

FAUSTINO CORTEZ, PETITIONER, VS. HONORABLE ONOFRE VILLALUZ, PRESIDING JUDGE, COURT OF AGRARIAN RELATIONS, FIFTH REGIONAL DISTRICT, BRANCH TWO, SAN FERNANDO, PAMPAN-GA, ATTY. SAN...

G.R. No. L-28842. July 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

Petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction, filed by Faustino Cortez against the Honor-able Onofre Villaluz, Presiding Judge, Court of Agrarian Relations, Fifth Regional District, Branch Two, Jose Reyes, the Clerk, Court of Agrarian Relations, Fifth Regional District, Branch Two, to declare void and set aside an order issued by the respondent judge on March 2, 1968 attached to said petition as Annex D.

It appears that respondent Jose Reyes filed an action in the aforesaid Court of Agrarian Relations against Liborio Cortez, father of herein petitioner Faustino Cortez, to have him ejected from the land-holding (of Reyes) cultivated by him, situated in San Jose, Macabebe, Pampanga; for the collection of forty-five cavans of rice as rental, attorney's fees and expenses of litigation. Upon being served with the required summons, Liborio Cortez filed his answer, but upon the case being called for pre-trial on February 2, 1968, he and his attorney failed to appear although, they had been previously notified. Instead they filed a motion for postponement, to which Reyes strenuously objected. As the reason alleged in said motion was found to be without merit, the same was denied and, thereafter, the court allowed Reyes to present his evidence. Subsequently, or more specifically on February 19, 1968, on the strength of the evidence presented, judgment was rendered as follows:

"1. authorizing the ejectment of the defendant and/or anybody in possession or cultivation of the landholding of the plaintiff;

"2. ordering the defendant and/or any other person acting in his behalf to vacate the landholding of the plaintiff situated at San Jose, Macabebe, Pampanga.

"3. ordering the defendant to pay the plaintiff the amount of 45 cavans as rental for the use of the landholding for the agri-cultural year 1966-1967; and

"4. ordering the defendant to pay the amount of P300.00 as attorney's fees and P150.00 as litigation expenses.

"With cost against the defendant."

On March 2, 1968, upon an ex-parte motion filed by Reyes, the respondent court issued the order complained of, the dispositive portion of which reads as follows:

"WHEREFORE, the Clerk of Court, Atty. Santiago S. Suñga, is hereby directed to proceed immediately, upon receipt of this. Order to the landholding in question situated at San Jose, Macabebe, Pampanga, and one therein

to supervise the reaping, thresh-ing, and liquidation of the current standing palay crop. The liquidation shall be as follows:

"1. The Clerk of Court shall deliver to the defendant 25% of the gross harvest;

"2. From the net harvest he shall deduct and deliver to the plaintiff the rental of 45 cavans for the agricultural year 1966-67, and another 45 cavans as rental for the use of the landholding in question for the current agricultural year 1967-68; and

"3. The balance, after deducting the said amounts to be deposited in a bonded warehouse, the same to be remained therein until further order of this Court.

"Atty. Suñga is hereby further directed to submit a written report of his actuations within five (5) days from completion thereof."

On March 6, 1968, petitioner Faustino Cortez filed a motion praying that the order of March 2, 1968 above-mentioned be set aside, claiming that he was the real tenant of the landholding subject matter of the case; that he had not been made a party thereto, and that for these reasons, the order complained of was illegal and arbitrary. This motion was denied by the court on the ground that Faustino Cortez had "no standing nor personality to appear" in the case.

In connection with the issue thus raised by herein petitioner, it appears that on July 12, 1965 respondent Jose Reyes had already filed a case in the same court against Liborio Cortez for the latter's ejectment from the same landholding involved in Case No. 625, upon the ground that he (Reyes) desired to cultivate his land personally. Liborio Cortez filed his answer in which he admitted being the tenant of the aforesaid landholding. Moreover, in a verified motion filed in said case (No. 248) Liborio Cortez prayed the Court to order the deposit of the forty-five cavans of palay paid by him as rental in a bonded warehouse.

After trial case No. 248 was decided in favor of the plaintiff Reyes. On appeal, the Court of Appeals (C.A.-G.R. No. 38873-R) affirmed said decision on May 15, 1968.

Furthermore, the record also discloses that in Case No. 625, final judgment has already been rendered, and the same having become executory, the corresponding writ of execution was issued on June 6, 1968.

The foregoing facts and circumstances would seem show that Faustino Cortez' late appearance in the picture, first by motion to set aside the order complained of - which the respondent court denied - and second, by present petition for certiorari etc., was obviously intended to frustrate the judgment rendered against his father, and that the question of fact of who as between the two, father and son, was really the tenant, has already been resolved by the respondent court not only when it rendered final judgment in cases Nos. 248 and 625 but also when it denied Faustino Cortez' motion in the latter, praying that the order complained of be set aside.

At any rate, respondents in this case aver in their answer - and this has not been denied by petitioner - that the order complained of has been fully implemented and carried out.

IN VIEW OF ALL THE FOREGOING, the petition under consideration is dismissed and the writs prayed for are denied, with costs.

As a result, the motion for a writ of preliminary mandatory injunction filed by petitioner in the present case on April 17, 1968 is likewise denied.

Concepcion, C.J., Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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