

AMANDO CALUAG DOMINGO, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF NUEVA ECIJA AND FELISA ROMAN VDA. DE MORENO, RESPONDENTS.

G.R. No. L-362. August 31, 1946

Ponente: PARAS, J.

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PARAS, J.:

In an ejectment case instituted in the justice of the peace court of San Antonio, Nueva Ecija, in which the respondent (Felisa Roman Vda. de Moreno) was the plaintiff and the petitioner (Amando Caluag Domingo) the defendant, the latter was sentenced, in a decision rendered on November 27, 1941, to vacate the controverted land and to pay P30 (unpaid balance of the rent from September, 1940, to September, 1941), plus the sum of P65 annually thereafter until actual restitution of the land to Felisa Roman, and the costs. During the pendency of the appeal interposed by the petitioner in the Court of First Instance of Nueva Ecija, Felisa Roman filed a motion for the execution of the decision of the justice of the peace court in view of the failure of the petitioner to file a supersedeas bond and to pay to Felisa Roman or to the court the rents awarded in the decision of the justice of the peace court, whereupon the Court of First Instance of Nueva Ecija issued an order, dated September 9, 1943, directing the execution prayed for. The petitioner subsequently was able to have this order of execution lifted, but not without posting a bond for P1.000 required by the Court of First Instance of Nueva Ecija in its order of August 2, 1944. Said bond (which was in Japanese military notes) was substituted by a cash bond for the same amount, but in Philippine currency, filed by agreement of the parties and approved by the Court of First Instance of Nueva Ecija in the order of August 8, 1945', which further provided that execution would automatically follow if said bond was not put up within twelve days. On December 20, 1945, notwithstanding the existence of this new bond, the Court of First Instance of Nueva Ecija, acceding to another petition of Felisa Roman, ordered "the execution of the decision under the provisions of Rule 72, of the Rules of Court." This last order is sought to be annulled in the certiorari proceedings now before us, instituted by the petitioner.

The attorney for the respondents contends—and this is the basis of the Court of First Instance of Nueva Ecija for directing the execution—that "apesar de haberse hecho el deposito de mil pesos por el demandado Caluag1 Domingo, primero en Japanese notes y despues en Philippine currency, ello vino a constituir solamente la fianza de super-sedeas provista en la segunda condition prevista para la suspension de la ejecucion," and that, if the petitioner wanted to have the execution suspended, he should have paid "al demandante o en la escribania del juzgado, tod as las cantidades que venia a ser condenado a pagar, desde el juzgado de paz, hasta la fecha de referencia 20 de diciembre de 1945, y del mismo modo en lo sucesivo, por cada pago que periodicamente debiera hacer segun la sentencia."

Ordinarily, under section 8 of Rule 72 of the Rules of Court, the winning plaintiff in an ejectment case is entitled to move for immediate execution—and the court is bound to grant the same,—unless the defendant, who 1ms appealed from the decision of the justice of the peace or municipal court, files a supersedeas bond and, during the pendency of the appeal, pays to the plaintiff or to the court the rents due from time to time. The facts of the case at

bar, however, show that the respondent Felisa Roman, by her own act, had waived her right to immediate execution, in that she, after the petitioner had already failed to pay the rent due after the decision of the justice of the peace court of November 27, 1941, had on two occasions agreed to suspend execution upon the mere filing by the petitioner of a cash bond for P1,000, first in 1944 (Japanese notes) and, then, in 1945 (Philippine currency). Indeed, the agreement was approved by the Court of First Instance of Nueva Ecija in its order of August 8, 1945, which recited partly as follows: "Aprobando este convenio, por la presente se fija en P1,000 la fianza que debe prestar el demandado dentro del termino de 12 dias, a contar desde la fecha de la presente orden; entendiendose que si asi no lo hiciera, automaticamente se ordenara la ejecucion de la sentencia del juzgado de paz."

