

APOLONIO PANER, PETITIONER AND APPELLANT, VS. GAVINO SEPULVEDA, JUDGE OF THE MUNICIPAL COURT OF DAVAO CITY, AND GUILLERMO T. GARCIA, RESPONDENTS AND APELLEES.

G.R. No. 11638. April 30, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Davao dismissing the appellant's petition for mandamus (civil No. 103).

On 23 June 1956, Guillermo T. Garcia brought in the Municipal Court of the City of Davao a detainer action against Johnny Anthony and Crisostomo Paner to recover the possession of a house (civil No. 2253). On 6 July Apolonio Paner filed a motion praying that he be allowed to intervene, attaching thereto his answer in intervention.

On 19 July the Municipal Court denied his motion. Motion for reconsideration filed by him was denied on 27 July. On 31 July Apolonio Paner filed in the Court of First Instance of Davao a petition for a writ to compel the Municipal Court to allow him to intervene in the detainer case. On 14 August respondent Garcia and on 17 August respondent Judge of the Municipal Court filed their answers. After hearing and after the petitioner had filed his memorandum, on 26 September the Court rendered judgment dismissing the petition for mandamus. The petitioner filed a motion for reconsideration which was denied on 6 October. The petitioner has appealed.

It appears that after judgment had become final and executory in civil case No. 1213 of the Court of First Instance of Davao, Guillermo T. Garcia, plaintiff vs. Benita B. Vda. de Mercado and Apolonio Paner et al., defendants, the Court issued a writ of execution; that pursuant thereto, the Sheriff of Davao levied upon execution and on 26 April sold at public auction to Guillermo T. Garcia all interests, rights and title of the appellant in and to a house located at Tiongko Avenue, Davao City, erected on a parcel of land owned by Vicenta M. Vda. de Tiongko, subject to appellant's right of redemption within one year from the date of sale; that the appellant having failed to redeem the house within the statutory period, the Sheriff of Davao executed and issued a certificate of absolute sale thereof in favor of Guillermo T. Garcia, the purchaser of the house at public auction; that on 23 June 1956, the latter brought in the Municipal Court of the City of Davao a detainer action against Johnny Anthony and Crisostomo Paner to recover possession of the house (civil No. 2253); that the appellant Apolonio Paner moved to intervene in the detainer case; and that in the appellant's answer in intervention attached to his motion for intervention, he impugns the validity of the execution sale for lack of notice to him and failure to comply with the rules of court, and alleges that he is still in possession of the house which is sought to be recovered by the purchaser at public auction Guillermo T. Garcia in the detainer case.

If the appellant Apolonio Paner be allowed to intervene in the detainer action by which the plaintiff, the purchaser of the house at public auction, seeks to recover it from the defendants Johnny Anthony and Crisostomo Paner, the appellant could raise questions tending to defeat the plaintiff's title to the house over which the Municipal Court

has no jurisdiction. In view thereof, the Municipal Court was correct in not allowing the appellant to intervene in the detainer case.

The judgment appealed from is affirmed, with costs against the appellant.

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

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