

**JOSEFINA S. DE LAUREANO, PETITIONER, VS. HON. MIDPANTAO L. ADIL, IN HIS CAPACITY AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ILOILO, BRANCH II, AND ONG CU, RESPONDENTS.**

*G.R. No. L-43345. July 29, 1976*

Ponente: AQUINO, J.

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**AQUINO, J.:**

Josefina S. de Laureano in this special civil action of certiorari assails the interlocutory orders of the Court of First Instance of Iloilo, denying her motions for execution and for a preliminary mandatory injunction in an ejectment suit which was decided in her favor by the city court of Iloilo City and which was appealed by the lessee, Ong Cu (Civil Case No. 10370).

Mrs. Laureano is the registered owner of Lots 996 and 1004-B with a total area of 3,107 square meters located at the corner of Iznart and Solis Streets, Iloilo City. The lots were leased to Ong Cu for a fifteen-year period which allegedly expired on August 31, 1974.

In view of Ong Cu's failure to vacate the lots and remove his improvements thereon, Mrs. Laureano filed against him an ejectment suit in October, 1974 in the city court of Iloilo City.

After trial, the city court on September 23, 1975 rendered a judgment ordering Ong Cu to vacate the lots, to restore their possession to Mrs. Laureano, to remove his buildings and other improvements thereon and to pay P12,428 monthly as compensation for the use and occupation of the lots from September 1, 1974 up to the time he vacates them, with interest at twelve percent per annum from the date of accrual, plus P10,000 as moral and exemplary damages and attorney's fees.

Ong Cu appealed to the Court of First Instance of Iloilo. Instead of filing a supersedeas bond based on the findings of the city court in its decision, Ong Cu asked the city court ex-parte to approve his supersedeas bond in the sum of P22,000 and to fix the rental value of the, two lots at P1,200 a month. The city court granted that ex-parte motion in its order of October 8, 1975. Thereafter, the record was elevated to the Court of First Instance. The case was assigned to the sala of respondent Judge.

On November 4 Mrs. Laureano received a notice from the clerk of court that Ong Cu's appeal had been docketed. On November 13 she filed a motion in the lower court praying for a preliminary mandatory injunction to restore her to the possession of the said lots. Invoking article 1674 of the Civil Code and section 9, Rule 70 of the Rules of Court, she alleged that Ong Cu's appeal was frivolous and dilatory.

She also asked for immediate execution of the city court's judgment on the ground that Ong Cu's supersedeas bond was inadequate and that he had failed to deposit the sum of P12,428 monthly as reasonable value of the use and occupation of the lots adjudged by the city court.

Ong Cu opposed the two motions. The lower court in its order of December 9, 1975 upheld the city court's order fixing the supersedeas bond and the amount to be deposited by Ong Cu.

After the lower court's attention was called to its failure to resolve Mrs. Laureano's other motion for a mandatory injunction, it ruled, in its order of February 12, 1976 that the writ could not be granted because it had already sanctioned Ong Cu's supersedeas bond, the purpose of which was to stay execution pending appeal. The lower court reasoned out that it would be absurd to stay execution and at the same time restore possession to the plaintiff by granting the mandatory injunction. It regarded Ong Cu as a possessor in good faith entitled to reimbursement of his necessary and useful expenses.

The instant certiorari action was filed on March 25, 1976. The issue is whether the lower court acted with grave abuse of discretion in denying Mrs. Laureano's motions for execution and a mandatory injunction.

The motion for execution. - Rule 70 of the Rules of Court provides:

"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 bond, approved by the municipal or city court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the municipal or city court to exist. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment, on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the municipal or city court, with the other papers, to the clerk of the Court of First Instance to which action is appealed.

"All moneys so paid to the appellate court shall be deposited in the provincial or city treasury, and shall be held there until the final disposition of the appeal unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, 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 with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits.

