

FERNANDO CORPUZ, PLAINTIFF AND APPELLANT, VS. HON. DAMIAN L. JIMENEZ, ET AL., DEFENDANT AND APPELLEE.

G.R. No. L-21655. September 29, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal by Fernando Corpuz from the order dated March 22, 1960 of the Court of First Instance of Rizal in Civil Case No. Q-4916 denying his petition for relief from the judgment of the Municipal Court of Quezon City in Civil Case No. 4689.

In May 1958, appellee J.M. Tuason & Co., Inc. filed with the Municipal Court of Quezon City a complaint for ejectment against appellant (Civil Case No. 4689), alleging that the latter, on December 1, 1957, illegally entered into the possession of a portion of appellee's land located at Barrio North Tatalon, Quezon City, and constructed his house thereon. After several postponements, the court, on July 10, 1959, issued an order in open court and in the presence of the parties and their respective counsel, setting the case for trial on August 11 of the same year. As appellant and his counsel failed to appear on said date, the court proceeded to hear appellee's evidence, after which it rendered judgment ordering appellant to vacate the premises and to pay reasonable rents therefor until the same is vacated.

Judgment having become final, the court, upon motion of appellee, issued the corresponding writ of execution on October 21, 1959. On November 9 of the same year, appellant filed a motion to lift the writ of execution on the ground that the filing on April 24, 1959 by appellee of another complaint against him for the recovery of possession of the same parcel of land with the Court of First Instance of Rizal (Civil Case No. Q-4341) constituted an implied waiver or abandonment of the first case. Appellee objected to the motion alleging that the land subject-matter of Civil Case No. Q-4341 was different from that of the case decided by the inferior court. After the court had denied said motion on December 9, 1959, appellee moved for a special order of demolition. Before the court could act thereon, appellant filed on January 15, 1960 a petition in the Court of First Instance of Rizal (Civil Action No. Q-4916) entitled "A writ of Certiorari or Relief from Judgment with Preliminary and Mandatory Injunction", for the purpose of annulling the decision of the Municipal Court of Quezon City in Civil Case No. 4689 and its order of December 9, 1959 denying his motion to lift the writ of execution issued therein. On March 22, 1960, the lower court issued the appealed order.

In the Court of Appeals - where the appeal had been originally filed - appellee filed a motion for the dismissal of the appeal on the ground that appellant had voluntarily vacated the premises subjectmatter thereof by removing his house and other constructions therefrom and that, therefore, the issues raised in the present appeal had become moot and academic. The Court of Appeals required appellant to answer the motion, but as the latter filed no such answer, the court resolved to take up the motion when the appeal is decided on the merits. Thereafter the case was certified to Us.

We take appellant's failure to answer the motion mentioned in the preceding paragraph as an implied

acquies-cence thereto.

WHEREFORE, the appeal is dismissed, without costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Bengzon, J., on leave.

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