

## FELIX PAULINO, SR., ET AL., PETITIONERS, VS. HON. JOSE T. SURTIDA, ET AL., RESPONDENTS.

*G.R. No. L-14497. September 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

On July 30, 1956, Felix Paulino, et al. filed an action for forcible entry against Gonzalo Refe, et al., before the Justice of the Peace Court of Sipocot, Camarines Sur, praying that defendants be ordered to vacate the land in dispute and to respect their possession of said property.

After trial on the merits, the justice of the peace court rendered decision ordering defendants to vacate the land and to restore its possession to plaintiffs and to pay the sum of P1,800.00 as damages and the costs. In addition, in an order issued later amending the foregoing decision, defendants were also ordered to pay every 45 days the value of 15,000 coconuts that may be taken during that period, or its equivalent of P450.00, as rental for the use and occupation of the land from the rendition of the judgment until the land is restored to the plaintiffs.

From this decision, as amended, defendants appealed to the Court of First Instance of Camarines Sur. They filed a supersedeas bond and began depositing the sum of P450.00 every 45 days as required in the decision. Since the supersedeas bond filed by defendants was legally defective, plaintiffs objected to its approval unless the defect is cured. And having found the objection well taken, the court granted defendants 30 days within which to make the correction.

On April 15, 1958, defendants filed a new supersedeas bond which again was found to be defective. Hence on May 12, 1958, plaintiffs filed a motion for immediate execution invoking Section 8, Rule 72, of the Rules of Court. On May 28, 1958, defendants in turn filed a motion for extension of time to deposit the sum of P450.00 which they were required to pay every 45 days, to which plaintiffs objected as being contrary to law, and on June 16, 1958 the court issued an order denying the motion for extension and granting the motion for immediate execution. Defendants filed a motion for reconsideration, which was denied on August 22, 1958, although the court stated that the execution will only include the possession of the property and the collection of the rents in arrears. On August 27, 1958, plaintiffs filed another motion praying that the periodical deposits made by defendants with the provincial treasurer, which at that time reached a total of P4,950.00, be delivered to plaintiffs pending appeal, which the lower court denied in an order issued on September 5, 1958 stating that plaintiffs cannot be allowed to withdraw the money deposited unless defendants agree thereto. Plaintiffs filed a motion for reconsideration, and the same having been denied, they interposed the present petition for mandamus contending that the trial court neglected and failed to perform a ministerial duty enjoined by law when it denied to the plaintiffs the right to withdraw the amounts deposited by defendants.

Before disposing of the issues raised, it may be well to state the following undisputed facts: In the decision rendered by the Justice of the Peace Court of Sipocot, defendants were ordered to pay the sum of P1,800.00 as damages, representing the coconuts harvested by defendants up to the rendition of the judgment, as well as to

deposit every 45 days the value of 15,000 coconuts that may be taken during that period, or its equivalent of P450.00, as rental for the use and occupation of the land from the rendition of the judgment until the possession of the land is restored to the plaintiffs. Defendants failed to put up a valid supersedeas bond although they began depositing the current rental of P450.00 every 45 days as required in the decision. Because of such failure plaintiffs moved for immediate execution of the judgment, which was granted, the court stating that the execution should only include the possession of the land and the collection of the rents in arrears. The trial court refused to grant plaintiffs the right to withdraw the back rentals deposited with the provincial treasurer in view of the objection of defendants. Hence, the present petition for mandamus.

The question that now arises is: If defendant fails to put up a supersedeas bond to stay execution pending appeal, and plaintiff asks for execution, may the writ of execution cover not only the restoration of the land in dispute but also the payment of the back rentals deposited by defendant in court? In other words, should plaintiff be restored only to the possession of the property while the moneys deposited in court should be left there until the final disposition of the appeal?

The answer to these questions depends upon the proper interpretation to be placed on the following: pertinent provisions of Section 8, Rule 72, of the Rules of Court:

"SEC. 8. Immediate execution of judgment. How to stay same.— 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 band 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 National Treasury, and shall be held there until the final disposition of the appeal. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits."

In *Silva vs. Macadaeg, et al.*, 85 Phil., 74; 47 Off. Gaz., No. 5, p. 2337, this Court, resolving a similar question, held:

"In the case at bar, the petitioner, as defendant in an ejectment proceeding, having objected to the granting of the petition of respondent for the withdrawal of the moneys or rentals deposited by him with the clerk of the Court of First Instance, the orders issued by the respondent judge granting said petition for withdrawal, are contrary to the provisions of sections 8 and 9 of Rule 72 of the Rules of Court. Had the petitioner agreed to, or failed to oppose, the motion of plaintiff, respondent herein, for withdrawal, the granting of the same would have been in order, but since he objected thereto, the court lacked justification in issuing those orders. The doctrine laid down in *Ocampo Leus vs. Martin* (77 Phil., 657; 43 Off. Gaz., No. 12, p. 5066) is hereby reiterated."

It should be noted that in the case above adverted to the defendant filed the required supersedeas bond and deposited with the clerk of court the rents fixed for the occupancy of the premises during the pendency of the appeal but that notwithstanding the payment of said back rentals plaintiff moved for withdrawal of the moneys deposited. And so it was held that such withdrawal cannot be done unless defendant agrees to it or fails to oppose

it. In the instant case, however, a different situation obtains. Defendants not only failed to put up a valid supersedeas bond but were delinquent in depositing the current rentals as fixed by the justice of the peace court, in which case the rule gives to plaintiffs the right to demand not only the restoration of the premises but also the payment of the back rentals deposited with the provincial treasurer. This is in line with the above-quoted provisions of Section 8, Rule 72, as interpreted by this Court in the following cases:

"The execution of the judgment in forcible entry or illegal detainer during the pendency of the appeal as not only for the restoration of the possession of the premises leased but also for the payment of the rents due and payable as determined by said judgment." (Romero vs. Pecson, 83 Phil., 308; 46 Off. Gaz., No. 10, p. 4882.)