\* \* \* \* \*

As explicitly provided in section 8, the judgment of the inferior court in plaintiff's favor in an ejectment case is immediately executory. Thus, where the city court on the day it rendered the judgment ordered the execution thereof and the defendant did not perfect his appeal and did not post a supersedeas bond, it was held that certiorari would not lie to set aside the execution. Section 8 of Rule 70 is an exception to the general rule as to the execution of the judgment of an inferior court which is found in section 18, Rule 5 of the Rules of Court (*Pascua vs. Nable*, 71 Phil. 186).

The inferior court's judgment is immediately executory in order to prevent further damages to the plaintiff should the defendant continue to deprive him of the possession of the premises in litigation (*Yu Tiong Tay vs. Barrios* 79 Phil. 597, 601).

The defendant may stay execution by (a) perfecting an appeal and filing a supersedeas bond and (b) paying from time to time either to the plaintiff or to the Court of First Instance during the pendency of the appeal the rentals or the reasonable value of the use and occupation of the property as fixed by the inferior court in its judgment (*Sison vs. Hon. Bayona*, 109 Phil. 557, 561; *Vda. de Palanca vs. Chua Keng Kian*, L-26430, March 11, 1969, 27 SCRA 356).

The reasonable value of the use and occupation of the premises is that fixed by the inferior court in its judgment, because the rental stipulated in the lease contract that had expired might no longer be the reasonable value for the use and occupation of the premises by the reason of the change or rise in value. (*Aylon vs. Jugo*, 78 Phil. 816).

The purpose of the supersedeas bond is to secure payment of the rents and damages adjudged in the appealed judgment. Hence, the bond is not necessary if the defendant deposits in court the amount of back rentals fixed in the judgment. In other words, the supersedeas bond answers only for rentals as fixed in the judgment and not for those that may, accrue during the pendency of the appeal which are guaranteed by the periodical deposits to be made by the defendant. (*Sison vs. Hon. Bayona*, supra). The appeal bond answers for the costs (*Sanchez vs. Zosa*, L-27043, November 28, 1975, 68 SCRA 171, 174; *Contreras vs. Dinglasan*, 79 Phil. 42).

The damages contemplated in section 8 of Rule 70 refer to the reasonable compensation for the use and occupation of the property which is generally measured by its fair rental value. It cannot refer to other damages which are foreign to the enjoyment or material possession of the property. Consequently, attorney's fees cannot be considered as damages (*Castueras vs. Bayona*, 106 Phil. 340).

In the instant case, the city court found that Ong Cu's lease expired on August 31, 1974 and that the reasonable value of the use and occupation of the two lots is four pesos a square meter or P12,428 monthly. To stay execution, Ong Cu should have filed, and the city court should have required, a supersedeas bond in the total amount of the reasonable value of the use and occupation of the two lots for the period from September 1, 1974 to September, 1975, or for thirteen months, at the rate fixed in the city court's judgment which is P12,428.

The supersedeas bond should be in the total sum of P161,564.00. And the amount to be deposited monthly beginning October, 1975 is that same amount of 12,428. The deposit should be made on or before the tenth day of the succeeding month.

The city court erred in issuing ex-parte an order granting Ong Cu's motion fixing the supersedeas bond at P22,000 and the monthly deposit at P1,200 which was the rental stipulated in the lease contract that had already expired. The city court should not have allowed Ong Cu to dictate the amount of the supersedeas bond and the amount of the monthly payments to be deposited in court.

The reasonable value of the use and occupation of the two lots was already fixed in its judgment. That value is the value to be deposited in court. Ong Cu's motion that it be fixed at P1,200 was uncalled for and was in contravention of the mandatory provisions of section 8 of Rule 70.

Also contrary to the peremptory provisions of section 8 was Ong Cu's act of fixing his supersedeas bond at P22,000 instead of at the amount equivalent to the total compensation or rentals that had accumulated up to the rendition of the city court's judgment. That is the amount of the supersedeas bond unalterably fixed in section 8.

The lower court theorized that the city court's order of October 8, 1975 approving Ong Cu's supersedeas bond in the sum of P22,000 and provisionally fixing the monthly rental deposited at P1,200 was a valid amendment of the city court's decision. It distorts the meaning of an amendment. Ong Cu did not move that the decision be amended. The order according to its letter and tenor can in no sense be interpreted as amendment of the city court's decision. It makes no reference to the decision.

