

VICTOR DE LA CRUZ, PETITIONER, VS. HONORABLE AMBROSIO T. DOLLETE, JUDGE OF THE COURT OF FIRST INSTANCE OF BATAAN, AND LEONARDO QUESADA, ET AL., RESPONDENTS.*G.R. No. L-8183. April 15, 1955*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari with preliminary injunction wherein petitioner seeks to nullify the order of execution issued by respondent judge on July 21, 1954 and, in the meantime, to enjoin him from enforcing said order. The petition for preliminary injunction was granted upon petitioner's filing a bond in the amount of P1,000.

On February 15, 1954, the Justice of the Peace Court of Balanga, Bataan rendered a decision ordering Victor de la Cruz, petitioner herein, to vacate and relinquish the fishpond in litigation and to deliver the same to Leonard Quesada, et al., respondents herein, and, among other things, to pay the latter the sum of P2,750 per annum as rental from January 10, 1954 up to the time the fishpond shall have been delivered to said respondents. From this decision petitioner appealed to the Court of First Instance of Bataan and deposited with the clerk of court the sum of P912 by way of supersedeas bond to stay execution pending appeal. On June 14, 1954, respondent filed a motion for immediate execution of the decision on the ground that petitioner failed to deposit the rentals that had accrued on the basis of P229.17 per month, and on June 18, 1954 petitioner filed a written opposition contending that the rental fixed by the justice of the peace court is P2,750 per annum and the court cannot modify that rate by dividing it into a monthly rental of P229.17 as claimed by respondents. The court overruled this opposition and granted the motion in an order issued on July 21, 1954. His motion for reconsideration having been denied, petitioner interposed the present petition for certiorari.

The rule regarding immediate execution of a judgment in a detainer case is governed by section 8, Rule 72, of the Rules of Court. Said section in part provides that "If the judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution * * * pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment." From this rule it appears clear that the immediate execution of the judgment can only be demanded if the defendant fails to pay "on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment." This rule contemplates payment of a monthly rental the failure of which would give rise to execution, and not the payment of rental in any other manner. In the present case, the rental fixed by the justice of the peace court is not monthly but yearly, and this is understandable considering the fact that the property subject of lease is a fishpond. The court can take judicial notice that fishpond is operated on a yearly basis because by its very nature the harvest accrues only once a year with rare exceptions and generally the rental is computed on a yearly basis. It is for this reason that the justice of

the peace court fixed a rental of P2,750 a year as the reasonable value of the use and occupation of the fishpond in litigation. Such being the case, it is our opinion that section 8, Rule 72 cannot be invoked as basis for the execution of the judgment of the justice of the peace court. As it now appears the rental fixed by the court is not yet due and, therefore, the order of execution issued by the respondent judge is premature.

It is true that respondents plaintiffs may desire to protect their interest by preventing any damage that may be caused to them because of their failure to possess the property during the pendency of the appeal taken by petitioner in the detainer case, but while this desire is legitimate and is not without justification, we believe that their remedy is not what they had availed of but elsewhere. Our remedial law affords more than one way by which this possible damage or injury to them can be averted. But, as this Court has aptly said, "In the absence of a contract, the amount of the periodical deposits to be made by an appellant under section 88, must be determined in the judgment of the justice of the peace, who has original jurisdiction of the case, and the Court of First Instance cannot, in advance of the trial upon its merits, virtually modify that judgment by adding to it a provision fixing the amount of such deposits." (*Felipe vs. Teodoro*, 46 Phil., 409; See also *Perez vs. Revilla*, 46 Phil., 56.) (*Italics supplied.*)

Wherefore, the petition is granted, with costs against respondents-plaintiffs.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Concepcion, and Reyes, J. B. L., JJ., concur.

Petition granted.

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