

DOMINGO ENRILE AS ADMINISTRATOR OF THE ESTATE OF MARIA DOLORES REYES DECEASED, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF BULACAN (PRESIDED OVER BY THE JUDGES P. M. MOIR AND...

G.R. No. 11030. March 30, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

This is a motion to dismiss the present action based upon the provisions of Act No. 2588.

The action is one for a writ of mandamus directed to the Court of First Instance of Bulacan requiring it to dismiss an appeal taken from a judgment rendered by a justice of the peace in an action of forcible entry and detainer entitled Domingo Enrile, as administrator of the estate of Maria Dolores Reyes, deceased, vs. Felipe Bernabe and others.

The complaint alleges that Domingo Enrile, as administrator, began an action for unlawful entry and detainer in a justice's court of the Province of Bulacan; that judgment was obtained for the possession of the lands described in the complaint and for P16.33, the reasonable value of the use and occupation of said lands; that the defendants appealed to the Court of First Instance, all of them save one giving the bond required by law but none of them depositing in the justice's court the amount of the judgment obtained against them as required by section 88 of the Code of Civil Procedure; that on the arrival of the case in the Court of First Instance of Bulacan the appellee made a motion to dismiss the appeal on the ground that it had not been perfected in accordance with law, the appellants having failed to make the deposit in the justice's court required by the section of the Code of Civil Procedure referred to; that the Court of First Instance denied the motion, giving the appellants an opportunity to make such deposit in the Court of First Instance; that thereafter the appellee made a motion to reconsider the decision and, at the same time, offered another motion asking for a dismissal of the appeal on the ground that the appellants had not paid into the Court of First Instance the rent of the land involved in the suit as required by the section of the Code of Civil Procedure above mentioned ; that the Court of First Instance denied the motion for reconsideration and also the motion to dismiss the appeal, at the same time ordering the appellants to deposit in that court the rent of the land in question for the year 1915. The appeal of Ciriaca Jimenez was dismissed because she had not given the bond required by law.

During the pendency of this action the Philippine Legislature passed Act No. 2588 which amends section 88 of the Code of Civil Procedure by providing that, instead of dismissing the appeal on failure of the appellant from a judgment in an action of forcible entry and detainer to make the deposit in the justice's court required by that section as a condition precedent to the allowance of his appeal, the court should, on motion and proof of the facts required by the section, order the execution of the judgment of the justice's court, but should continue with the appeal and decide the questions properly presented thereby.

The defendants in this action moved to dismiss it on the ground that Act No. 2588 should be held to be applicable

to the pending action and that the trial court was correct in its refusal to dismiss the appeal and that mandamus will not lie to compel it to act otherwise.

We are of the opinion that Act No. 2588 is applicable to the present case for the reason that it affects procedure rather than the substantive rights of the parties and tends to remedy a condition arising in appeals from judgments of justice's courts rendered in actions of forcible entry and detainer which, it is well known, has produced considerable hardship to appellants. Whether the motion to dismiss is the correct proceeding or not is immaterial as the action has been submitted to us on the merits and, in dealing with it thus, Act No. 2588 may be applied.

The action is dismissed, without costs. So ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

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