At the time the order was issued, Ong Cu had already filed his notice of appeal. He did not file a new notice of appeal by indicating therein that he was appealing from the city court's decision as supposedly amended by its order of October 8. He could not have done so because the October 8 order in its face does not purport to amend the decision.

It results that Ong Cu's supersedeas bond was in-adequate and that he did not deposit the compensation for the use and occupation of the two lots which was fixed in the city court's judgment. His supersedeas bond and his deposits were not sufficient to stay execution.

If this were a case where the defendant did not file any supersedeas bond or did not make any monthly deposit, then Mrs. Laureano would be entitled as a matter of right to the immediate execution of the city court's judgment both as to the restoration of possession and the payment of the accrued rentals or compensation for the use and occupation of the premises (*De Pages and Vda. de Rodriguez vs. Hon. Canonoy*, 116 Phil. 898, 901; *Paulino, Sr. vs. Hon. Surtida*, 109 Phil. 621, 626).

In such a case the execution is mandatory. The only exceptions are, the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable. (*Cunanan vs. Rodas*, 78 Phil. 800; *Laurel vs. Abalos*, L-26098, October 31, 1969, 30 SCRA 281).

This is a case where there was a supersedeas bond and monthly deposits were made but the bond and the deposit were inadequate or were not in conformity with the city court's judgment. Ong Cu committed a mistake because he followed the erroneous order of the city court which fixed the supersedeas bond and the monthly deposit in contra-vention of its own decision and, consequently, in violation of section 8 of Rule 70. Because of that mistake, immediate execution under Rule 70 would not be warranted (See *Yu Phi Khim vs. Amparo*, 86 Phil. 441, 445; *Bantug vs. Montinola*, 73 Phil. 13, 20; *Kraut vs. Encarnacion*, 96 Phil. 986; *Tagulimot vs. Makalintal*, 85 Phil. 40; *De la Cruz vs. Burgos*, L-28095, July 30, 1969, 28 SCRA 977). The Court of First Instance has discretion to order the execution of a new supersedeas bond to replace a defective one (*Zamora vs. Dinglasan and Hilario*, 77 Phil. 46, 53).

Ong Cu should be given a thirty-day period from notice within which to file a new supersedeas bond in the sum of P161,564 and to deposit the value of the use and occupation of the two lots at the rate of P12,428 beginning October, 1975 less the amounts already deposited by him. Execution should issue if he fails to file a new supersedeas bond and to make up for the deficiency in his monthly deposits.

Motion for mandatory injunction . - The Civil Code provides:

"ART. 1674. In ejectment cases where an appeal is taken the remedy granted in article 539, second paragraph, shall also apply, if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is prima facie meritorious. The period of ten days referred to in said article shall be counted from the time the appeal is perfected. (n)"

Article 1674 is reproduced in section 9 of Rule 70. Article 539 of the Civil Code in its second paragraph grants to the possessor, who was deprived of the possession of his real property through forcible entry, the right to secure from an inferior court in the action for forcible entry a writ of preliminary mandatory injunction to restore him in his possession.

Article 1674 gives to the plaintiff in an unlawful detainer case originating in the inferior court and appealed to the Court of First Instance the remedy which article 539 gives to the plaintiff in a forcible entry case. It is designed to eliminate the injustice of the old rule which allowed the lessee to continue in possession during an appeal even if the owner or plaintiff has an immediate right to the premises in litigation (pp. 98, 143, Report of Code Commission).

Article 1674 is in consonance with the summary character of an ejectment suit which is an expeditious means for

recovering possession of real property (Deveza vs. Montecillo, L-23942, March 28, 1969, 27 SCRA 822; Mara, Inc. vs. Estrella, L-40511, July 25, 1975, 65 SCRA 471) but the effectiveness of which was often frustrated by defend-ant's dilatory tactics which were tolerated by inferior courts (Vda. de Palanca vs. Chua Keng Kian, L-26430, March 11, 1969, 27 SCRA 356, 365-6).

The decisive issue is whether the pleadings, the city court's decision and Ong Cu's contentions show that his appeal is manifestly frivolous and dilatory.

