

**VICENTE ABELLANA, CATALINA ABELLANA, CORNELIO ABELLANA,
FRANCISCO ABELLANA AND THE HEIRS OF DAMASO ABELLANA,
PETITIONERS AND APPELLEES, VS. THE HON. TERESO M. DOSDOS,
JUDGE OF T...**

G. R. No. L-19498. February 26, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioners sued for a writ of mandamus in the Court of First Instance of Cebu to compel respondent Municipal Judge to execute his decision in Civil Case No. R-5912. The writ was granted and respondents instituted the present appeal.

The decision appealed from was rendered on a stipulation of the parties. From the said stipulation as well as from the annexes which were made integral parts thereof, the following facts appear base No. R-5912 was one for ejectment filed by Damaso Abellana and his wife against the spouses Constancio Alcober and Esteleta Alcober. The property involved was a 200 square-meter portion of lot No. 5600 of the Cebu City cadastre. A certain Agripina Abarquez intervened in the action, alleging that she was the owner of the portion occupied by the defendants and that the plaintiffs' property was a different portion of the same cadastral lot. The municipal court in its decision found that the allegation was not true, but that the defendants had leased the land occupied by them from Abarquez, believing in good faith that she was the owner; that the lease was for a period of four years, at a yearly rental of P20.00; and that the defendants had paid in full to Abarquez the four-year rents of P80.00 and had built a house of strong materials on the property.

Upon such findings, the municipal court fixed a five-year lease between the plaintiffs and the defendants, to start on January 1, 1961, at a yearly rental of P50.00, from which P20.00 was to be deducted every year for the first four years in view of the fact that the defendants had already paid P80.00 to Abarquez, who in turn was ordered to pay the same to the plaintiffs. The sum of P30.00 (after the deduction of P20.00) was to be paid during the first week of January every year from 1961 to 1964, and the final rent of F50.00 was to be paid during the same period of 1965. "If they (the defendants, fail to pay the said sums as above-stated," the municipal court further adjudged, "then execution shall issue against them to vacate the premises in question and to return the possession thereof to the plaintiffs."

The decision of the municipal court, respondent Judge presiding, was rendered on November 29, 1960 and became final on the following December 22, no appeal having been taken by either party. On January 10, 1961 the plaintiffs filed a motion for execution on the ground that the defendants had failed to pay the rent of P30.00 during the first week of that month, as ordered in the judgment. On January 30 the defendants deposited the said amount in court, which thereupon denied the motion for execution in an order dated the next day, January 31. A motion for reconsideration was filed by the plaintiffs and was likewise denied by the court. The order of denial, dated February 13, 1961, was submitted as Annex D to the stipulation of the parties before the Court a quo in the

present action for mandamus, and gives the following reason:

"... a slight delay on the part of defendants Alcober in the payment of the rent does not make said defendants negligent in the performance of their duties, because the delay of the payment was due not to their voluntary desire not to pay but to the fact that there was a certain negotiation between defendant Alcober and herein plaintiffs going on at the time and at the initiative of the plaintiffs for the barter of the land occupied by said defendants Alcober for their own land located just in front of or very near to said land occupied by them."

After their motion for reconsideration was denied the plaintiffs initiated the instant case of mandamus. The Court a quo granted the writ prayed for, applying Rule 72, Section B (of the old Rules of Court) respecting execution pending appeal in cases of forcible entry or illegal detainer where the defendant-appellant fails to pay the current rentals. The Court's reliance on the said rule is erroneous. The case before it was an original action for mandamus and not an appeal from the decision of the municipal Court in the ejectment case. The decision had already become final. The only question was whether the dispositive portion thereof, stating that in case of failure of the defendants to pay the rents as therein adjudged "execution shall issue against them to vacate the premises. . . ," should be implemented and carried out because the defendants failed to pay the 1961 rent within the first week of January, and did so only on January 30.

The Court a quo considered the issuance of a writ of execution as ministerial duty of respondent Judge, there being "no showing that the delay in the payment of the rentals, as provided in the decision, was due to fraud, accident, mistake or excusable negligence." Appellees now contend that a conclusion of fact such as this is not reviewable by us on appeal, since only questions of law may be raised (Sec. 17, par. 6, R. A. No. 296). This is true as a general rule, but the same is not without qualification. It does not apply where the Court, in arriving at its conclusion, has manifestly overlooked or disregarded certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.

In this case the stipulation of facts submitted by the parties to the Court a quo included, as an integral part thereof, the order of the municipal court of February 13, 1961, in which it found that the delay of the defendants was not voluntary, but was due to the negotiation initiated by the plaintiffs for the barter of certain properties respectively owned by them. The submission of the said order to the Court a quo as part of the stipulation is an admission of its factual basis, and such fact need no longer be specifically pleaded and proven by the respondents in the subsequent action for mandamus, where the only question involved was whether or not upon the facts found by the Municipal Court its duty to issue a writ of execution was mandatory and ministerial.

After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend its execution and grant relief as the new facts and circumstances warrant (Candelario vs. Cañizares, 114, Phil. 672; citing City of Bataan vs. Ortiz, 113 Phil. 636; see also (Peñuela vs. Hornada, 111 Phil. 618). In the case of ejectment decided by respondent Judge here such facts were found by him to exist, and no appeal was taken from that finding. His duty to execute the judgment, under the circumstances, was not ministerial and could not be compelled by a proceeding in mandamus.

The decision appealed from is reversed, with costs against petitioner-appellees.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Bengzon, J.P. and Zaldivar JJ., concur.

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