

ISABELO CENTENO PETITIONER, VS. DOLORES GALLARDO AND HONORABLE ZOILO HILARIO, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOCOS SUR, RESPONDENTS.*G. R. No. L-6165. May 15, 1953*

Ponente: TUASON, J.

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This is a petition for a writ of certiorari to review an order of Honorable Zoilo Hilario, as Judge of the Court of First Instance of Ilocos Sur, decreeing the execution of the judgment of the Justice of the Peace of Candon, Ilocos Sur, in an action of detainer, and the removal within four months of the defendant's, now petitioner's, house built on the land in question. The contested order was issued on the showing that the defendant, petitioner herein, had neither filed a supersedeas bond nor deposited the rents in arrears which he had been sentenced to pay.

It is held in a long line of decisions that in accordance with section 8 of Rule 72, or section 88 of the former Code of Civil Procedure, it is mandatory on the part of the Court of First Instance, on petition of the plaintiff, to order the execution of the judgment of the Justice of the Peace upon failure of the defendant to comply with either of the aforesaid obligations. To mention only a few of the cases sustaining this view, see *Guillena vs. Borja*, 53 Phil., 379; *Lapuz vs. Court of First Instance of Pampanga*, 36 Phil., 77; *Arcega vs. Dizon*, 76 Phil., 164; *Meneses vs. Dinglasan*, 81 Phil., 470, *Hernandez vs. Hon. Peña*, 86 Phil., 411.

No irregularity is alleged in connection with the promulgation of the order of which the petitioner complains. On the contrary, it affirmatively appears that a hearing, of which both parties had received notice and in which they had appeared and argued in favor and against the plaintiff's motion, was held. If Judge Hilario committed any error of law, he did, we believe, on the side of leniency: as stated. His Honor granted the defendant four months to remove his house voluntarily.

The sole ground of defendant's, now petitioner's, opposition to the execution was that he was raising a question of ownership of the land involved in the suit. He claimed to have bought this property from the judicial administrator of the estate of a deceased (who, to judge from his name [Gallardo], must have been a relative of the plaintiff), with the singularity that the purported, purchase, which was not supported by any proof, was allegedly effected after the justice of the peace's decision was handed down, and was asserted for the first time in the Court of First Instance in defendant's opposition to the motion for execution. In the court of origin the defendant had interposed general denial.

Even where defendant in a detainer or forcible entry and detainer suit alleges title to the property in his answer, it is declared in a great number of cases that the Justice of the Peace or the Court of First Instance on appeal will not be divested of its jurisdiction by such allegations alone. (*Savinada vs. Tuazon et al.*, [1] G. R. No. L-2132, May 30, 1949; *Lee Soo vs. Osorio*, [2] G. R. No. L-1364, May 30, 1951; *Cruz vs. Lansang*, [3] G. R. No. L-2332, October 4, 1950, *De los Reyes vs. Elepaño et al.*, G. R. No. L-3466, October 13, 1950; *Mediran vs. Villanueva*, 37 Phil., 752; *Aguirre et al. vs. De las Alas, et al.*, G. R. No. 27432.) While the earlier decisions were conflicting on the

point, the conflict is now settled. (2 Rules of Court, Moran, 1952 Ed., 296.) In *Mediran vs. Villanueva*, supra, a leading case, the Court adverted that "in considering this problem, the averments of the complaint and character of the relief sought are primarily to be consulted" but that "it would be a mistake to suppose that the defendant in such an action can defeat the jurisdiction of the magistrate's court by setting up title in himself." "The factor which defeats the jurisdiction of the court of the Justice of the Peace," it is said, "is the necessity to adjudicate the question of title, and the mere circumstance that proof of title is introduced at the hearing or that claim of ownership is made by either or both parties is immaterial." See also *Medel vs. Militante*, 41 Phil., 526; *Fabie vs. Gutierrez David*, 42 Off. Gaz., 511, 75 Phil., 536; *Facundo vs. Santos*, 44 Off. Gaz., No. 3, p. 860, 77 Phil., 733. "Were the principle otherwise," it is pointed out in other cases, "the ends of justice would be frustrated by making the efficacy of this kind of actions depend upon the defendant in all cases." (*Aquino vs. Deala*, 63 Phil., 582 and *De los Reyes vs. Elepanio et al.*, supra.) At any rate, claim of title to the property in litigation raises an issue of fact and this issue can only "be determined from the evidence presented by both parties at the trial." (*Aquino vs. Deala*, supra; *De los Reyes vs. Elepaño*, supra; and *Alviar vs. Pampolina*, 87 Phil. 45.)

The rule that a possessory action cannot be quashed and overthrown by the simple expedient of setting up title in the defendant has peculiar and greater force where the relations of landlord and tenant exists between plaintiff and defendant. This is so because the tenant is not allowed to deny his landlord's title at the commencement of the relation. (Sec. 68(b), Rule 123.) Where, as in this case, defendant entered upon the possession of the premises as lessee, "the facts of the lease and the expiration of its terms are the only elements of the action" and "if the defendant denies plaintiff's ownership, as he does, he raises a question unessential to this action." (*Sevilla vs. Tolentino*, 51 Phil. 333.)

It should be stated at this juncture that, from the findings of the Justice of the Peace, it appears that the defendant bought his house from one Salvador Pascua who held a contract of lease from the plaintiff and that he (defendant) had knowledge of and recognized that contract, and had been paying the same rent as his seller has paid, until the owner of the lot raised it from P15 to P30 a month.

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

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] 83 Phil. 840.

[2] 89 Phil. 139.

[3] 48 Off. Gaz. 551; 87 Phil. 443.

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