

ESTEBAN G. LAPID, RECURRENTE Y APELADO, CONTRA EL HON. GUILLERMO CABRERA, ETC. Y OTROS, RECURRIDAS Y APELANTES.*G. R. No. L-5640. May 29, 1953*

Ponente: PABLO, J.

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Tratase de una apelacion elevada directamente ante este Tribunal contra una decision del Juzgado de Primera Instancia de Manila en un asunto de certiorari, declarando nulas la decision del 30 de mayo de 1950 y la orden de ejecucion de 8 de junio del mismo año, dictadas por el Juzgado Municipal de Manila.

La decision apelada dice en parte:

"On May 23, 1950, Ceferina Lawan filed a complaint dated May 15, 1950, against Esteban Lapid and Luciano Silla, styled "DETENTACION ILLEGAL Y DAÑOS Y PERJUICIOS" with the following material allegations: That since March 11, 1947, the plaintiff Ceferina Lawan became the owner by purchase of various adjoining parcels of land described in transfer certificates of title Nos. 6315, 6316 and 6313 of the City of Manila, situated in the District of Tondo, Manila; that the defendants Esteban Lapid and Luciano Silla jointly had been occupying a portion of said parcels of land with an area of about 59.45 square meters, they having constructed thereon a building designated with No. 2627 Rizal Avenue, without their having paid a single centavo to the plaintiff for the use and occupation of the said portion of her land, and the reasonable rent for the use and occupation thereof being- F178.3F5 a month at the rate of P8 per square meter; that the plaintiff had been requiring the said defendants to vacate the land in question, the last demand therefor having been made on April 26, 1950 but, in spite of which, the defendants have refused to vacate the said land and to pay the reasonable rental for the use and occupation thereof; that summons were issued to the said defendants and the sheriff in his return dated May 26, 1950, certified that on said date he served a copy of the summons and of the complaint attached thereto "upon Esteban Lapid and Luciano Silla, respectively, with residence at No. 2627 Kizal Avenue, Manila, through Luciano Silla personally"; that on May 30, 1950, Judge Guillermo Cabrera of the Municipal Court rendered a decision against both defendants (against Esteban Lapid by default), ordering them and all other persons possessing in their behalf and representation to vacate the premises by removing therefrom their building designated as No. 2627, to restore the plaintiff to the possession of the said lot, and to pay the plaintiff the sum of P178.35 a month as reasonable compensation for the use and occupation of the lot in question from March 11, 1947, until the same shall have been finally vacated and surrendered to the plaintiff, with costs against said defendants and in favor of the plaintiff; that on June 6, 1950, the defendant Esteban Lapid, through counsel, filed a motion for a new trial, which was objected to in writing by the plaintiff, through counsel, praying in her written opposition, filed Juno 7, 1950, that defendant Esteban I>apid's motion for a new trial be denied and that immediate execution of the judgment be issued; that the defendant Esteban Lapid, through counsel, filed a written opposition dated June 8, 1950, to plaintiff's petition for execution; that on June 8, 1950; defendant Lapid's motion for a new trial was denied and plaintiff's petition for immediate execution of the decision was granted; and that on June 9, 1950, the respondent Judge issued ejectment execution, ordering the respondent Sheriff of Manila to execute the dispositive part of the decision aforementioned.

* * * * *

"There is no question that the present petition for certiorari is the only and proper remedy now available to the herein petitioner Esteban Lapid, as defendant in civil case No, 11605 of the Municipal Court of the City of Manila, because the decision rendered against him in said case was by default and, therefore, unappealable.

* * * * *

"The herein petitioner, Esteban G. Lapid, also contends that the respondent Judge had not acquired jurisdiction over his person, in view of the fact that he was not properly summoned, for the reason that he was residing at 2558 Rizal Avenue Extension, Manila, and not at 2627 Rizal Avenue Extension, as alleged in Ceferina Lawan's complaint.

"The respondent counsel contends that when petitioner as defendant in the civil case before the Municipal Court of the City of Manila, filed a motion for a new trial on June 6, 1950, he had appeared in the case, and that such, voluntary appearance was equivalent to service of summons upon him. The contention is tenable but under the facts of this case, it is evident that before Esteban Lapid appeared as defendant by his motion for a new trial on June 6, 1950, and before that date the Court had not acquired jurisdiction over his person, if he had not been properly summoned."

La mocion de nueva vista de que habla la decision es aquella que presento Esteban Lapid en el Juzgado Municipal de Manila pidiendo, en consonancia con la Regla 38, la revocacion de la sentencia, invocando fraude, accidente, error o excusable negligencia. Como esta peticion habia sido denegada, Lapid debio haber apelado contra la orden denegatoria para la determinacion definitiva si estaba justificada o no la orden de rebeldia contra el. Si el juzgado de apelacion revocara la orden de denegacion por estar bien fundada la mocion presentada de acuerdo con la Regla 38, entonces el demandado Lapid podria presentar su contestacion y pruebas en su defensa. El recurrente tenia entonces un remedio facil y expedito en el curso ordinario de los procedimientos, que era la apelacion; apelacion contra la orden denegatoria de su mocion presentada en virtud de la Regla 38, no contra la sentencia. Por no haber apelado Esteban Lapid, quedo firme la sentencia. Estaba bien expedida la orden de ejecucion. Por tanto, el remedio de certiorari empleado por el recurrence es inapropiado.

Se revoca la decision apelada con costas contra el recurrente.

Feria, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo y Labrador, MM., estan conformes.

Paras, Pres., conforme con el resultado.

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