

**JOSE M. GARCIA, PETITIONER, VS. THE HON. MANUEL M. MUÑOZ,  
JUDGE OF THE COURT OF FIRST INSTANCE OF DAGUPAN CITY, MRS.  
ROMAN PEÑA, ALIAS TINAY AND LEONIDES PEÑA, RESPONDENTS.**

*G. R. No. 11617. April 30, 1958*

Ponente: LABRADOR, J.

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**LABRADOR, J.:**

This is an original action filed in this Court to compel the Court of First Instance of Dagupan City, Hon. E. Muñoz presiding, to immediately order the execution of a judgment rendered in Civil Case No. 73 of the Justice of the Peace Court of Bayambang, Pangasinan, entitled Jose M. Garcia vs. Mrs. Roman Peña, alias Tinay and Leonides Peña, defendants, for illegal detainer pending in the Court of First Instance on appeal. The record discloses that the above Civil Case No. 73 (Justice of the Peace Court of Bayambang, Pangasinan) was instituted by Jose M. Garcia against the defendants therein to eject the latter from a certain parcel of land situated in the poblacion of Bayambang, Pangasinan and to collect from them supposedly unpaid rentals amounting to P170 and a monthly rental of P5. From the decision rendered by the Justice of the Peace Court, it appears that the plaintiff testified that defendants occupied the land in question, upon request presented to Atty. Garcia, for a nominal rent of P5 a month, and that defendants had been paying rentals regularly until April, 1952 when they became irregular in the payment of said rentals, such that on the date of the filing of the action they were in arrears in the amount of P170. The plaintiff also declared that the land is declared for tax purposes in the name of his wife. The defendant denied that they ever rented the premises from the plaintiff and alleged that they had constructed their house on the land 10 years before, without having been molested by the plaintiff, or paying rents to him until the plaintiff brought the action. Defendant also presented a representative of the Bureau of Lands who testified that the land, subject of the action, is covered by a sales application in the name of one Roman Peña, husband of defendant; that opposition to this application was filed by plaintiff Garcia; that the land applied for by Peña is Lot 88, which is adjacent to Lot 89, which is in the name of plaintiff Garcia. The justice of the peace court believed the testimony of the plaintiff and his witnesses and rendered judgment in accordance with plaintiff's petition. Against this decision the defendants appealed to the Court of First Instance.

While the case was pending in the Court of First Instance, as the defendant did not file a supersedeas bond or pay the monthly rental of P5 ordained in the judgment, the plaintiff moved for the execution of the judgment of the justice of the peace court. The court thereupon issued an order authorizing the sheriff to place the plaintiff in possession of the land. This the sheriff carried out by notifying the defendants of the order of the court, but allowing them 15 days within which to remove their house from the land, subject of the order of execution.

The above writ of possession is dated November 2, 1956. One day thereafter, that is, on November 3, 1956, defendant moved to reconsider the order of the judge, dated 19th of October 1956, for the execution of the judgment of the justice of the peace court, alleging that the action that had been instituted is in fact not an action for illegal detainer but one involving ownership, or the right to the possession of the land. It was argued in support of this claim that the land now in question was formerly a part of a former United States military reservation

known as Camp Gregg, which was turned over to the Philippine Government after the independence of the Philippines was granted, and that the land was thereafter placed in the possession of the Bureau of Lands for disposition and administration; that the defendants are in actual possession of the portion now subject of the action by reason of a sales application No. V-2759 filed by them; and that the defendants would be willing to deposit the sum of P30 and P5 monthly to respondent for such damages as plaintiffs may be able to recover.

Upon hearing this motion for reconsideration, the respondent judge on November 16, 1956 set aside the order of execution, for the reason, his order states, that the defendants had raised the question of ownership of the land subject of the litigation and since they have filed a supersedeas bond and are willing to pay a certain amount pending the appeal.

The question squarely presented before us is whether the respondent judge has the right or power to set aside its previous order for the execution of the judgment of the justice of the peace court, after a finding by it that the question raised in the action before it was one of ownership. Petitioner's action is based on the provisions of Rule 72, section 8, and upon a line of decisions rendered by us to the effect that it is the ministerial duty of a judge of the Court of First Instance to order the return of the possession of the land subject of an action for forcible entry or unlawful detainer, if defendant fails to file a supersedeas bond and pay from time to time the amount of rents that the justice of the peace court had found to due in its judgment.

From the records of the case there are grounds to believe that the judge below must have found that the real question presented in the case was one of ownership, as he was satisfied that the land that defendants were occupying is a portion of a public land for which they had applied for sale through the Bureau of Lands, under which the area had been placed for administration and disposition, and that the case did not involve the failure of a tenant to pay the rents as the justice of the peace court had found. The action of unlawful detainer was evidently adopted or resorted to in order to deprive the defendants, who had been on the land for some time, of the immediate possession thereof. The respondent judge, having found that the defendants are evidently possessors and sales applicants in good faith, rightfully held that the action was one involving the right of ownership or possession and not one for unlawful detainer. The lower court was, therefore, fully justified in setting aside the order of execution under its general power to amend its order to make them conform to law and justice (Rule 124, section 5 [g]).

We, therefore, find that the petition for the issuance of the writ of execution should be, as it hereby is, denied, with costs against petitioner.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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