

FIDEL SAHAGUN ET AL., PETITIONERS, VS. EMILIO PEÑA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, THE SHERIFF OF CITY OF MANILA, AND F.L. PIMENTEL, RESPONDENTS.*G.R. No. L-1094. October 08, 1947*

Ponente: FERIA, J.

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This is an special action of certiorari against the respondent Judge Emilio Peña's order of execution of the judgment of the Municipal Court of Manila in favor of the other respondent F. L. Pimentel and against the petitioners in an action of illegal detainer.

Petitioners Fidel Sahagun, Alejandro Ragajo, and Valeriano Lontoc had each entered into a separate written contract of lease of lots of land situated at Azcarraga Street, Manila, with the predecessor in interest of the respondent F. L. Pimentel, at a monthly rental of P80 and the conditions stipulated in each one of the contract of lease is that it shall terminate on July 31, 1946, and should, upon the expiration of the contract of lease, the lessor need the premises and the lessees refuse to surrender the same, the lessees shall pay a monthly rental of P200 from and after the expiration of the lease until they surrender the premises.

The terms of the written contract of lease of a lot at the same Azcarraga Street entered into by the petitioner Severino Tortona with the same lessor are similar to that of the above mentioned petitioners, with the only difference that the monthly rental before July 31, 1946, is P110, and the rent the lessee shall pay should he refuse to surrender the premises to the lessor upon the expiration of the contract is P250 a month.

Petitioner Emiliano Custodio had also entered with the same predecessor in interest of the respondent F. L. Pimentel a contract of lease of three (3) lots also at the Azcarraga Street, at a monthly rental of P330 to terminate on July 31, 1946, in which it is stipulated that if the lessee refuses to surrender the lot leased upon the termination or expiration of the contract, he should pay the lessor a monthly rental of P750 from and after that expiration until he surrenders that premises leased. The contract of lease of one lot together with a concrete warehouse at the same street having an aggregate area of 800 square meters more or less, entered into by the petitioner Ngo Gioc alias Tan Dian with the same lessor contains the same stipulations with the only difference that the monthly rentals stipulated before and until the end of July, 1946 is P430, and the rent the lessee should pay the lessor should he refuse to surrender the property upon the termination of lease on July 31, 1946, is P900.

Upon failure of the petitioners to vacate the premises on July 31, 1946, notwithstanding notice to vacate served upon the petitioners by the respondent F.L. Pimentel, said respondent filed a complaint against each and every one of the petitioners with the Municipal Court of Manila requiring them to vacate the premises and pay the plaintiff the monthly rentals stipulated in the above quoted contracts should they refuse to surrender the premises leased at the expiration of July 31, 1946, that is, Fidel Sahagun, Alejandro Rogajo, and Valeriano Lontoc to pay a monthly rental of P200 each, Severino Tortono P250 a month, Emiliano Custodio P750, and Ngo Gioc alias Tan Dian P900 monthly rent, from and after the expiration of the contract until they surrender the premises. And after trial

of the six cases, the justice of the peace rendered several judgments ordering each one of the defendants-petitioners to vacate the premises and to pay the plaintiff-respondent F. L. Pimentel the rents demanded in the complaints until they vacate the premises.

The petitioners appealed from the judgments of the municipal court to the Court of First Instance of Manila. During the pendency of the appeal the defendants appellants then, now petitioners, did not file a supersedeas bond nor pay to the plaintiff or to the court the monthly rentals as found or determined by the judgments of the municipal court. In view thereof plaintiff-appellee moved the Court of First Instance to issue orders of execution of the judgments of the inferior court, and the respondent judge issued the corresponding orders of execution.

The petitioners now files jointly this petition for certiorari and prohibition against the respondents on the ground that the respondent judge acted in excess of jurisdiction or with grave abuse of discretion in issuing the said orders of execution. The grounds or causes of action alleged in the present petition are: (1) that the municipal court has no jurisdiction to entertain the action of illegal detainer filed by the respondent F. L. Pimentel against the petitioners, for there was no previous demand to vacate the premises; and (2) that the petitioners had each deposited every month, not the amount of monthly rentals adjudicated by the municipal court in favor of the said respondent and against the petitioners, but the monthly rentals which according to the contracts the lessees had to pay the lessor before the expiration of the contract of lease on July 31, 1946 as claimed by the petitioners; because the rent due under the contract as found by the municipal court is onerous and "in violation of the Administrative Order No. 12 which prohibits the collection of rents of more than 25 per cent of the rental preceding as of the last semester of the year 1941."

Neither the first nor the second ground or cause of action is well taken.

(1) As to the alleged lack of jurisdiction of the Municipal Court of Manila, it is plain that after judgment has been rendered by said court, and appeal taken by the petitioners to the Court of First Instance of Manila, certiorari does not lie because the appeal which was resorted to by the petitioners is the proper remedy. Specially because, according to uncontradicted allegation in the answer, the complaints were amended by leave of the municipal court by alleging therein that notice to vacate was served on time upon the petitioners; and any error which may have been committed by the municipal court in finding that there was sufficient evidence to support that allegation, is for the appellate court to decide on appeal, and not for this Court, in a certiorari proceeding.

