

TORIBIO P. MUNCAL, PETITIONER AND APPELLANT, VS. HON. ALFIN S. VICENCIO, JUDGE OF THE CITY COURT OF CABANATUAN CITY, AND FELICIANA VIZCARRA, RESPONDENTS AND APPELLEES.

G.R. No. L-28333. May 31, 1974

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

Appeal in forma pauperis from the decision of the Court of First Instance of Nueva Ecija in its Civil Case No. 4702, dismissing the petition for certiorari "for lack of merit."

On July 29, 1963 Feliciano Vizcarra filed a complaint for ejectment in the City Court of Cabanatuan City against Toribio P. Muncal. After due hearing the court rendered judgment on April 22, 1964, ordering the defendant to vacate the premises in question. The defendant appealed to the Court of First Instance of Nueva Ecija, where the case was docketed as Civil Case No. 4405. On August 31, 1965 the Presiding Judge, Hon. Serafin R. Cuevas, *motu proprio* issued the following order:

"It appearing that neither of the parties had taken any step leading to the early termination of this case since July 20, 1964, and considering that this case has been pending in the docket of this Court for more than a year;

"Wherefore for failure to prosecute, this case is hereby dismissed without prejudice and without costs."

Almost a year thereafter, or on July 7, 1966 the plaintiff filed a motion to remand the record of the case to the City Court of Cabanatuan City for execution. In his order dated August 18, 1966, Judge Cuevas rejected the opposition of the defendant and granted the motion, thus:

"Defendant contends that what was dismissed by the said order was the case itself and not the appeal of the defendant because of the inclusion of the phrase 'without prejudice'. This contention is erroneous and no jurisprudence could be shown that will support the same. To sustain the view advanced by the defendant would be to put a price for his inaction and will be tantamount to rewarding him for his failure to prosecute his appeal. This could not have been the intent of the law much less of the order above referred to Section 9, Rule 40 of the Rules of Court which is pertinent hereto in part provides as follows:

'x x x If the appeal is withdrawn or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution.

"Failure to prosecute under this section refers to failure to prosecute the appeal and the judgment so revived will then be remanded to the justice of the peace or municipal court for execution. (Comment on the Rules of Court by Martin, Vol. 2, p. 188, 1964 Ed.)

"WHEREFORE, finding the motion of the plaintiff to be in order, the same is hereby granted. Let the records of this case be remanded to the court of origin for execution."

Accordingly, the record of the case was remanded to the City Court of Cabanatuan City, which issued a writ of execution on November 7, 1966. The defendant moved to quash the writ contending that it had no legal basis. It

was his theory that there was no decision of the city court to be executed since it was the case itself and not the appeal that was allegedly dismissed in the order of August 31, 1965; and that the order dated August 18, 1966, which allegedly tried to explain the import of the order of dismissal, had no legal effect because it was issued after said order of dismissal had become final and executory. The city court, in its order dated January 12, 1967, denied the defendant's motion, holding that it was "not in a position to pass upon the Order of the Court of First Instance of Nueva Ecija, dated August 18, 1966," which remanded the case for execution.

Unable to obtain a reconsideration of the order, the defendant filed a petition for certiorari in the Court of First Instance of Nueva Ecija, seeking to annul the writ of execution issued by the city court. After the petitioner and the private respondent submitted their respective memoranda the court a quo rendered its decision dated August 31, 1967, dismissing the petition and dissolving the writ of preliminary injunction it had previously issued. Thereupon the petitioner interposed the instant appeal.

The appeal cannot be sustained. The city court did not act in excess of its jurisdiction or with grave abuse of discretion in issuing the writ of execution in question. As aptly slated by the court a quo:

"x x x, the legal remedy being resorted to by the herein petitioner is already too late as he has slept on his right; because, if he believes that it was the case itself that was dismissed by the Court of First Instance, the Order of the said Court of August 18, 1966, which apparently sought to correct its Order of August 31, 1965, thus remanding the case to the court of origin for execution of judgment, should have been the one questioned and stopped by the petitioner by elevating this case on certiorari to the appellate court for a review of the question involved. At this stage of the proceedings, the respondent judge of the City Court of Cabanatuan City, upon receipt of the case being remanded to him by a higher court, is left no other alternative but to follow and execute the order of the said Court. And as contended by the petitioner the Court of First Instance of Nueva Ecija acted illegally in correcting itself by clarifying its Order of August 31, 1965, stating that it was the appeal that was dismissed in Civil Case No. 4405, said Order having issued after the Order of August 31, 1965 had already become final and executory, with more reason, right then and there, the said petitioner should have exerted efforts to stop what he believes was an illegal order of the Court of First Instance remanding the case to the court of origin."

Indeed, the City Court of Cabanatuan City had no jurisdiction to review the order of the Court of First Instance of Nueva Ecija, dated August 18, 1966, remanding the case for execution. Its function was a ministerial one, that of complying with said order. To allow the inferior court to pass upon the order of the higher court would result in confusion and delay the administration of justice.

WHEREFORE, the decision of the Court of First Instance of Nueva Ecija dated August 31, 1967 is hereby affirmed, without costs.

Castro, Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

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