

**LEONARDO AZARCON, MANUEL AZARCON AND ESTEBAN ABOBO,
PETITIONERS, VS. VICTOR EUSEBIO, RESPONDENT.***G.R. No. 11977. April 29, 1959*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of Appeals, Fourth Division, in CA-G. R. No. 15444-R, promulgated September 5, 1956, finding Leonardo Azarcon, Manuel Azarcon and Esteban Abobo guilty of contempt of court, ordering each of them to pay a fine of P100, to remove certain improvements that they have constructed on the land, etc.

The record discloses that respondent Victor Eusebio and petitioners herein had a dispute over the possession of a certain parcel of public land in the year 1954. Victor Eusebio had filed a lease application, No. V-79, for a parcel of land known as lot No. 3807, containing an area of about 349 hectares. A portion thereof was occupied by petitioners herein, Leonardo L. Azarcon and his companions, under a homestead application. The conflict between the lessee and the homesteaders was ordered to be investigated on May 25, 1955 by the Director of Lands and again on August 3, 1955 by the Secretary, of Agriculture and Natural Resources.

Before the dispute could be settled and on April 28, 1954, Victor Eusebio filed a complaint in the Court of First Instance of Nueva Ecija, alleging that he had acquired a big parcel of land, 349 hectares in area, by lease from the Bureau of Lands (lease application No. V-79); that while he was in possession thereof defendants occupied a portion, known as lot No. 2807, containing an area of six hectares more or less. He, therefore, prayed that defendants be ordered to vacate the six hectares occupied by them and pay damages. Defendant Leonardo Azarcon answered the complaint alleging that he is in actual possession of a portion of 24 hectares since 1941 by virtue of a homestead application, No. V-42995; that the lease application of plaintiff is subsequent to said homestead application of Leonardo Azarcon; that Azarcon had occupied the land since 1941 with interruptions during the war and again in 1950 up to the time of the filing of the action. He, therefore, prayed that the action be dismissed. The answer was filed on June 2, 1954 and on motion of plaintiffs dated March 15, 1955, the defendants were declared in default. A motion to set aside the default was denied, and a judgment by default was entered by the court on April 26, 1955. It ordered defendants to restore possession of the land to plaintiff. Having failed to obtain a reconsideration of the above decision, defendants appealed to the Court of Appeals.

While the case was pending in the Court of Appeals, a writ for the execution of the judgment of the lower court was issued on October 3, 1955. On October 8, 1955, defendants moved and the court on October 21 ordered that the said writ of execution be stayed upon defendants' depositing of a supersedeas bond of P1,000. The writ of execution was actually served on the defendants on October 7, 1955. Various petitions were submitted by the parties, and among them was that of defendants-appellants asking for the lifting of the writ of execution. This petition, dated October 14, 1955, was granted on November 1, 1955, and the court again fixed the supersedeas bond to stay execution in the amount of P1,000 to be filed with and approved by the Court of First Instance of Nueva Ecija as to its sufficiency. In the same order of November 7, the Court of Appeals denied a petition of the

plaintiff-appellee to file a counter-supersedeas bond as well as plaintiff appellee's motion for injunction. In the meanwhile the defendants-appellants had presented on November 21, 1955 the supersedeas bond required for the approval of the Court of First Instance of Nueva Ecija and the said bond was filed and approved on November 21, 1955. This fact was certified to by the clerk of the Court of First Instance of Nueva Ecija on November 14, 1955.

On December 2, 1955 the Court of Appeals on motion of plaintiff, reconsidered its order or resolution of November 7, 1955 authorizing the stay of execution upon the filing of the bond by the defendants-appellants, on the ground that the defendants-appellants have not filed any supersedeas bond as required. On January 19, 1956, the Court of Appeals denied a petition of defendants-appellants to reconsider said order of December 2, 1955 on the ground that the writ of execution issued on October 3, 1955 had already been executed.

The following appear to be clear: (a) the writ of execution dated October 3, 1955 was furnished the defendants on October 7, 1955; (b) said order of execution was set aside in an order of October 21, 1955, which order authorized the defendants-appellants to file a supersedeas bond in the amount of P1,000, the same to be approved by the Court of First Instance of Nueva Ecija; (c) said supersedeas bond was filed with the Court of First Instance on November 21, 1955, but the certificate showing such filing of the bond was issued by the clerk of the Court of First Instance of Nueva Ecija only on December 14, 1955; and the Court of Appeals, not having been notified of the fact that the defendants have already secured the approval of their supersedeas bond, set aside the order to stay execution on December 2, 1955.

The evidence shows that in spite of the receipt by the defendants of the notice of the writ of execution of October 3, 1955, which writ of execution commanded defendants "to forthwith remove from said premises and that plaintiff have restitution of the same," defendants-appellants nevertheless entered the land to gather palay which was then pending harvest. We gather further from the record that the rice found on the disputed land at the time of the service of the order of execution had been planted by defendants-appellants, who appear to have been in possession of the land from 1951. While the court order of October 3, 1955 ordered the defendant-appellant to move out from the premises, it did not prohibit them from gathering the crop then existing thereon. Under the law a person who is in possession and who is being ordered to leave a parcel of land while products thereon are pending harvest, has the right to a part of the net harvest, as expressly provided by Article 545 of the Civil Code.

"Art. 545. If at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession."

As the order of execution did not expressly prohibit the defendants-appellants from gathering the pending fruits, which fruits were the result of their possession and cultivation of the land, it cannot be said that the defendants appellants committed an act which is a clear violation of the courts' order. Besides, the defendants-appellants had presented, after receipt of the order of execution, a motion to set aside the said order of execution, and this motion to stay execution was granted. Defendants furthermore presented a bond in accordance with the order of the court and had it approved by the Court of First Instance. It was perhaps in expectation of this resolution of the court setting aside the order of execution that defendants-appellants may have felt justified in entering the land and harvesting the fruits existing thereon.

Again the order of the court setting aside its order to stay execution was issued in the belief that the defendants-appellants had not presented their bond to stay execution (which they had actually presented before the Court of First Instance of Nueva Ecija and which said court actually approved). Under the circumstances above stated, we are not ready to conclude that the defendants-appellants can be held to have committed a clear

defiance of the order of the court. Their act in harvesting the pending fruits was not only justified by law but was not expressly prohibited by the court's order, and was even ratified when the court ordered the suspension of the execution. There was, therefore, no open, clear and contumacious refusal to obey a definite order of the court such as would constitute contempt. Furthermore, a person who has been ordered to leave certain premises is ordinarily not prohibited from taking with him his own effects and possession, unless there is an express prohibition to this effect. No such prohibition was contained in the order for the defendants to leave the land. There may have been a technical violation of an order not to enter the premises, but not of one prohibiting them from removing anything therefrom. Such technical violation of the order cannot be considered as one amounting to a defiance of the court's authority, punishable as contempt.

For the foregoing considerations, the order appealed from should be, as it is hereby, set aside, and the defendants-appellants acquitted of the charge against them. Without costs.

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

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