(2) With respect to the second ground, it is clear that the respondent judge did not act in excess of jurisdiction or with grave abuse of discretion. According to section 8, Rule 72, if the defendant appeals from the judgment of the inferior court and wants to stay the execution of the judgment during the pendency of the appeal, he must, not only file a supersedeas bond to pay the rents, damages and costs awarded by the court, but, "during the pendency of the appeal, pay 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 the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment." And the amount of the monthly rents due under the contract as found by the municipal court, and not as claimed by the petitioners, is what the petitioners must have deposited with the court in order to stay the execution of the judgment. Whether or not the respondent judge of the municipal court erred in his findings as to the monthly rents the defendants now petitioners must pay under the above quoted contracts, or in not applying the Administrative Order quoted by the petitioners, is a question to be decided by the Court of First Instance of Manila to which the cases were appealed, and not by this Court in a certiorari proceeding.

In view of all the foregoing, the petition is denied with costs against the petitioners.

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

MORAN, C.J.:

I certify that Mr. Justice Pablo voted to grant the petition.

CONCURRING**HILADO, J.:**

I concur with the sole qualification, to avoid misunderstanding, that this concurrence is without prejudice to my dissent in *Mitschiener vs. Barrios* (76 Phil., 55).

With reference to that part of the dissenting opinion wherein it is asserted that the elevation of the rents after July 31, 1946, is unreasonable or even immoral, I think if petitioners believed the increased rents to be unreasonable or immoral, since the original leases had admittedly expired as of July 31, 1946, their remedy was to sever all relations with their former landlord and quit his property. But if they wished to continue enjoying the use of said property after July 31, 1946, it seems only legal and just that they should accept the terms demanded by the owner, there being no showing that those terms, particularly the increased rents, violate any provision of law, the more so because in the respective original contracts of lease there was an express provision that if after July 31, 1946, date of the termination of the leases, the lessor should need the premises and the lessees should refuse to surrender the same, the latter shall pay the stipulated increased rents until they surrender the premises. This express stipulation was accepted and subscribed to by the respective lessees in the respective contracts of lease.

DISSENTING**PARAS, J.:**

Petitioners' several contracts of lease provided for monthly rents of various rates, namely, P80, P110, P330, and P430. Said contracts further provided that they were to expire on July 31, 1946, and that, after this date, if the lessor should need the premises and the lessees (petitioners) should refuse to vacate the leased premises, the petitioners would pay the corresponding increased rentals of P200, P250, P750 and P900. Without even intimating that the rented lots would be needed by him, the respondent F. L. Pimentel (successor in interest of the original lessor) gave notice to the petitioners requiring the latter to vacate, in view of their failure to do so on July 31, 1946. As this notice was not needed, ejectment cases were filed against the petitioners in the Municipal Court of Manila which rendered judgment ordering petitioners' ouster and the payment by the latter of the increased rentals, above specified, from July 31, 1946 until the leased premises shall have been vacated. The petitioners appealed to the Court of First Instance and, to stay execution, they deposited therein the monthly rentals at the initial rates of P80, P110, P330 and P430. Notwithstanding such deposits, upon motion of the respondent F. L. Pimentel, the Court of First Instance issued orders of execution, obviously on the theory that what the petitioners should have deposited are the increased rentals of P200, P250, P750 and P900.

The majority, in denying the present petition for certiorari, hold that "the amount of the monthly rents due under the contract as found by the municipal court, and not as claimed by the petitioners, is what the petitioners must have deposited with the court in order to stay the execution of the judgment." Under section 8 of Rule 72, to stay execution pending appeal in the Court of First Instance, the defendant, in addition to the supersedeas bond, must pay 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 inferior court to exist. I am of the opinion that, in the case at bar, the rents under the contracts in question, which are contemplated by section 8, are the rents paid during the lifetime of the

leases, that is, before July 31, 1946. As said rents have been so deposited by the petitioners, the orders of execution issued by the respondent judge are improper. The amounts required by the contracts to be paid after July 31, 1946, though denominated rents, are in fact in the nature of damages which the lessor is claiming as a result of petitioners' illegal detention which may be considered as having commenced after the expiration of petitioners' leases. The petitioners, I think, may perhaps be bound to deposit the increased amounts, only if in their appeal they do not question the legal propriety of said amounts.

Moreover, even admitting the technical correctness of the majority's position, I cannot, in the interest of justice, acquiesce in a procedure that permits the virtual frustration of a tenant's right to appeal by his landlord under such circumstances as are revealed in this case. It is significant that the herein petitioners are old tenants of premises (which consisted of buildings and lots), for which the rents were originally as low as P20. The lessor was not satisfied in raising such rents to abominable heights, the lowest being P80. The contracts of lease further obligate the tenants to pay still higher rates, the lowest being P200, if they should fail to surrender the rented premises after July 31, 1946. The unreasonableness, nay immorality, of said condition becomes palpable when it is borne in mind that the premises now held in lease by the petitioners consist only of vacant lots. Of course, it is intimated by the majority that the legality of the increased rents may be decided in the appeal; but what advantages will the petitioners thereby derive, if in the meantime they are not only out in the streets but also deprived of the use of the buildings they have constructed on the rented lots? And what is worse, the lessor cannot certainly need the several lots for his use.

PERFECTO, J.:

We concur in this dissenting opinion.

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