There is no question that Mrs. Laureano is the registered owner of the two lots and that they were leased to Ong Cu for a fifteen-year period counted from September 1, 1959 and expiring on August 31, 1974. Ong Cu in his answer to the ejectment complaint unmistakably admitted that the lease expired on that date. He alleged that there were negotiations for his purchase of the two lots.

His defenses were that the ejectment action was premature because he was still considering Mrs. Laureano's proposal to sell the lots; that the removal of his buildings and improvements allegedly worth P1,800,000 would prejudice him and entail considerable expenses; that there is difficulty in looking for another site during the short period granted to him by Mrs. Laureano; that he is willing to buy the lots at a reasonable price, and that the price fixed by Mrs. Laureano is excessive.

Those defenses cannot defeat the ejectment suit. The expiration of the lease and Mrs. Laureano's refusal to renew it made Ong Cu a deforciant or an unlawful withholder of the possession of the lots. He has become a possessor in bad faith. The Civil Code provides:

"ART. 1669. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand. (1565)

"ART. 1671. If the lessee continues enjoying the thing after the expiration of the contract over the lessor's objection, the former shall be subject to the responsibilities of a possessor in bad faith. (n)

"ART. 1673. The lessor may judicially eject the lessee for any of the following causes:

"(1) When the period agreed, upon, \* \* \* has expired.

x x x x x x x x (1569a)"

The rule is that if after the termination of the lease contract the lessee prolongs his occupation of the premises, there is unlawful detainer and article 1674 applies. For the purpose of that article, it is enough that the plaintiff is the owner of the land and that the defendant is in temporary occupation thereof whether under a lease contract or on mere tolerance or under a temporary permit. (De la Cruz vs. Bocar, 99 Phil. 491).

The lower court assumed that Ong Cu in constructing his building on the leased lots is a possessor in good faith entitled to reimbursement of the necessary and useful expenses incurred by him and with a right of retention, as contemplated in articles 546 and 547 of the Civil Code.

That assumption is erroneous. As a lessee, who constructed a building on the leased land, Ong Cu cannot be characterized as a builder in good faith. Under article 448 of the Civil Code the owner of the land on which anything has been built in good faith may appropriate the building after payment of the indemnity provided in articles 546 and 548 of the Civil Code.

Article 448 applies to a case where one builds on a land of which he honestly claims to be the owner and not to lands wherein one's only interest is that of a lessee under a rental contract. A contrary rule would place it within the power of the lessee "to improve his landlord out of his property" (Alburo vs. Villanueva, 7 Phil. 277, 280;

Cortes vs. Ramos, 46 Phil. 184; Fojas vs. Velasco, 51 Phil. 520; Bantug vs. Montinola, 73 Phil. 13).

In other words, article 448 refers to a possessor who occupied the land in the belief that he was the owner thereof. It does not apply to the lessee because the lessee knows at the outset that he is not the owner of the land (Lopez, Inc. vs. Philippine & Eastern Trading Co., Inc., 98 Phil. 348). The tenant has no pretension to being the owner of the land (Rivera vs. Trinidad, 48 Phil. 396, 401).

As noted by the city court, Ong Cu's rights with respect to the improvements made by him on the leased land are governed by the following provisions of the Civil Code:

"ART. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased; the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

"With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished. (n)"

Under article 1678 it is the lessor who has the option to pay for one-half of the value of the improvements which the lessee has made in good faith, which are suitable for the use for which the lease is intended and which have not altered the form and substance of the land (Philippine National Bank vs. Pineda, L-29748, August 29, 1969, 29 SCRA 262; Lapeña and Pineda vs. Morfe, 101 Phil. 997; Sto. Domingo vs. Chua Man, 105 Phil. 220; Bacaling vs. Laguda, 70 O.G. 2694, 54 SCRA 243).

Contrary to the lower court's impression, the lessee has no right of retention because article 546 of the Civil Code does not apply to the improvements made by him. Only the possessor in good faith has a right of retention under article 546. As already noted, article 1671 regards an overstaying lessee as a possessor in bad faith.