"\* \* \* But section 8 of Rule 72 does not limit the execution to the possession of the property in question, so that it refers to the whole judgment, both for possession and collection of the money judgment, rendered by the justice of the peace court or the municipal court. This explanation is even unnecessary here, for it was clearly set forth in the Romero vs. Pecson case, supra which Judge Abaya is presumed to have understood." (Villaroman vs. Abaya, et al., 91 Phil., 20.)

We may, therefore, conclude that if defendant puts up a supersedeas bond to stay execution and pays regularly the rentals that may accrue pending appeal, plaintiff may not withdraw the moneys deposited unless defendant agrees to it or files no opposition thereto. But if he fails to put up a supersedeas bond, or to deposit regularly the rentals that may accrue during the appeal, plaintiff may ask for execution not only with regard to the possession of the property but also with regard to the withdrawal of the moneys deposited. The reason for this ruling is simple. Since defendant failed to "stay execution by complying with the requirements of Rule 72, Section 8, plaintiff is entitled to execution not only with regard to possession but also with regard to the money deposited. This judgment must be executed in its entirety, as clarified by this Court in the Villaroman case:

"In the order of the court below it is said that 'physical possession is the only issue in forcible entry and detainer cases' and that if the execution pending appeal refers both to the possession of the premises and the collection or deposit of the rentals in arrears, the appeal on the merits 'would just be a moot question and would turn to be purely academical, because of what use would that appeal be if after all the entire judgment appealed from should be executed.'

"In the first place, it is not true that physical possession is the only issue, for in a great many cases, the amount of the rent or the value of the use and occupation of the premises is the most important issue.

"In the second place, the appeal would not be a moot and 'academical' question if the writ of execution includes both the possession and the collection or deposit of the rents in arrears, because should the judgment appealed from be reversed in toto by the appellate court, the possession would be restored to the defendant with damages and the rentals would be refunded to him. (Sec. 8, Rule 72; sec 5, Rule 39.)"

Wherefore, petition is granted. The trial court is ordered to issue a new writ of execution covering not only the restoration of the property in question but also the withdrawal of the moneys deposited by defendants with the provincial treasurer of Camarines Sur. Costs against respondents other than respondent judge.

Paras, C. J., Bengzon, Padilla, Gutierrez David, Paredes, and Dizon, JJ., concur.

Concepcion, Reyes J. B. L., and Barrera, JJ., concur in the result.

## DISSENTING

**LABRADOR, J.:**

I dissent.

The majority opinion holds that in the execution of the judgment of the justice of the peace court, which requires the payment of rentals amounting to P450 every 45 days, the plaintiff-appellee is entitled to withdraw or be paid the amount of rentals that the defendant-appellant had actually deposited with the court while he was in possession of the land in question.

I believe that the decision of the majority, in so far as it authorizes payment of the deposits to plaintiff, is not justified by a sense of justice or by the language of the rules. Simply because the law authorizes execution of the judgment of the justice of the peace court, if after defendant has secured a stay of execution he fails to deposit the rentals, not for that reason alone should plaintiff be entitled to get all the rentals that defendant had deposited while he was in possession. We admit that the law is strict in allowing execution if a supersedeas bond is not filed or rentals paid during the pendency of the appeal. This is a deviation from the general rule that upon appeal execution of the appealed judgment is stayed. Since the rule allows leniency when it relieves the defendant from such a harsh provision, if he files a bond and pays rentals, there is no reason why the law should be made even more harsh, if there is a subsequent failure to pay rentals, by allowing execution of the supersedeas bond and delivery of the rentals deposited to plaintiff. The provision of the law in allowing possession to the defendant during the pendency of the appeal, which in a way liberalizes the harsh provision allowing execution unless a supersedeas bond is filed, should not be instantly nullified by authorizing plaintiff to withdraw the deposits that the defendant has made while in possession. Plaintiff is sufficiently protected by the fact of the deposit of rentals alone. It is unfair to the defendant that the plaintiff be allowed to get the rentals deposited, because there is no assurance that the plaintiff can immediately return the amount so deposited to the defendant, if he loses and the latter wins. Our experience shows that the recovery of damages, if plaintiff refuses or fails to pay, may mean prejudicial delays.

The ruling of the majority has the effect of nullifying the express provision in the rule that the rentals deposited shall remain in the court's custody until final disposition of the appeal. There is no exception attached to this directive in the rule. The majority decision would have the effect of adding a limitation to the above rule, i. e., (that deposits shall continue to remain in the court's custody) unless defendant fails to pay rentals, in which case the deposit shall be delivered over to the plaintiff in execution of the judgment. This provision would have to be read into the rule if the decision of the majority were allowed to prevail. The provision allowing plaintiff to immediately take possession of the property, unless a bond is presented and unless rents are paid, is fair enough to plaintiff. It is harsh enough for defendant. Should we make it harsher by requiring, even after defendant has started paying the rentals, not only payment by him of the amount. of the bond but also the payment to the plaintiff of the deposited rentals? I feel I cannot subscribe to such an injustice.

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