That the sense of the agreement; referred to and approved in this order was to suspend execution after the filing of the cash bond, is clearly deduced from the warning "entendiendose que si asi no lo hiciera, automaticamente se ordenara la ejecucion de la sentencia del juzgado de paz," and from the amount of said bond which is sufficient to cover the rents for more than ten years, it appearing that the decision of the justice of the peace court sentenced the petitioner to pay only P30 (unpaid balance from September, 1940, to September, 1941) and P65 yearly from September, 1941, plus the costs, and that the back rents in 1945 when the cash bond of P1,000 was filed, amounted to the insignificant sum of P290. If, as held in *Mitschiener vs. Barrios* (76 Phil., 55), the supersedeas bond "has, in effect, the purpose of securing only the payment of rents in arrears," the amount of P1,000 was absolutely excessive if it was not intended to cover also future rents.;

In this connection, it also appears that on October 31, 1945, the Court of First Instance of Nueva Ecija decided the ejectment case in favor of the plaintiff; that on November 29, 1945, the motion for execution" was filed, which was granted—as already noted—in the order of December 20, 1945; that the subsequent motion for reconsideration was denied on the ground that the cash deposit of P1,000 did not take the place of a supersedeas bond "first because it was not given as such, and second—the deposit was made before the decision the execution of which has been asked for." The first reason requires no other comment than that the attorney for the respondents herein now admits that said deposit "vino a constituir * * * la fianza de super sedeos." As to the second reason, it may be remarked that the cash bond of P1,000 filed before the rendition of the judgment of the Court of First Instance of Nueva Ecija, continued to serve its purpose and effect thereafter, as may be inferred from section 9 of Rule 72 which provides that "where the defendant appeals from judgment of the Court of First Instance, execution of said judgment shall not be stayed unless the appellant pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided." Of course, the record does not show that the petitioner had duly appealed. At the same time, it is not here pretended by the respondents that the judgment of the Court of First Instance of Nueva Ecija has become final and executory.

It results that we need not pass upon petitioner's allegation that the order of execution of December 20, 1945, was issued without previous notice to him, although, of course, a writ of execution may only be issued by the court in ejectment cases after notice to the adverse party. (*Section 8, Rule 72; Angel Jose Realty Corp. vs. Galao*, 76 Phil., 201.)

The petition for certiorari is, therefore, granted and the order of the Court of First Instance of Nueva Ecija dated December 20, 1945, set aside, with costs against the respondent Felisa Roman Vda. do Moreno. So ordered.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

DISSENTING

PADILLA, J., with whom concurs HILADO, J.:

I dissent. This case can not yet be decided in view of the divergent allegations of the petitioner and the respondent Moreno as disclosed by their pleadings. Petitioner should not be allowed to withhold facts that must be laid before this court. He failed to append to his petition his answer filed in the respondent court, but in lieu thereof attached a copy of the judgment rendered by the justice of the peace of San Antonio, Nueva Ecija. The allegation in paragraph XI of his petition that the motion for execution filed by respondent Moreno on November 29, 1945, was without notice of hearing to petitioner and that it was filed before the determination of the case on the merits, is denied by respondent Moreno.

The latter pleads that the motion was with notice of hearing and that it was filed after judgment on the merits had been rendered by the respondent court on October 31, 1945. This last allegation seems to be supported by the orders of December 20, 1945 and January 18, 1946 entered by the respondent court (Exhibits I and L). In paragraph XVI of the petition, it is alleged that the respondent court refused to allow petitioner to file a bond to answer for rentals due. This is denied by respondent Moreno.

I believe that the interest of justice would be best subserved by directing the respondent court to forward the record of the case for review by this court.

Nevertheless, if, despite such divergent allegations, this court feels that it can decide the case, I would still dissent, because whether the case had been or has not been decided on the merits by the respondent court, the order of execution of December 20, 1945, was issued because of petitioner's failure to pay the rentals at the rate of ₱5 a year from 1941 to 1945. The cash bond of ₱1,000 can not be deemed a compliance with petitioner's obligation, during the pendency of the appeal, to pay to the plaintiff or into the court the rentals as they fall due, either under section 8 or under section 9, Rule 72, of the Rules of Court.

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