

**CRISPULO OCAMPO LEUS AND ESTRELLA BAUTISTA, PLAINTIFFS
AND APPELLEES, VS. CIRILO MARTIN, DEFENDANT AND APPELLANT.***G.R. No. L-653. November 26, 1946*

Ponente: PERFECTO, J.

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PERFECTO, J.:

In a petition filed on August 9, 1946, copy of which was served on the same day on the other party, plaintiffs-appellees pray that the moneys deposited as monthly rentals by defendant-appellant with the clerks of the Municipal Court and Court of First Instance of Manila and this Supreme Court be turned over to them and that defendant-appellant be required to surrender the receipts for said deposits so that the amounts therein stated may be properly withdrawn by the plaintiffs-appellees.

Plaintiffs, as owners of the house at 2502 Tindalo, Manila, seek to oust defendant therein for failure to pay the agreed monthly rental of ₱2 for August and September, 1945. On October 29, the Municipal Court of Manila rendered decision as prayed for in the complaint. Defendant appealed to the Court of First Instance of Manila.

On January 10, 1946, plaintiffs prayed that the defendant be declared in default for failure to file his answer within the period of fifteen days fixed by the rules (section 1, Rule 9 and section 7, Rule 40). On February 14, 1946, defendant was pronounced in default and on February 28 decision was rendered ordering the defendant to vacate the premises and to pay the rents in arrears and those that may become due until he vacates the property. Defendant appealed again.

Two errors are assigned in defendant's brief, dated July 24, 1946, but no issue is raised in said brief regarding the fact that plaintiffs are entitled to collect the rents in question. Defendant's failure to oppose, object to, or even answer plaintiffs-appellees' petition of August 9, 1946, could obviously be taken for granted as acquiescence therein.

Although according to sections 8 and 9 of Rule 72, all moneys deposited by the defendant "for the purposes of stay of execution" shall be held "until the final disposition of the appeal," and "shall be disposed of in accordance with the provisions of the judgment," this court taking the position that Rules are not ends by themselves but means to serve the interest of justice had, on more than one occasion, allowed the turning over of said moneys to the plaintiffs.

In *Estrella, et al, vs. Sangalang* (42 Off. Gaz., 2095), plaintiffs-appellees prayed to be allowed to withdraw all the monthly rentals deposited by defendant appellant for the months of March, April, May, and June, 1945, at the rate of ₱30, and for July, August and September, at the rate of ₱37.50. Defendant opposed the withdrawal of all the amounts deposited on the ground that he did not agree to the increased rental of ₱37.50 a month, he being willing to continue paying the prewar rental of ₱30 a month. By resolution adopted on October 13, 1945, we granted the motion only as to the undisputed monthly payment of ₱30, but not as to the disputed balance of ₱7.50 per month, which will be taken up when the case is finally decided.

In four cases—L-187, L-188, L-189, and L-190, *Reyes vs. Regala, et al.*,—by resolution adopted on February 16, 1946, we granted appellees' petition to withdraw all the amounts deposited by appellants by way of rentals, "it appearing¹ that counsel for the appellants is agreeable thereto." In case L-97, *Borja vs. Bautista*, we granted equally the motion, "defendants not having filed any objection thereto." Similar petition was granted in L-715, *Leus, et al., vs. Valentin*, because defendant failed to object to the petition.

On the other side, in case L-702, *Gamboa Hilado vs. Schweigert*, plaintiff's motion to withdraw rents was denied because appellant opposed it on the ground that the ownership of the property in question is in litigation between plaintiff and a third party, Salem Assad, who claims to be the owner and to be entitled to the rents in question.

It is, therefore, settled that when the defendant agrees or fails to oppose plaintiff's petition to withdraw said moneys, the petition must be granted.

The wordings and phraseology of the rules are not rigid mouldings. They are the means to convey the ideas and legal objectives of the authors, always with the view of attaining justice. Those ideas and objectives are not rigid in themselves, but are resilient as all manifestations of the mind, as all rules of human life and conduct. The purpose of sections 8 and 9 of Rule 72 is to avoid that the defendant may suffer if plaintiff should be allowed to withdraw the moneys deposited when plaintiff's right to collect the moneys is in issue. Where no such issue is raised, there is no harm to be protected against.

Plaintiffs' petition to withdraw the rents deposited is granted; but his petition to require defendant to surrender the receipts for moneys deposited, being groundless and unnecessary, is denied.

Moran, C. J., Paras, Pablo, HUado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

FERIA, J.:

I concur in the result on the ground that the defendant-appellant in this case impliedly agreed to the withdrawal by the plaintiffs-appellees of the rents deposited by him with the courts, in accordance with sections 8 and 9, Rule 72, of the Rules of Court. Section 8 provides in part the following which was adopted or incorporated by reference in section 9, of Rule 72:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. All moneys so paid to the Court of First Instance shall be deposited in the provincial treasury, or in the City of Manila in the Insular Treasury, and shall be held there until the final disposition of the appeal."

The law gives the defendant-appellant the right, either to pay the rents to the plaintiff, or deposit it with the court, the rentals or reasonable compensation for the use and occupation of the premises accruing during the pendency of the appeal, and if he choses to do the latter, moneys so deposited with the court "shall be held there until the final disposition of the appeal? that is, until final judgment is rendered ordering the payment of said rents and

compensation to the plaintiff. In providing for such deposit, it is not, therefore, the "purpose of the law to avoid that the defendant any suffer if plaintiff should be allowed to withdraw the money deposited by the defendant" as stated in the decision of the court. Consequently, unless the defendant-appellant agrees, expressly or impliedly, to the withdrawal by the plaintiff of the money so deposited during the pendency of the appeal, the court can not allow the plaintiff to withdraw it, irrespective of whether or not the right of the plaintiffs to collect the money is in issue. Because to grant such withdrawal before the final disposition of the appeal would be tantamount to grant a partial execution of the judgment during said pendency without any authority of law, and thus deprive the appellant of his right to have the money held by the court until the final disposal of the appeal.

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