

CATALINA CURA ET AL., PETITIONERS, VS. SOTERO RODAS, JUDGE OF FIRST INSTANCE OF MANILA, THE SHERIFF OF CITY OF MANILA, AND RAMON RICAFORT, RESPONDENTS.

G.R. No. L-1480. November 26, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

On October 10, 1945, the Municipal Court of Manila rendered a decision for the ejectment of twelve tenants, including the herein six petitioners. They appealed.

On March 4, 1946, the owner moved for the execution of the appealed decision upon two grounds: first, failure to file the appeal bond provided by section 8 of Rule 72, and second, failure to deposit rents. The motion was granted on April 11, 1946.

On April 13, 1946, appellants moved for reconsideration alleging that, although it is true that some of the tenants "had failed and others had refused to pay their corresponding part of the rents, yet, the majority of said tenants had been paying their rents religiously" and that if no appeal bond "had yet been filed by the paying tenants¹, the reason is that the municipal court did not fix the amount of such bond." On April 17, the motion was denied.

On May 8, 1947, a second motion for reconsideration was filed, wherein appellants alleged that "almost all" of the defendants had filed their respective bonds and were up-to-date in making the rent deposits, with the exception of Rafael Contreras. On May 21, the second motion for reconsideration was denied. In the order of denial it was stated that subsequent to the denial of the first motion for reconsideration, defendants, had been making deposits of rents, but always beyond the time fixed by the provisions of section 8 of Rule 72.

On May 26, appellants' prayed for the suspension of execution of the judgment for a period of six months "in order to give the petitions sufficient time to find other premises wherein to transfer." On June 21, the petition for suspension was denied for lack of averment to the effect that defendants deposited the rents due up to the filing of the petition.

Thereafter, defendants came to us seeking the annulment of the orders of the Court of First Instance of April 11, and May 21, 1947, as having been made in excess of jurisdiction and with grave abuse of discretion.

Respondents answered that petitioners have never been up-to-date in the payment or deposit of rents, with specification of amounts and dates.

Upon the very facts alleged in petitioners' motion for reconsideration dated April 13, 1946, there should not be any question that they failed to file the appeal bond and, at least, some of the defendants had failed and even refused to pay the rents.

The lower court acted according to law in issuing the orders of April 11 and May 21, 1947.

Petition dismissed.

Paras, Hilado, and Tuason, JJ., concur.

PARAS, J.:

I hereby certify that Mr. Justice Briones voted for the dismissal of the petition.

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