

MARGARITA ESTACIO VDA. DE POSADAS, PETITIONER, VS. MARIA NIEVRE ET AL., AND HON. JOSE P. FLORES, ETC., RESPONDENTS.*G.R. No. L-7026. March 30, 1954*

Ponente: REYES, J.

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This is a petition for mandamus to compel the execution of a judgment of the Justice of the Peace of Rosario, La Union, in a forcible entry and detainer case. The Judgment orders the defendants therein to vacate the land object of the suit and to pay a monthly rental of P5.00 from January, 1953, until possession was delivered to plaintiff. But the judgment was appealed to the Court of First Instance of La Union, and while the appeal was pending in that court, the Judge thereof, at the instance of plaintiff ordered the issuance on January 13, 1953, of a writ of execution for failure of the appellant to file a supersedeas bond or to deposit in court all back rents due. Implementing this order, the clerk of court issued the corresponding writ on July 14 and the same was served upon defendants by the sheriff on July 18. Instead of complying with the writ, the appellants on July 21 asked that they be permitted to file a supersedeas bond to stay execution and the court in its order of August 6 allowed them to file such bond in the sum of P200.00 and ordered the sheriff to hold in abeyance the execution of the judgment, the court further declaring that the order superseded that of July 13. Reconsideration of the order having been denied, the appellee filed the present petition for mandamus to compel the court to order the execution of the judgment, contending that the order suspending the execution was void and that the court had no authority to issue the same.

It is settled that failure of the defendant in a forcible entry and detainer case to file a supersedeas bond or to pay on time the adjudged monthly rentals for the occupation of the property is a ground for execution under Section 8, of Rules 72, Rules of Court, and the duty of the court to order such execution is ministerial and imperative. The Court of First Instance to which such case has been appealed has no jurisdiction to allow extensions of time for the payment of such rents. (II Moran on Rules of Court, 3rd ed., pp. 294-295.) According to the same author, "neither has the court authority to accept a bond instead of the cash payments. A payment made out of time prior to the order of the court cannot be accepted as an excuse for not ordering execution of the payment; and so with a payment made after the motion for execution was filed." (Ibid.)

It is, however, urged in the answer, which is not under oath, that the delay in the filing of the bond and the payment of the monthly rents was due to the illness of the defendants and their lawyer's preoccupation in election matters and in connection with the sickness of his own wife. But there is no showing that an honest attempt has been made at the proper time to comply with the requirement of the Rule on these matters and that the attempt was frustrated by causes beyond the control of the parties. The case is not covered by the ruling laid down in the decisions invoked by the respondents. On the other hand, the following from a subsequent decision of this Court *Ambrosio Carbungco vs. Rafael Amparo*, 46 Off. Gaz. (Supp. 11) p. 91, 83 Phil., 638, is decisive on the present case:

"The fact that the actual deposit was made shortly after the expiration of the first ten days of the succeeding

month should not and cannot make any difference. The law has prescribed a period, and this requirement should be complied with strictly and its observance and compliance should be enjoined and enforced by the courts, not only for the protection of parties in whose favor the law happens to have been made and promulgated, but also for the information and guidance of those otherwise affected thereby. Otherwise, there would be confusion and misunderstanding as to whether or not an appellant in a forcible entry and detainer case could avoid execution if he shall have made the monthly deposit, say, on the 11th, 12th 13th or 14th day etc. of the succeeding month, just as long as the delay is not too long.

"Pending appeal, failure to make the deposit of rental within the period fixed by law, however short the delay, gives the appellee the right to execution of the judgment, which the court is bound to grant and enforce."
(syllabus.)

In view of the foregoing, the petition for Mandamus is granted and the respondent judge is required immediately to issue and order for the execution of the judgment of the justice of the peace of Rosario, La Union, now on appeal to the Court of First Instance of that province with costs against the respondents other than the Judge of First Instance.

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

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