

FRANCISCO R. VILLAROMAN, PETITIONER VS. HON. GAVINO S. ABAYA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND THE MANILA SOUTHERN COLLEGES, RESPONDENTS.

G.R. No. L-4833. March 21, 1952

Ponente: JUGO, J.

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JUGO, J.:

This is a petition for mandamus against Hon. Judge Gavino S. Abaya who held sessions in the Court of First Instance of Manila.

In an action for forcible entry and detainer, the petitioner obtained a judgment from the Municipal Court of Manila of the following tenor:

"DECISION

"Judgment is hereby entered, ordering the defendant to vacate the premises described in the complaint; to pay the sum of P6,700.00 for rentals in arrears, and such other rents that will become due from August 1, 1950, up to the time when the said defendant shall have fully vacated the premises in question, at the rate of P1,050.00 a month; and the costs of this action.

"SO ORDERED.

"Manila, Philippines, August 18, 1950.

"(Sgd.) CRISANTO ARAGON

"Judge, Municipal Court, Manila"

On September 18, 1950, the respondent Manila Southern Colleges appealed from said decision to the Court of First Instance of Manila where the case was docketed as No. 12261 of said court, the respondent filing an appeal bond of P25.00, but not a supersedeas bond. It paid the rentals for the months of October and November, 1950, but failed to pay to the plaintiff (petitioner herein) or to deposit in court the rentals for August and September, 1950, and for the subsequent months.

On December 18, 1950, the petitioner filed a motion with the Court of First Instance of Manila for the execution of the judgment of the municipal court for failure to file a supersedeas bond and to pay the rentals that had accrued up to said date. The order of execution was issued by the respondent Judge on February 16, 1951. Pursuant to said order the Sheriff of Manila levied on the personal properties of the respondent Manila Southern Colleges inside the building in question, stationing a guard in same whose services were paid for by the petitioner.

On February 27, 1951, the Manila Southern Colleges filed a motion for reconsideration of the order of execution, alleging that it had already vacated the premises in question and that the order of execution could not cover the collection of rentals due under the judgment of the municipal court appealed from. Opposition was filed by the petitioner to said motion, inviting the attention of Judge , Gavino S. Abaya to the decision of this Court entitled

Flaviano Romero vs. Potenciano Pecson, et al[*] (46 Off. Gaz., No. 10, p. 4882, promulgated on April 13, 1949). The Judge, however, issued an order dated March 15, 1951, to the effect that the execution referred only to the delivery of possession to the petitioner and not to the collection of rentals in arrears.

The petitioner, on April 4, 1951, filed a motion for reconsideration of said order, again inviting the attention of Judge Abaya to the decision in Romero vs. Pecson, supra. Judge Gavino S. Abaya, disregarding the decision of this Court in said case, reiterated his order that the writ, of execution referred only to the possession of the building involved and not to the collection or deposit of the rentals in arrears, stating as ground therefor that:

"A careful perusal of Section 7, Rule 72 of the Rules of Court shows that the judgment rendered in an action of forcible entry or detainer shall be effective with respect to the possession only. The logic and philosophy of the entire Rule 72 (Forcible Entry and Detainer) refer to possession only. And since physical possession is the only issue in forcible entry and detainer cases, the judgment to be rendered therein can dispose of no other issue than possession."

The other reason stated by the respondent Judge is that if the writ of execution referred both to the restitution of the building to the plaintiff and the collection or deposit of unpaid rentals "the appeal which is still pending final disposition on its merits before this Court would just be a moot question and would turn to be purely academic, because of what use would that appeal be if after all the entire judgment appealed from should be executed?"

The respondent Judge further quotes a part of section 8 of Rule 72, as follows:

". . . Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from, but such execution shall not be a bar to the appeal taking its course until final disposition thereof on its merits. . . ."

citing the case of Domingo vs. Flordeliza (37 Phil., 694), and Angel Jose Realty Corporation vs. Felix Galao, et al. (42 Off. Gaz., No. 10, p. 2419; 76 Phil., 201).

