

JESUS B. LOPEZ, PETITIONER, VS. RAFAEL DINGLASAN, LINO GUTIERREZ, JUDGE GUILLERMO CABRERA, AND SHERIFF OF MANILA, RESPONDENTS.

G.R. No. L-2062. August 11, 1949

Ponente: TUASON, J.

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TUASON, J.:

These proceedings have been brought against the Honorable Rafael Dinglasan, Judge of the Court of First Instance of Manila, Lino Gutierrez, the Honorable Guillermo Cabrera, Judge of the Municipal Court, and the Sheriff of Manila, to compel Judge Dinglasan to approve an appeal in a case for certiorari pending in his court and to forward the record thereof to this Court. The petitioner also seeks a writ of preliminary injunction to restrain execution of the judgment of respondent Judge Cabrera pending the appeal.

According to the allegations of the petition, in a case for unlawful detainer commenced in the municipal court of Manila, in which respondent Lino Gutierrez was plaintiff and petitioner herein, Jesus B. Lopez, was defendant, the parties submitted the case "for decision on a compromise agreement." Accordingly, Judge Cabrera rendered Judgment "in the tenor of the foregoing agreement, enjoining both the plaintiff and the defendant to adhere to and comply (with) all the terms and conditions (thereof), without special pronouncement as to costs." Referring to the effect of that judgment, petitioner says that, "being a judgment by compromise," the same "was non-appealable."

Alleging that some of the terms of the agreement had been violated, plaintiff in the detainer case, Lino Gutierrez, asked for execution of the judgment, and Judge Cabrera granted the motion. Inasmuch as, says Lopez in his petition at bar, "there was no appeal from the decision of Judge Cabrera and there was no other adequate remedy at law, and as the respondent Judge Cabrera refused to cancel and set aside the writ of execution despite motions filed asking for its cancellation, the petitioner had to file, and did file, a petition for certiorari with the respondent Judge of First Instance of Manila, the Honorable Rafael Dinglasan," with a prayer for preliminary injunction. On January 12, 1948, Judge Dinglasan, after hearing both parties on whether a writ of preliminary injunction should issue, denied Lopez's motion, stating that "no sufficient ground exists therefor." From Judge Dinglasan's refusal to enjoin the execution of Judge Cabrera's decision, Lopez, on February 17, 1948, filed a notice of appeal with the request "that under Rule 41, section 17, the original record of this case be forwarded to the Supreme Court, and that a supersedeas bond be fixed." The appeal was disallowed in an order of February 21, 1948.

It is to compel Judge Dinglasan to approve the appeal that the present application for mandamus was instituted.

Section 2, Rule 41, of the Rules of Court reads:

"No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other."

"Interlocutory orders or judgments are not appealable, because, prior to the rendition of the final judgment, they are, at any time, subject to such corrections or amendments as the court may deem proper. This does not

mean, however, that they are not appealable at all. Appeal may be taken therefrom but after final judgment is rendered." (I Moran's Rules of Courts, 729, 730, citing Manila Electric Co. vs. Artiaga, 50 Phil., 147, and Olsen & Co. vs. Olsen, 48 Phil., 238, 240.)

There is no doubt, and there is no contention to the contrary, that Judge Dinglasan's refusal to issue a writ of preliminary injunction to restrain the execution of the judgment of the municipal court was an interlocutory or incidental order and is not a proper subject of appeal.

After the oral argument, the parties in a written stipulation submitted the case "for decision on the merits upon the present state of the record, with the same effect as if this case had been brought up to this Court upon appeal from the orders of the respondent Judge Dinglasan, as appear alleged in the body of the petition herein, instead of upon the prayer therein for mandamus to forward said appeal to this court." This stipulation was approved.

After a more thorough consideration of the pleadings and the issues, and of the nature of the instant action, we reach the conclusion that the stipulation was out of order, and should not be sanctioned. The stipulation would have this Court decide a case on appeal without a record on appeal and briefs with specification of errors essential to appellate review. What is more anomalous is that there is no judgment to review no judgment to affirm, reverse or modify. The parties to all intents and purposes would have us act as a court of first instance. Parties can not by stipulation confer upon an appellate court jurisdiction to hear and finally decide a case still in the process of trial in the lower court.

It is true that this Court has original jurisdiction in extraordinary legal remedies concurrent with the courts of first instance, but it is no less true that where an action of this kind was actually commenced in one of the latter courts, the Supreme Court can take cognizance of that particular action only on appeal, after all the steps and processes prescribed in such cases have been complied with.

