

AMALIA TORRES, PETITIONER, VS. BUENAVENTURA OCAMPO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, GREGORIO NARVASA, AS FORMER VACATION JUDGE OF FIRST INSTANCE OF MANILA, AN...

G.R. No. L-1487. January 23, 1948

Ponente: FERIA, J.

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FERIA, J.:

The petitioner in the present case filed in the Municipal Court of Manila a complaint against the respondent Fernando Acebedo, which, among others, alleges:

As first cause of action,

"2. That the plaintiff was awarded by the City Health Officer of the City of Manila the right to use and occupy stalls Nos. 29-30, of the Sampaloc Market, Sampaloc, Manila, on or about February 18, 1946;

"3. That the said City Health officer of Manila has the control, direction and supervision of all markets in the City of Manila;

"4. That on or about July 31, 1946, the award or assignment of stalls referred to in the preceding paragraph 2 thereof, was affirmed by the Mayor of the City of Manila; and thereafter, on or about August 21, 1946, the Acting Administrator of City Markets who is under the direction and control of the City Health Officer, instructed the defendant herein to leave and vacate the stalls thereof in favor of the plaintiff;

"5. That inspite of repeated demands to leave and vacate the stalls thereof, the defendants refused and still refuse to leave and vacate the same;

"6. That the defendant is still in actual use and possession of the said stalls, and the market officials have not taken the legal steps to enforce and render effective the award or assignment of the stalls thereof in favor of the plaintiff notwithstanding the lapse of considerable and sufficient time to do so."

And as second cause of action:

"8. That from the date of the award of the stalls Nos. 29-30, Sampaloc Market, Sampaloc, Manila to the plaintiff, the said plaintiff is legally entitled to the use and occupation thereof;

"9. That he is a merchant who engages in the business of selling cooked food in the market stalls for public consumption, and as such merchant, he ordinarily earns Ten (10) pesos daily as his net income;

"10. That the illegal occupation and use of the stalls thereof by the defendant has unduly deprived the plaintiff the right to use and occupy said stalls for his business, and consequently, he has sustained damages, and still sustains damages, to the extent of his unrealized income which otherwise, he would have derived and received from the use of the stalls thereof;"

After the hearing, the Municipal Court rendered judgment; which reads as follows:

"(a) declaring that the plaintiff Amalia Torres is entitled to the use and occupation of stalls Nos. 29-30 of the Sampaloc Market, Manila, and ordering said defendant to leave and vacate said stalls and restore the possession thereof to the plaintiff; (b) requiring the defendant to pay to the plaintiff for damages sustained by the latter the sum of Ten (10) Pesos daily, from August 21, 1946, the date when said defendant was required by competent authority to leave and vacate the stalls thereof in favor of the plaintiff, until he actually vacates them and (c) to pay the costs of this proceeding."

The defendant perfected his appeal from the judgment of the municipal court, by filing a notice of appeal, appeal bond, and paying docket fees.

On April 17, 1947 the plaintiff "filed a motion for execution of the judgment pending appeal in the Court of First Instance of Manila praying that, by reason of the failure of the defendant Fernando Acebedo to file a supersedeas bond or to deposit the money required to be entrusted to the court," the judgment of the lower court be forthwith executed in accordance with section 8, Rule 72, of the Rules of Court as amended; and the respondent Judge Narvasa denied the said motion. Thereafter plaintiff filed another motion "praying that the defendant be ordered to deposit in court the amount of damages as determined in judgment of the municipal court, and to file immediately a supersedeas bond pending appeal;" and the respondent Judge Buenaventura Ocampo, then presiding, denied the motion declaring in its order dated May 29 that the motion is in effect equivalent to a motion for execution.

The plaintiff has brought the present case to this Court on certiorari and prohibition, and prays that the orders of the court of first instance of April 30 and May 29, 1947, denying his two motions, be set aside, And that the respondent judge presiding the said court be ordered to issue a writ of execution of the judgment of the municipal court, on the ground that the respondent judges of the Court of First instance acted with grave abuse of discretion in rendering said orders, and failed to comply with their ministerial duty to issue a writ of execution of the judgment of the Municipal Court of Manila under section 8, Rule 72, there being no other plain, speedy and adequate remedy in the ordinary course of law.

