Naga, an alias writ of execution was issued on April 23, 1957. Said alias writ was served on defendants by the Sheriff on April 28, as per his return to wit:

"I hereby certify that on April 26, 1957, I went to the Commercial Store or Door No. 6 in the Building, known as the Chinese Commercial Property Company Building at Gen. Luna St., Naga City, and I commanded to the defendants Esperanza P. Martinez and Glicerio Joco to vacate and deliver the said building stated above to the plaintiff representative of the Chinese Commercial Property Company, Inc., and to pay the amount of accrued rentals as stated in the execution, but said defendants refused to vacate and deliver the same and refused to pay said amount. Nevertheless, said defendants received a copy of the writ of execution, but they refused to sign receipt."

On the strength of the foregoing return, plaintiff, on June 26, 1957, filed a motion to declare defendants in contempt of court. On July 6, the court of first instance issued an order requiring defendants to appear before it and explain why they should not be punished for contempt.

After hearing, the court of first instance issued order adverted to at the beginning of this opinion, which in part reads:

"Considering that the respondents, Glicerio Joco and Esperanza Martinez, were duly served with the alias writ of execution (Exh. A-incident), which was evidenced by the return of the Sheriff dated April 26, 1957, marked Exh. B-incident, and that, despite the said writ of execution, they refused to vacate the same, as manifested by them in open Court on July 13, 1957 (Exh. C-incident), the Court found (sic) them guilty of contempt for disobedience of, or resistance to a lawful writ, provided for under paragraph (b) of Section 3 of Rule 64, which reads as follows:

'Disobedience of or resistance to lawful writ, process, order, judgment and command of a trial court or injunction granted by the judge'.

The evidence clearly shows that in the return of the writ of execution dated April 23, 1957 (Exh. B-incident), they were ordered to vacate and deliver the Commercial Store or Door No. 6 in the building known as the Chinese Commercial Property Company Building at General Luna Street, City of Naga, and to restore the possession thereof to the plaintiff, but they refused to do so, manifested by them in open Court, when they appeared before it on July 13, 1957.

"They are, therefore, sentenced to suffer an imprisonment of one (1) month each.

"IT IS SO ORDERED."

From this order, defendants instituted this appeal.

Defendants-appellants, in this instance, claim that the trial court erred in finding them guilty of indirect contempt of court under Section 3(b), Rule 64, of the Rules of Court, citing in support of their submission the case of Goyena de Quizon vs. Philippine National Bank, et al. (85 Phil., 459).

We agree with appellants. In the Goyena de Quizon case, (the facts of which are practically on all fours with those of the case at bar except that in the Goyena case it was a final judgment that was being executed, while here it was a judgment of the Municipal Court under appeal but was immediately executable under the special provisions of Section 8, Rule 72 of the Rules of Court, a difference which is immaterial for the purposes of this incident), appellant Angela Goyena de Quizon was declared by the court below guilty of indirect contempt of court under Section 3(b), Rule 64, of the Rules of Court and sentenced to imprisonment, for her disobedience to its judgment requiring her to vacate the premises and deliver possession of the property belonging to appellees Alex F. Magtibay and Paulina B. de la Cruz, as well as the order of execution levied by the Sheriff, by refusing to vacate

the premises in question and deliver possession thereof to said appellees. On appeal to this Court, we reversed the order of the court below and acquitted appellant of contempt, stating as follows:

"The judgment involved here requires the plaintiff to vacate the premises and deliver the possession thereof to the said defendants Alex P. Magtibay and Paulina B. de la Cruz.' Under Section 8(d) of Rule 39, if the judgment be for the delivery of the possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejection the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may the loser be charged with and punished for contempt under paragraph (h) of Section 3, Rule 64.

"In *United States vs. Ramayrat*, 22 Phil. 183, a similar writ of execution was invoked to punish the defendant for contempt of court. The defendant, who had been adjudged in a civil case to deliver the possession of a certain parcel of land to the plaintiff, manifested to the sheriff in writing that he was not willing to deliver to Sabino Vayson [the plaintiff] or to the deputy sheriff of this municipality, Cosme Nonoy, the land in my possession, as I have been directed to do by the said sheriff, in order that, in the latter case, he might deliver the same to the aforementioned Vayson, in conformity with the order issued by the justice of the peace of this municipality.' In affirming the order of the Court of First Instance acquitting the defendant of contempt, this court, interpreting the provisions of the Code of Civil Procedure from which paragraph (d) of section 8, Rule 39, was taken, held:

'According to these sections, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and, in fact, it was he himself, and he alone, who was ordered by the justice of the peace who rendered that judgment, to place the plaintiff, Vayson, in possession of the land. The defendant in this case had nothing to do with that delivery of possession, and, consequently, his statements expressing his refusal or unwillingness to effect the same, are entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the alleged disobedience of the defendant, that the judgment was not duly executed. For that purpose the sheriff could even have availed himself of the public force, had it been necessary to resort thereto'.

* * * * *

"Appellant cannot be punished for contempt under paragraph (b) of Section 3, Rule 64, for disobedience of or resistance to the judgment of the trial court because said judgment is not a special judgment enforceable under Section 9 of Rule 39, which reads as follows:

'SEC. 9. Writ of execution of special judgment.—When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and may be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.'

"In other words, when as in this case, the judgment requires the delivery of real property, it must be executed not in accordance with paragraph (d) of Section 8, Rule 39, and any contempt proceeding arising therefrom must be based on paragraph (h) of Section 3, Rule 64, and not on paragraph (b) of the same section in relation to Section 9 of Rule 39.

"Acquitting appellant of contempt of court, we reverse the order appealed from, with costs against the appellees Alex F. Magtibay and Paulina B. de la Cruz." (*Italics supplied.*)

Conformably with this decision, the order appealed from of the court a quo is hereby reversed and appellants are declared acquitted of contempt of court, with costs against the appellee.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Originally appealed to the Court of Appeals but certified to us on March 24, 1961 because it involves only questions of law.

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