

INES R. DE PAGES, INES VDA. DE JOSE RODRIGUEZ, IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF JOSE RODRIGUEZ, ET AL., PETITIONERS, VS. HON. MATEO CANONoy, IN HIS CAPACITY AS...

G. R. No. L-18588. October 31, 1962

Ponente: DIZON, J.

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DIZON, J.:

Original action for certiorari and mandamus filed by Ines Vda. de Rodriguez, Clemente Rodriguez, Miguela R. de Jariol and Paulo Rodriguez, as administratrix, executor and joint special administrators, respectively, of the Estates of Jose Rodriguez, Timoteo Rodriguez and Humiliano Rodriguez, all deceased (Special Proceedings Nos. 310-R, 1505-R, and 2114-R of the Court of First Instance of Cebu), to annul or modify the respondent judge's orders of June 10 and 29, 1961 in Civil Case No. R-6989, and to compel him to issue an order for the immediate execution of the decision of the municipal court from which said case originated.

On October 3, 1960 petitioners Ines Vda. de Rodriguez and Clemente Rodriguez, in their respective capacities already mentioned, together with Humiliano Rodriguez (now deceased and represented in the present action by the joint special administrators of his estate), filed an action for unlawful detainer in the Municipal Court of Cebu City (Civil Case No. R-6236) against respondents Marciano Laurente and Diego Canizares. After trial said court sentenced "the defendants to pay jointly and severally the plaintiffs the sum of P3,150.00 representing rents in arrears from January, 1960 to February, 1961, both inclusive, with interest thereon at 6% per annum from the date of this decision, to vacate the premises in question and to deliver the possession thereof to the plaintiffs, to pay P225.00 a month from March 1, 1961 until the premises are vacated and returned to the plaintiffs, to pay P500.00 as attorney's fees and to pay the costs."

Respondents appealed to the Court of First Instance of Cebu where the case was docketed as Civil Case No. R-6989.

On May 15, 1961, petitioners filed a motion for the immediate execution of the decision of the municipal court mentioned heretofore, on the ground that respondents had failed (a) to file a supersedeas bond, as required by section 8, Rule 72 of the Rules of Court, and (b) to pay petitioners or deposit with the Court of First Instance the monthly rentals of P225.00 for the months of March and April 1961.

On June 10, 1961, respondent judge ordered the issuance of a writ of execution to satisfy the judgment for rentals beginning March 1, 1961, at the same time authorizing defendants to file a supersedeas bond for the back rentals amounting to P3,150.00 within five days from receipt thereof, otherwise, execution would also issue to satisfy the same.

Petitioners filed a motion for reconsideration of the above order claiming that under section 8, Rule 72 of the Rules of Court, they were entitled to the execution not only of the portion of the decision relating to the payment

of the current monthly rents due but also to that relating to the ejectment, the rentals in arrears, attorney's fees and costs.

In his order of June 29, 1961, respondent judge denied petitioner's motion for reconsideration ruling that it is within his discretion to allow a supersedeas bond to be filed before the judgment is executed and that, having ordered respondents to pay the rents due during the pendency of the appeal, petitioners are not entitled to the possession of the property in question.

The answer filed by respondent judge alleges that this action has become academic because after its filing on August 7, 1961 His Honor rendered judgment in Civil Case No. R-6989:

- 1) Declaring the lease (Exh. C) terminated;
- 2) Declaring the plaintiffs with right to the immediate possession of the premises in question, and ordering the defendant, Marciano Laurente, to vacate the same immediately;
- 3) Condemning the defendants jointly and severally to pay the plaintiffs the sum of P3,877.50 as back rentals and P600.00 as attorney's fees with legal interest per annum from the date hereof until fully paid;
- 4) Granting the plaintiffs option either to retain Laurente's building and pay him P10,000.00 or to require the latter to remove it at his expense;
- 5) Dismissing the defendants' counterclaim; and
- 6) Condemning the defendants to pay the costs.

In actions for unlawful detainer, the law in this jurisdiction is that, if the inferior court renders judgment against the defendant and the latter appeals to the Court of First Instance, his failure to file a supersedeas bond and/or to pay on time the monthly reasonable value of the use of the property or the rents fixed in the judgment will entitle the plaintiff, as a matter of right, to the immediate execution of the judgment both as to the payment of rents and the restoration of possession (Section 8, Rule 72, Rules of Court, *Romero vs. Pecson*, 83 Phil. 308, *Villaroman vs. Abaya*, 91 Phil., 20), the duty of the court to order such execution, upon application of the plaintiff, being ministerial and imperative (*Perez vs. Fernandez*; 99 Phil., 183; 53 Off. Gaz. [1] 109; *Lopez Inc. vs. Philippine Trading etc.* 98 Phil., 348; 52 Off. Gaz. (3) 1452; *Alvarez vs. Lacson*, 99 Phil., 166 52, Off Gaz. No. 10 page 4680).

In spite of the fact that respondent judge has already rendered judgment in Civil Case No. R-6989 in favor of petitioners, we are not now in a position to consider the issue involved in this case as moot, there being nothing in the record showing that said decision has already become executory.

Wherefore, the orders complained of are set aside and respondent judge is hereby ordered to issue a writ for the execution of the judgment rendered by the municipal court of Cebu City. With costs against other respondents.

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

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