The lower court discerned an absurdity or incongruity in allowing a defendant in an ejectment case to stay execution of the inferior court's decision, by filing a supersedeas bond and making monthly deposits, and at the same time granting a mandatory injunction to restore possession on the theory that the defendant's appeal is frivolous and mandatory.

The absurdity is more apparent than real. The execution in an ejectment case has two aspects: (a) possession and (b) the rentals or reasonable value of the use of the premises. The mandatory injunction refers to the possession of the premises in litigation.

On the other hand, the supersedeas bond and the monthly deposits are primarily designed to insure that the plaintiff would be paid the back rentals or the compensation for the use and occupation of the premises should the inferior court's decision in his favor be affirmed on appeal. Hence, if no bond was filed or no monthly deposit was made, the plaintiff is entitled to the possession of the premises. To allow the defendant to continue his possession without any security for the rentals would be prejudicial to the plaintiff. He might not be able to recover the back rentals when the judgment in his favor becomes final and executory. In that event, his claim for rentals would be illusory or ineffectual.

If the mandatory injunction is granted, defendant's possession would cease but the supersedeas bond and the deposits already made would subsist as security for the accrued pecuniary liability of the defendant to the plaintiff. The execution as to the rentals or compensation for the use of the premises would be stayed.

It results that the lower court gravely abused its discretion in not granting the writ of mandatory injunction. Its questioned orders were predicated on erroneous assumptions.

Generally, certiorari does not lie to question the propriety of an interlocutory order of the trial court. Interlocutory orders ordinarily should be reviewed when an appeal is taken from the trial court's judgment. Not every procedural error or erroneous legal or factual conclusion amounts to a grave abuse of discretion. An error of judgment is not necessarily a jurisdictional error.

But when a grave abuse of discretion was patently committed, such as when the lower court acted capriciously and whimsically, or petitioner's contention appears to be clearly tenable, or the broader interests of justice or public policy require the setting aside of the interlocutory order, then it devolves upon this Court in a certiorari proceeding to exercise its supervisory authority and to correct the error committed which in such a case is equivalent to lack of jurisdiction (*Sanchez vs. Zosa*, L-27043, November 28, 1975, 68 SCRA 171, 175; *Pachoco vs. Tumangday and Fernando*, 108 Phil. 238; *Manila Electric Co. and Sheriff of Quezon City vs. Hon. Enriquez*, etc. and *Espinosa*, 110 Phil. 499).

The immediate possession to be granted to Mrs. Laureano under the writ of mandatory injunction would embrace the portions of the two lots not occupied by Ong Cu's improvements.

As to the portions of the lots occupied by Ong Cu's improvements, their demolition would be necessary in order to deliver the possession thereof to Mrs. Laureano. In such a case, the provisions of section 14, Rule 39 of the Rules of Court should be observed. A special order of demolition should be issued only after notice and hearing and after giving Ong Cu a reasonable time to effect the removal.

The disposition of the appeal in the lower court should proceed in accordance with section 45 of the Judiciary Law as amended. The grant of the mandatory injunction constitutes a prejudgment of the appeal with respect to the possession of the two lots. The main point to be resolved in the lower court's disposition of the appeal is the correctness of the city court's finding on the reasonable value of the use and occupation of the two lots after the lease expired on August 31, 1974.

In filing the ejectment suit Mrs. Laureano opted not to reimburse Ong Cu for his improvements. Consequently, there is no issue as to the reimbursement to be made under article 1678. What period should be given to Ong Cu for the removal of his improvements is a matter that should be judiciously resolved by the lower court in the light of the evidence introduced in the city court and the evidence that will be presented during the hearing on the petition for a special order of demolition. Ong Cu's rights under the law should be respected. Nothing oppressive or arbitrary should be perpetrated in connection with the removal of his improvements.

WHEREFORE, the lower court's orders of December 9, 1975 and February 12, 1976 are set aside.