If the action filed in the Municipal Court of Manila were an action of forcible entry or illegal detainer, and the damages claimed by the plaintiff against the defendant were either rents or damages consisting in reasonable value of the use and occupation of the premises by the defendant, there would be no question that the plaintiff is entitled to the writ of mandamus prayed for in the petition filed in this case, But the action instituted by the plaintiff against the defendant was neither of forcible entry nor of illegal detainer. It is an ordinary action for the recognition of the plaintiff's preferred right to the use and occupancy of the stalls in question in Sampaloc Market, against the claim of the defendant, under the provisions of the Market Code and administrative regulations in implementation thereof. In ordinary actions the provisions of section 8, Rule 72, are not applicable, and upon the perfection of an appeal the judgment of the municipal court is vacated, and the case is tried de novo in the Court of First Instance in accordance with section 9, Rule 40.

The action of the plaintiff against the defendant is not an action of forcible entry, for the simple reason that it is not an action instituted by a person who was in possession of a land or building against a person who has deprived him of the possession thereof by force, intimidation, threat, strategy or stealth, within one year from such unlawful deprivation. Assuming without deciding, for the purpose of this decision that a market stall is a building or land within the meaning of Rule 72, Rules of Court, whatever right the plaintiff may have to occupy the market stall in question, originated upon the alleged award to plaintiff by the City Health Officer of Manila. And not having entered into possession under that award or lease of the market stall in dispute, plaintiff had acquired no right in the leased property in the nature of a right in rem, which third persons were bound to respect or not to infringe.

The action brought by the plaintiff against the defendant was not an action of illegal detainer because according to

section 1, Rule 72 this action is for the recovery of possession of any land or building, instituted within one year from date of illegal possession by a person against whom the possession of any land or building is being unlawfully withheld by another after the right of the latter to hold possession by virtue of any contract, express or implied, with the plaintiff has expired or terminated. In the present case, there was no contract whatsoever, express or implied, between plaintiff and defendant for the possession of the market stall, and hence no expiration or termination of the latter's right to hold possession thereof under contract.

The damage which may be claimed by the plaintiff against the defendant in an action of forcible entry, is the damage equivalent to a reasonable compensation for the use and occupation of the premises by the trespasser; and for that reason the defendant-appellant is required is required, not only to put up a supersedeas bond or deposit the amount awarded as damages by the inferior court in its judgment, but to pay the plaintiff or deposit with the court, on or before the tenth day of each calendar month, during the pendency of the appeal, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment, in order to prevent the execution of the judgment of the inferior court.

Payment of damages other than those described above such as that which the plaintiff expect to obtain from his business to be located in the premises, or for material injury caused to the premises, can not be claimed in connection with or as incidental to an action of illegal detainer or forcible entry, and for that reason in case of appeal by defendant, the latter is not required to file a supersedeas bond, and deposit every month, a certain amount to answer for the payment of said damages in order to stay the execution of a judgment during the pendency of the appeal. Because in actions other than forcible entry or illegal detainer, the judgment of the inferior court appealed to the Court of First Instance is vacated, and the action is tried de novo in the latter court as if the action has been originally instituted therein, and no judgment of the inferior court may be executed, for the latter is set aside by the appeal. While judgment rendered by an inferior court in forcible entry or illegal detainer is not vacated by the appeal until after the rendition of judgment by the Court of First Instance; but it continues inforce and may be executed upon failure on the part of the appellant to put up the supersedeas bond and monthly deposit required by law, during the pendency of the appeal.

In view of the foregoing, petition for mandamus is hereby denied with costs against the petitioner, because the respondent judges did not act with grave abuse of discretion in rendering the orders complained of, and did not fail to perform any ministerial duty in not issuing an order of execution of the judgment of the Municipal Court of Manila. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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