

**GASPAR M. LLAMAS, PETITIONER, VS. HONORABLE SEGUNDO MOSCOSO AS JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, RUFO RAGA, AS ACTING PROVINCIAL SHERIFF OF LEYTE, AND CIRIACO ENRIQ...**

*G.R. No. L-7524. July 31, 1954*

Ponente: REYES, A., J.

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**REYES, A., J.:**

This is a petition for certiorari to annul an order for execution and subsequent processes for its implementation. It appears that on February 1, 1948, the herein respondent Ciriaco Enriquez, in his capacity as judicial administrator of the estate of his deceased wife, Manuela Dioso, which was then the subject of an intestate proceeding in the Court of First Instance of Leyte, leased to the herein petitioner Gaspar M. Llamas two parcels of land known as Lots Nos. 56 and 57 of the Cadastral Survey of Tacloban and covered by Original Certificates of Title Nos. 381 and 455, respectively, of the land records of that province, issued in the name of the spouses. The lease had the approval of the court and was recorded in the Registry of Deeds. According to its terms, it was to run for a period of ten years from April 1, 1948, at a monthly rental of P300 and the lessee could construct on the leased premises such buildings and other improvements as he might deem proper, provided that they were to become the property of the lessor upon the expiration or earlier termination of the lease. The lessee was not an heir to the estate in administration, though his wife Encarnacion Enriquez was, being one of the children of the deceased.

A few months after the lease was entered into, Ciriaco Enriquez, his co-administrator Panfilo Enriquez, and the rest of the heirs of the deceased submitted for the approval of the court a project of partial partition, allocating various portions of the estate to different heirs with the proviso "that the heirs shall continue occupying the premises of the estate they are presently using until the termination of these proceedings." Among the portions allocated were those covered by the lease, namely, lots No. 56 and No. 57 of the Tacloban Cadastre, the first of which was assigned to Ciriaco Enriquez and the second, to Encarnacion Enriquez, wife of the lessee. Acting on the petition, the court, under dated of July 19, 1948, handed down an order approving the partial partition and stating that it was "to become effective as of August 1, 1948, on which date the respective parties will take possession of the premises or estate ceded to them with all the corresponding rights and privileges of ownership."

After the issuance of the above order of Ciriaco Enriquez, in his capacity as administrator of the estate, filed a petition in the intestate proceedings asking for the rescission of the lease in question for various reasons, alleging, among other things, that by virtue of the said order he had become the owner of lot 56 and entitled to the possession thereof and that the lease had been breached by lessee's failure to pay rents. In a subsequent petition he also asked for a writ of preliminary injunction restraining the lessee from collecting rents from the occupants of the leased property and authorizing petitioner instead to collect those rents. But the court denied both motions, holding that the rescission of the lease should be the subject of a separate action by Ciriaco Enriquez in his own behalf and not as an administrator of the estate.

As a consequence of the above order, Ciriaco Enriquez filed an ordinary civil action against the lessee Gaspar M. Llamas praying that the lease in question be declared cancelled and terminated and Llamas ousted from the leased premises, alleging as a ground for his action that, as sole and absolute owner of lot 56 by virtue of the decree of partial partition plaintiff had the right to terminate the lease, or in the alternative, to receive the rents corresponding to said lot, but that defendant had failed to pay those rents and had also refused to vacate the premises. With this action still pending, Ciriaco Enriquez filed a motion in the intestate proceeding calling attention to that part of the order approving the partial partition which says that "on August 1, 1948, the respective parties will take possession of the premises or estate ceded to them with all the corresponding rights and privileges of ownership" and praying for the issuance of a writ of executive to enforce the said part of the order by commanding the sheriff to place movant in possession of lot 56 and ejecting therefrom Llamas and his wife. These two opposed the motion, calling attention to the existence of the lease in favor of Llamas and the pendency of the civil action for its cancellation, and, in effect, objecting to the jurisdiction of the probate court by alleging that the question of whether or not the order approving the partial partition had the effect of terminating the lease of lot 56 in favor of Llamas came within the competence of the court in the exercise of its ordinary jurisdiction as a Court of First Instance but was not cognizable by it as a probate court. Notwithstanding this objection, the court ordered the writ to issue, and in compliance therewith the sheriff placed Ciriaco Enriquez in possession of lot 56 and gave notice thereof to the tenants of the building which the lessee had constructed on said lot. An attempt was made to have the Court of Appeals enjoin the enforcement of the writ, but the petition for that purpose was denied by said court on the ground that the same was filed after what was sought to be prevented had already been totally accomplished.

On January 8, 1954, the court, upon complaint of Ciriaco Enriquez, issued an order warning Llamas and his wife and the occupants of the building in question not to interfere with complainant's possession of said building on pain of being punished for contempt, and in a later order dated January 16, 1954, the court further decreed that Llamas and his wife must immediately vacate the lot and building in favor of Ciriaco Enriquez, with warning that should the occupants of the building continue paying rentals to them, it would send them and the said occupants to jail for contempt of court.

The present petition asks for the annulment of the order for execution and the subsequent orders for its implementation on the grounds that all of the said orders were issued in excess of jurisdiction and with grave abuse of discretion.

After going over the record and hearing the parties in oral argument, we have come to the conclusion that the petition should be granted. It is obvious that the orders complained of have the effect of depriving the lessee of his rights under the lease without the lease having been terminated or annulled as the civil case instituted for that purpose was still pending in court. The contention that the lease on lot 56 must be deemed terminated by the order approving the project of preliminary partition which allocated the said lot to Ciriaco Enriquez and authorized him to take possession thereof from August 1, 1948 "with all the corresponding rights and privileges of ownership," is without merit, for the lessee was not a party to that partition and the court cannot, without any legal ground and without proper proceedings for the purpose, annul the lease. The allegation that the lease has been breached and should therefore be declared terminated, is a question that must be ventilated in the pending civil action for that purpose as the same is not within the competence of the court in the exercise of its probate jurisdiction.

Likewise, the defense of res adjudicata predicated on the decision of the Court of Appeals denying a petition for injunction to prevent the writ of execution from having carried, cannot be sustained. For it is obvious from the said decision that if the injunction was denied, it was because the writ of execution had already been carried out when the petition was filed. The decision did not pass upon the legality of the writ.

As an act done in excess of its jurisdiction as a probate court, the lower court's order for execution may be corrected by certiorari.

Wherefore, the petition for certiorari is granted and the orders complained of and the acts done thereunder are annulled, with costs against the respondent Ciriaco Enriquez.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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