

**AMADO DEHESA AND ISABEL IRADIER DEHESA, PETITIONERS, VS.
HON. FELIX V. MACALALAG, JUDGE OF THE COURT OF FIRST
INSTANCE OF AKLAN, ILUMINADA P. RAMPOLA, EUSTAQUIO P.
RAMPOLA AND Q...**

G.R. No. L-29096. February 23, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This is an execution incident in an ejectment case involving a nipa house built on a residential lot with an area of two hundred six square meters located in Banga, Aklan.

The municipal court of Banga in a decision dated August 30, 1966 ordered the spouses, Amado Dehesa and Isabel Iradier (Iradier) Dehesa, to vacate the said nipa house, restore possession of the lot to the spouses, Iluminada P. Rampola and Eustaquio P. Rampola, and pay the sum of P340 as back rentals for the period from April, 1965 to August, 1966 at the rate of twenty pesos a month (Civil Case No. 71).

The Dehesa spouses appealed to the Court of First Instance (Civil Case No. 1587). They posted a supersedeas bond in the sum of P400.

On October 5, 1967 the Rampola spouses filed a motion in the Court of First Instance for the execution of the judgment of the municipal court because the Dehesa spouses had not deposited in court the current rentals at the rate of twenty pesos a month starting from September, 1966.

The Dehesa spouses opposed the motion. They alleged that the inferior court did not fix in its judgment the monthly rental to be paid during their continued stay in the disputed premises. They also filed a motion to dismiss the case on the ground of lack of appellate jurisdiction because they had raised the issue of ownership in the inferior court.

Defendant Isabel Iradier Dehesa claimed that she and seven other persons inherited the lot from her grandfather, Paulino Rampola. (Plaintiff Iluminada P. Rampola claimed to have purchased the said lot at a tax sale which was held on July 21, 1937 after the owner of the lot, Paulino Rampola, had failed to pay the realty taxes due thereon.)

The lower court in its order of November 3, 1967 granted the motion for execution of the plaintiffs (now private respondents) and denied the motion to dismiss of the defendants, now the petitioners. After the denial of the petitioners' motion for reconsideration, they filed on June 6, 1968 the instant petition for certiorari, prohibition and mandamus, wherein they assailed the order of execution and the denial of their motion to dismiss.

This Court issued on August 21, 1968 a writ of preliminary injunction restraining the execution of the municipal court's judgment.

We find the petition to be devoid of merit. To stay execution of the judgment while the appeal is pending in the Court of First Instance, it was incumbent upon the petitioners to deposit in court the monthly rental of twenty

pesos, the amount which was found by the municipal court to be due under the lease contract.

It is true that the dispositive part of the municipal court's judgment did not specifically order the petitioners to pay the monthly rentals from September, 1966 until they vacate the premises. The payment of the current and future rentals should have been indicated in the judgment. There is usually such a disposition in the inferior court's judgment in favor of the plaintiff in an unlawful detainer case.

However, that omission did not preclude the Court of First Instance from ordering the execution of the municipal court's judgment for failure of the defendants to deposit in court the current monthly rentals. The fact that they asked for a stay of execution pending appeal by posting a supersedeas bond is a commitment on their part to deposit the current rentals which, as already noted, the municipal court found to be twenty pesos a month under the lease contract breached by the defendants.

Section 8, Rule 70 of the Rules of Court provides that the execution of the municipal court's judgment is stayed by (1) perfecting an appeal and filing of a supersedeas bond and (2) depositing with the Court of First Instance during the pendency of the appeal "the amount of rent due from time to time under the contract, if any, as found by the judgment" of the municipal court. The deposit is necessary to prevent further damage to the plaintiff (*De Laureano vs. Adil*, L-43345, July 29, 1976, 72 SCRA 148, 154).

In case the defendant fails to make the monthly deposit of the current rentals, it is generally mandatory for the Court of First Instance to order execution of the appealed judgment. Its duty to do so is ministerial and imperative (*Acibo vs. Macadaeg*, 120 Phil. 444, 448; 3 *Moran's Comments on the Rules of Court*, 1970 Ed., p. 334).

With respect to the denial of defendants' motion to dismiss, no error was committed by the trial court. In ejectment cases, the defendant may not divest the inferior court of its jurisdiction by merely claiming ownership of the property involved (*Castro vs. De los Reyes*, 109 Phil. 64, 68).

Defendants' claim of ownership may be ventilated in a separate action. The unlawful detainer action involves only possession de facto.

The municipal court found that the defendants were lessees of the disputed premises. As lessees, they are not permitted to deny the title of the plaintiffs at the time of the commencement of the relation of landlord and tenant between them (Sec. 3[b], Rule 131, Rules of Court; Art. 1436, Civil Code).

WHEREFORE, the petition is dismissed and the injunction is dissolved. Costs against the petitioners.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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