

P.M. SILVA, PETITIONER, VS. HIGINIO B. MACADAEG, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MACARIO M. OFILADA, CLERK OF COURT OF FIRST INSTANCE OF MANILA, AND ESTANISLAO D...

G.R. No. L-3041. November 29, 1949

Ponente: TORRES, J.

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TORRES, J.:

This is a petition for certiorari and mandamus filed by P. M. Silva against the Honorable Higinio B, Macadaeg, Judge of First Instance of Manila, Macario Ofilada, clerk of said court, and Estanislao de Ocampo. He prays that the orders issued by the respondent judge on May 18 and June 18, 1949, in civil case No. 7634 of said court be declared null and void and of no legal and valid effect, and that the respondent clerk of Court of First Instance of Manila and Estanislao de Ocampo be ordered to restore to petitioner the sums withdrawn by said respondent as deposits of the herein petitioner for his rents, to be disposed of later after the case of ejectment instituted by said respondent Estanislao de Ocampo against the herein petitioner shall have been finally decided by this Court.

In case No. 7634 of the Court of First Instance of Manila for ejectment, originally filed in the Municipal Court of said City by Estanislao de Ocampo against P. M. Silva, the latter, as appellant, posted the necessary appeal bond and supersedeas bond and deposited with the clerk of the Court of First Instance of Manila the sum of P800.40 corresponding to the rents for the occupancy of premises held by him during the months of March and April, 1949.

On March 13, 1949, while the case was pending hearing on its merits, respondent Estanislao de Ocampo filed an urgent petition praying that the cash deposits made by defendant, petitioner herein, with the clerk of court, in the sum of P800.40 as stated above, "and such other sum or sums now on deposit with said officer, in connection with the above entitled case," be withdrawn. On May 14, 1949, petitioner objected to the granting of the petition for withdrawal of the deposited rentals by alleging among other things that he had interposed in his answer a counterclaim in the sum of P2,000 "which should have been applied as rents but which plaintiff refused to do so." The respondent judge, however, granted the petition for withdrawal in its order of May 18, 1949, and in accordance therewith the respondent clerk of court paid the sum of P800.40 to respondent Estanislao de Ocampo.

On May 28, 1949, this petitioner moved for the reconsideration of the said order, but the court denied it on June 4, 1949. On June 15, 1949, plaintiff submitted another petition to withdraw a cash deposit of P400.20 to cover the rental for the month of May, 1949, and, notwithstanding petitioner's objections, on June 18, 1949, the respondent judge issued an order granting the same.

Hence, the petition submitted for our consideration.

As already stated, and since the case under consideration is now pending in the Court of First Instance of Manila by virtue of the appeal taken by petitioner, the issue raised by petitioner is governed by Sections 8 and 9 of Rule

72 of the Rules of Court. In *Crispulo Ocampo Leus, et al. vs. Cirilo Martin*[2] (43 O.G. No. 12, page 5066) this Court, confronted with a similar question held that:

"Although according to sections 8 and 9 of Rule 72, all moneys deposited by the defendant 'for the purposes of stay of execution' shall be held 'until the final disposition of the appeal,' and 'shall be disposed of in accordance with the provisions of the judgment,' the plaintiff will be allowed to withdraw said moneys when the defendant agrees or fails to oppose plaintiff's petition. The purpose of the Rule is to avoid that the defendant may suffer if plaintiff should be allowed to withdraw the moneys deposited when plaintiff's right to collect the moneys is in issue. Where no such issue is raised, there is no harm to be protected against."
(Syllabus)

That petitioner, as defendant in said ejectment case objected to the granting of the petition for the withdrawal by respondent Estanislao de Ocampo of the cash deposited by him with the clerk of the Court of First Instance of Manila, is shown in the record. That being the case, it appears that the interpretation made by this Court of the provisions of Sections 8 and 9 of said Rule 72 of the Rules of Court is on all fours with the case at bar. Had this petitioner agreed to, or failed to oppose, the motion of plaintiff for withdrawal, the granting of the same would have been in order, but since he objected to the same, the court lacked justification in issuing the orders in question.

Petition is granted. No costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

[2] 77 Phil., 657.

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