The petition is dismissed with costs.

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

DISSENTING

PARAS, J.:

I dissent.

In an ejectment case filed in the Municipal Court of Manila, the following decision was entered:

"The parties to the above-entitled case submitted today a written agreement which reads as follows—

(a) El demandado pagara al demandante los alquileres que este reclama de P50 por el mes de Diciembre de 1946 y de P65 por los meses de Enero, Febrero, Marzo, Abril y Mayo de 1947, y por los meses siguientes por la misma cantidad hasta que el demandado siga ocupando la finca en cuestion.

(b) El demandante se compromete y se obliga a reparar las goteras que tiene la citada finca asi como poner nuevos postes en el baño a cambio de lo que necesitan ser cambiados, cuyo costo se estima que seria alrededor de P50.

(c) El demandado podra ocupar la finca hasta tanto que no encuentre otro donde pueda trasladarse y mientras tanto este caso no llegue, el demandante no podra pedir el desahucio contra el demandado, a menos que este deje de pagar el alquiler de la finca, segun lo convenido.

(d) El demandante hara las reparaciones mencionadas en el inciso (b) dentro de cinco dias despues de que el demandado haya pagado los alquileres arriba mencionados, y la falta de cumplimiento de esta su obligacion dara derecho al demandado a mandar hacer dichas reparaciones por cuenta del demandante descontando el importe de cualquier alquiler que tenga que pagar al demandante, siempre que dichas reparaciones no pasen de P50, en el bien entendido que si el costo de dichas reparaciones excedieren de P50, en caso tal, la diferencia de mas sera por cuenta del demandado, si este quiere hacerlo.

"Wherefore, judgment is hereby rendered in the tenor of the foregoing agreement, enjoins ing both the plaintiff and the defendant to adhere to and comply all the terms and conditions, without special pronouncement as to costs. It is so ordered.

For alleged failure of the defendant to pay the stipulated rental, the municipal court, upon petition of the plaintiff, issued a writ of execution directing the ouster of the defendant. The latter thereupon filed in the Court of First Instance of Manila a petition for certiorari with preliminary injunction, with the view to preventing the writ of execution from being carried into effect. The respondent Judge of the Court of First Instance of Manila, while giving due course to the petition for certiorari, denied the prayer for the writ of preliminary injunction. From this order of denial, the defendant proceeded to perfect an appeal. The respondent Judge, however, refused to allow the appeal on the ground that the order being complained of is interlocutory. The defendant has now come to us in a petition for mandamus, to compel respondent Judge to certify defendant's appeal.

The majority are in accord with the respondent Judge's theory and are decreeing a simple dismissal of the present petition. There can be no doubt that the order in question is interlocutory. But there are cogent reasons for conceding necessary relief to the defendant (petitioner herein).

In my opinion, the decision of the municipal court hereinabove fully quoted merely had the effect of stamping judicial approval (though unnecessary) to the new contract of lease between the petitioner and the herein respondent Lino Gutierrez (plaintiff in the municipal court). The reciprocal rights and obligations of the petitioner and the respondent Lino Gutierrez thereunder are of course as binding as any contractual relations, but they are not enforceable by execution under the decision which has not made any definite and executory adjudications.

Accordingly, I hold that the writ of execution issued by the municipal court is not in order; and the respondent Judge should have granted plaintiff's prayer for the writ of preliminary injunction. The petition for certiorari filed in the Court of First Instance could have been filed directly in this Court and the same remedy should have been accorded by us. Under these circumstances, we are justified in disregarding technicalities and squarely passing on the irregularity committed by the municipal court. At any rate, under a liberal interpretation, we may consider the present petition as one for certiorari, specially in view of the stipulation of the parties herein to have the basic case decided on the merits. The majority are mistaken in supposing that we shall thereby be, in an appellate jurisdiction, disposing of the case which is only in the process of trial and in the absence even of a decision, because there are sufficient facts on record and the parties have agreed to submit the case thereon.

It cannot be said that there is no decision since the refusal of the respondent Judge to issue a writ of preliminary injunction, if not timely counteracted, will result in the ouster of the petitioner and in the conversion of the petition for certiorari pending in the Court of First Instance into an academic suit.

If the majority are unwilling to forget technicalities, they may, as this Court has done in many instances, at least make even a dictum for guidance of all concerned .

PERFECTO, J.:

We concur in this dissent.

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