Section 7, Rule 72, cited by the respondent Judge in his order does not refer at all to the alleged distinction between judgment for possession and judgment for delinquent rentals, but to the distinction between judgment as to the right of possession and judgment as to the title of ownership. It is elementary that judgment in forcible entry and detainer cases establishes only who has the right of possession but by no means who has the right or title of ownership. Section 7 is irrelevant to the question herein involved.

It was clearly and carefully explained in the decision of this Court in Romero vs. Pecson, supra, that the ruling in the case of Domingo vs. Flordeliza, supra, was based on the provisions of section 88 of Act No. 190, as amended by Act No. 1778, as further amended by section 1 of Act No. 2588, which in its pertinent part reads as follows:

". . . Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, upon proof of the failure of the defendant to make such payments, shall order the execution of the judgment of the court which had original cognizance of the case relative to the possession of the property in litigation: . . ." (Italics ours)

That is the reason why in said Flordeliza case it was held that the writ of execution for failure to pay the current rentals referred only to the possession of the property in litigation. But section 8 of Rule 72 does not limit the execution to the possession of the property in question, so that it refers to the whole judgment, both for possession and collection of the money judgment, rendered by the justice of the peace court or the municipal court. This explanation is even unnecessary here, for it was clearly set forth in the Romero vs. Pecson case, supra, which Judge Abaya cvnd Manila Southern Colleges Abaya is presumed to have understood.

In the case of *Angel Jose Realty Corp. vs. Galao, et al.*, supra, the facts and legal ruling of the court are as follows:

"It appears that the Municipal Court of Manila had already lost jurisdiction over the case due to the perfection of the appeal by the defendants in the ejectment proceedings. But even if the question of jurisdiction is not considered here, it is uncontroverted that when said Municipal Court issued the writ of execution on the 29th of May, 1945, the rents pertaining to the said month of May had already been deposited with the court by the appellants. For that reason the Municipal Court could not legally issue the writ of execution in question, ejecting the appellants from the premises during the month of May 1945. (Section 8, Rule 72, Rules of Court.) Moreover, according to said section 8 of Rule 72 of the Rules of Court, before a writ of execution could be issued, upon motion of the plaintiff, the defendant should have notice thereof—which was not complied with in this case." (p. 2421)

"2. EXECUTION; EJECTMENT; NOTICE TO ADVERSE PARTY AND FAILURE TO PAY OR DEPOSIT RENTS.—Pursuant to section 8 of Rule 72 of the Rules of Court, the writ of execution may only be issued by the court in ejectment cases after notice to the adverse party and if the rents have not been paid or deposited by "him." (Syllabus)

That case has, therefore, nothing to do with the extent of the execution which is the question involved here.

In the order of the court below it is said that "physical possession is the only issue in forcible entry and detainer cases" and that if the execution pending appeal refers both to the possession of the premises and the collection or deposit of the rentals in arrears, the appeal on the merits "would just be a moot question and would turn to be purely academical, because of what use would that appeal be if after all the entire judgment appealed from should be executed?"

In the first place, it is not true that physical possession is the only issue, for in a great many cases the amount of the rent or the value of the use and occupation of the premises is the most important issue.

In the second place, the appeal would not be a moot and "academical" question if the writ of execution includes both the possession and the collection or deposit of rents in arrears, because should the judgment appealed from be reversed in toto by the appellate court, the possession would be restored to the defendant with damages and the rentals would be refunded to him. (Sec. 8, Rule 72; sec. 5, Rule 39.)

In view of the foregoing, the petition for mandamus is granted and the respondent Judge or the one acting in his place is ordered to issue a writ of execution of the entire judgement of the Municipal Court of Manila above referred to, with costs against the respondent Manila Southern Colleges. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

* 83 Phil., 308.

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