(1) The lower court is directed to require Ong Cu (a) to file within thirty (30) days from notice a new supersedeas bond in the amount of P161,564 representing the reasonable compensation for the use and occupation of the two lots, at the rate found by the city court, from September 1, 1974 to September, 1975, when the city court rendered its judgment, and (b) to deposit in court within the same period the compensation for the use and occupation of the lots for the period from October 1, 1975 to June, 1976 at the rate of P12,428 a month, the amount fixed in the inferior court's judgment, less the amounts already deposited by Ong Cu at the rate of P1,200 a month.

(2) If after June, 1976 he has not restored to Mrs. Laureano the portions of the two lots not occupied by his buildings, then he should deposit in court on or before the tenth day of each month, as prescribed in section 8, Rule 70 of the Rules of Court, the same sum of P12,428 until he has complied with the mandatory injunction decreed herein.

(3) The lower court is further directed to issue a writ of preliminary mandatory injunction requiring Ong Cu to vacate the two lots in question, to deliver the possession thereof to Mrs. Laureano, and to remove his buildings and improvements after the court has passed upon the corresponding petition for demolition.

(4) After Ong Cu has complied with the mandatory injunction with respect to the portions of the lots not occupied by his buildings and improvements, he should deposit in court the value of the use and occupation of the portions of the two lots occupied by his buildings at the rate of four pesos a square meter. Costs against respondent Ong Cu.

SO ORDERED.

Fernando, (Chairman), Antonio, and Martin, JJ., concur.

Barredo, J., concurs in a separate opinion.

Concepcion Jr., J., is on leave.

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### CONCURRING OPINION

#### BARREDO, J.:

I concur. The purpose of this separate opinion is only to underline the important and precedential holding in the main opinion that notwithstanding a stay of execution of a judgment in an ejectment case upon the filing of a super-sedeas bond to cover past rents, damages and costs and the payment of the subsequent accruing rentals by the defend-ant, a writ of preliminary mandatory injunction may still be issued against said defendant under Article 1674 of the Civil Code for him to immediately turn over possession to the plaintiff, without prejudice to the continuation and final determination of the case in the appellate courts. I am in full accord with our distinguished colleague, Mr. Justice Aquino, that such is the law, and I wish to add, it is good law in principle and in practicality.

Indeed, there is incompatibility between the stay of execution sanctioned by Section 8 of Rule 70 on the one hand, and the mandatory injunction for the defendant to vacate immediately, but, as envisioned by the Code Commission that incorporated this innovative remedy in Article 1674 of the Civil Code, the objective of "the reform is to put an end to present state of the law which unjustly allows the lessee to continue in possession during an appeal." That "state of the law" referred to was precisely the fact that Section 8 of Rule 72 of the Rules of Court of 1940 allowed, as its counterpart in the Revised Rules of 1964, Section 8 of Rule 70, does the defendant in an ejectment case who has lost in the inferior court to prolong his stay in the premises in dispute, regardless of the apparent lack of merit of his defense, as already found by said court, just because he has filed the supersedeas bond and so long as he complies with the other requirement about payment of current rentals as they fall due. In other words, there is nothing surprising, much less absurd, in the preliminary mandatory injunction contemplated in Article 1674 because what it purports to protect, is the juridical right of the plaintiff to secure immediate possession of the premises in dispute which the court has already upheld, or, which appears prima facie to the Court of First Instance to be tenable despite an adverse judgment of the inferior court, as against the obviously tenuous proposition, underlying the stay of execution pursuant to the provision of the Rules aforementioned, which, in effect, is that the defendant may continue in possession, provided he can afford to pay the sums stipulated therein, in complete disregard of the fact that under the applicable substantive law and in the light of the particular facts of the case as found by the Court of First Instance, his right to possession either does

not exist or has already totally ceased, thereby entitling the plaintiff to sue the premises in question to whatever other purpose he may consider more suitable to his needs or circumstances than the monetary compensation which the rule aims to safeguard by the imposition of the conditions prescribed therein. What is really absurd and incongruent is for a possessor of a real property to be allowed to retain the same, although the court, even if in the first instance only, has already determined that he has no more legal basis to continue in possession, against the will and consent of the owner or of any other more rightful possessor, merely because he is ready and willing to compensate the plaintiff in money, in any amount to be fixed by the court (not by the plaintiff), for the prolongation of his stay, regard-less of the merits of his appeal, or, better said, notwithstanding the finding of the court that his appeal is more likely not to prosper. The regard of Article 1674 for the juridical rights involved is such that the preliminary injunction therein allowed should issue without requiring the plaintiff to file any bond, unlike ordinary preliminary injunctions under Rule 58. (Ilano vs. Mamaril, 11 C.A. Rep. 770, cited in Civil Law by Padilla, Vol. V, pp. 733-734, 1974 ed.)[1]

