

MAURICIO MIRANO, PETITIONER, VS. POMPHY DIAZ, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.

G.R. No. L-56. October 10, 1945

Ponente: DE JOYA, J.

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DE JOYA, J.:

On June 11, 1945, the respondents Pedro Mossesgeld Santiago and Mercedes Alonzo Mossesgeld filed, in the Municipal Court of the City of Manila, a complaint against herein petitioner, for forcible entry and detainer, alleging that they were illegally deprived of the possession of the lot and house in question, by herein petitioner, by means of force and intimidation, since May 7, 1945.

Petitioner, as defendant therein, moved for the dismissal of the case, stating that the alleged sale of the lot and house in question, now claimed by respondents, is null and void, as it was executed under a power of attorney, which had been forged, allegedly under duress.

After hearing said petition for dismissal, the respondent municipal judge dismissed the case, for lack of jurisdiction, on the ground that the question involved is not one of possession but of ownership.

Respondents appealed to the Court of First Instance of the City of Manila, which, on motion of respondents, claiming that the question involved in the case is really one of possession and not of ownership, and that the respondent judge of the municipal court has jurisdiction to try the case, remanded it to the respondent municipal judge, for trial on the merits; and the trial has already been commenced.

Petitioner tried to appeal from said order, but the respondent judge of the Court of First Instance of the City of Manila, holding that said order was interlocutory and unappealable, disapproved petitioner's record on appeal.

At this stage of the proceedings, the defendant in said case for forcible entry and detainer filed a petition for certiorari and prohibition in this Court, alleging the facts above stated, and asks for the annulment of the order of the respondent judge of the Court of First Instance of the City of Manila, declaring that the respondent judge of the municipal court has jurisdiction to try the case on the merits, at the same time remanding it to the latter for that purpose. Petitioner likewise asks that the respondent municipal judge be prohibited from taking further cognizance of the case.

Respondents filed an answer, also alleging the facts above stated.

On the date set for the hearing of the case before this Court, counsel for the parties appeared and argued the case.

It is a well-established doctrine in this jurisdiction that, in a forcible entry and detainer case, in any municipal court or justice of the peace court, when the case is dismissed, on the ground of lack of jurisdiction, and an appeal is taken to the Court of First Instance, the only question to be determined is whether or not, the inferior court has jurisdiction to try the case on the merits (Rule 40, sec. 10, Rules of Court; *U. S. vs. Ang Suyco*, 17 Phil., 92; *Carroll vs. Paredes*, 17 Phil., 94; *Davis vs. Director of Prisons*, 17 Phil., 168; *U. S. vs. Bernardo*, 19 Phil., 265). If

the Court of First Instance should decide that the municipal court or justice of the peace court has jurisdiction to try the case, as correctly held in this case, it must be remanded to said court, for trial on the merits (Lucido vs. Vita, 25 Phil., 414). The order of the respondent Judge of the Court of First Instance of the City of Manila, the Hon. Pompeyo Diaz, remanding the case to the municipal court, for its trial on the merits, is strictly in accordance with the law and authorities above cited.

In order that a petition for certiorari may prosper, it is absolutely necessary to show that the respondent judge acted without jurisdiction or in excess thereof (De la Cruz vs. Moir, 36 Phil., 213). In the instant case, the respondent Judge of the Court of First Instance has acted strictly in accordance with law.

The petition for certiorari and prohibition, being completely and absolutely devoid of merits, it is hereby dismissed, with costs.

Moran, C. J., Ozaeta, Paras, Jaranilla, Feria, Pablo, Bengzon, and Briones, JJ., concur.

MORAN, C J.:

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

CONCURRING

PERFECTO, J.,

Respondent Mossesgeld filed in the Municipal Court of Manila a complaint for forcible entry against the petitioner. The municipal court, after hearing, dismissed the case on the ground that it lacked jurisdiction in view of the allegation of ownership made by the petitioner.

The plaintiffs appealed the case to the Court of First Instance of Manila, which, upon motion of plaintiffs, ordered, on July 31, 1945, the case remanded to the municipal court, directing it to hear and make the necessary adjudication after finding that the municipal court had jurisdiction over the case.

The defendant appealed from said order and filed a record on appeal, but the Court of First Instance disapproved the same for the reason that its order of July 31, 1945, was interlocutory in nature and no appeal would lie therefrom.

We do not agree with this opinion. The order of July 31, 1945, is not interlocutory in nature. It disposed of finally the appeal interposed by plaintiffs against the order of dismissal issued by the municipal court. If, instead of appealing, plaintiffs had filed a petition for mandamus to compel the municipal court to proceed with and decide the forcible entry case, the decision of the Court of First Instance granting the petition would be substantially the same as the order of July 31, 1945. Undoubtedly, the decision granting the petition for mandamus would be appealable. The allegation of respondents to the effect that the order of July 31, 1945, did not dispose of finally the case is untenable. The same thing would have happened if, instead of appealing, plaintiffs resorted to a mandamus proceeding. The question presented in the appeal, or which would have been presented in the mandamus proceeding, would be exclusively whether or not the municipal court had jurisdiction to try the forcible entry case, and that question was decided finally in the order of July 31, 1945, as would be in a decision granting mandamus for the same purpose.

If petitioner had filed before this Court a petition for mandamus to compel the Court of First Instance of Manila to approve his record on appeal and give due course to his appeal, his action would, undoubtedly, have prospered.

The petitioner decided to follow a different course by presenting squarely, in these certiorari proceedings, the question whether or not the municipal court has jurisdiction to try and decide the forcible entry case. In this question, our conclusion is not favorable to the petitioner.

It appears that the plaintiffs filed the complaint, alleging that on May 7, 1945, they were deprived by force of the possession of the property in question. If this is the fact, the plaintiffs are entitled to respect in their possession. The possessors are entitled to be protected in their possession even against the real owner who ousted them by force. No one has a right to take justice in his own hands.

The main purpose of the summary proceedings in a forcible entry case is to preserve order and peace. In view of the foregoing, we concur in the denial of the petition.

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