It is my considered opinion that Article 1674 is exactly what is needed in order to solve the perennial problem of property owners who have to suffer what are virtually imposed and compulsory contracts of lease, which is what the stay of execution under Section 8 of Rule 70 amounts to. And when it is borne in mind how long it takes rather often for the appellate courts to dispose of appeals even in cases of ejectment, for there are appeals that have been pending for years and years in said courts, one can readily appreciate the justice and appropriateness of that Civil Code provision, now incorporated as Section 9 of Rule 70 of the Rules of Court. Accordingly, it stands to reason that the writ of preliminary mandatory injunction so provided for should be deemed as actually intended to be superior to the stay of execution permitted by the rules. While the privilege to appeal a judgment of ejectment may have, its merits, peace in the community and the integrity of the juridical order will be best served by not allowing any appeal to effect auto-matically the extension of appellant's possession of the disputed premises, just because he is able to pay the amounts required by the rules, where after due hearing, the Court of First Instance has already found *prima facie* that such possession does not have legal basis. No more should illegal possessors be allowed to misuse and abuse judicial proceedings as means to perpetuate an unjust and illegal situation.

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[1] The decision of the Court of Appeals in the cited case was penned by Justice Francisco Capistrano, who later was promoted to this Supreme Court, and who was a member of the Code Commission. The pertinent portion of Justice Capistrano's opinion reads:

"We have before us for resolution plaintiff-appellee's petition for the issuance of a writ of preliminary mandatory injunction, filed on February 20, 1967, within ten (10) days from the time the record of the appealed case was received by the Clerk of the Court of Appeals. The petition, filed on time (Elena Layug vs. Eloisa Ylo, CA-G.R. No. 30732-R, July 6, 1962), is in accordance with Art. 1674 of the Civil Code which provides:

'Art. 1674. In ejectment cases where an appeal is taken, the remedy granted in article 539, second paragraph, shall also apply, if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is *prima facie* meritorious. The period of ten days referred to in said article shall be counted from the time the appeal is perfected.

This article is new. It was drafted by the Code Commission in order to give the lessor in ejectment cases a speedy remedy to be restored in his possession.

In the deliberations of the Code Commission on the new article, the Code Commissioner who drafted the new provision remarked that although the law then in force provided for a speedy hearing and judgment in an

ejectment case in the City or Justice of the Peace Court, it did not so provide in event of appeal to the Court of First Instance and thence, to the Court of Appeals, resulting in delay of about five (5) years in the final disposition of the case in the higher courts; that in most ejectment cases the defendant-lessee has no meritorious defense and his appeal to the Court of First Instance and thence, to the Court of Appeals is frivolous or dilatory, hence, the need for the new article which gives the plaintiff-lessor the right to move the higher court where the case is, on appeal by the defendant-lessee for the issuance of a writ of preliminary mandatory injunction to restore him in his possession on the ground that the appeal is frivolous or dilatory; that said higher court may, in a proper case, be the Court of First Instance or the Court Appeals. The Commissioner also remarked that in some ejectment cases the complaint although meritorious is capriciously dismissed by the City or Justice of the Peace Court, hence, the new provision also gives the plaintiff-lessor the right to move the higher court where the case is on appeal by him for the issuance of a writ of preliminary mandatory injunction to restore him in his possession on the ground that his appeal prima facie meritorious; that said higher court may, in a proper case, be the Court Of First Instance or the Court of Appeals. The Commissioner likewise remarked that the issuance of the writ of preliminary mandatory injunction under and by virtue of the new code provision, which is substantive law, does not require the giving of a bond.”

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