

**MAXIMO VERGARA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
GETULIO BRUCELA, ETC. ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 12961. February 23, 1961*

Ponente: CONCEPCION, J.

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The Court of First Instance of Camarines Sur, having on motion of the defendants, dismissed the amended complaint herein, upon the ground of failure to state a cause of action, plaintiffs appealed to the Court of Appeals, which, subsequently, certified the records to this Court, pursuant to the provisions of section 17(6) of Republic Act No. 296.

Plaintiffs herein, namely, Maximo Vergara, Gavino Aguilar and Mamerto Portezo, were seemingly, the defendants in Civil Cases Nos. 1333, 1341 and 1345 of the Court of First instance of Camarines Sur, entitled "Garza vs. Vergara". The plaintiffs therein were, apparently, Segismundo, Jose and Vicente, all surnamed Garza. The nature and status of said cases are not specifically stated in the records before us, but, it may be gleaned therefrom that judgment against the defendants therein (plaintiffs in the present case) had been rendered for the restitution of a given land to the plaintiffs therein (defendants herein). On motion of the latter, said court issued on September 21, 1956, an order directing the Sheriff to demolish the houses of defendants therein—plaintiffs herein—in said land. Forthwith, the latter sought a reconsideration of said order, which was denied on September 29, 1956. Hence, said houses were, on October 13, 1956, demolished by the Sheriff and his agents.

Soon thereafter, or on October 16, 1956, plaintiffs herein commenced the present action against Getulio Brucela and Justo Imperial, deputy provincial sheriff and ex-officio provincial sheriff, respectively, of Camarines Sur, to recover damages and attorney's fees, as well as expenses of litigation, upon the ground that said officers had destroyed the aforementioned houses before the order for the demolition thereof had become final. Subsequently, the complaint was amended to include as party defendants the plaintiffs in said Civil Cases Nos. 1333, 1341 and 1345, or Segismundo, Jose and Vicente Garza. The defendants moved for the dismissal of said amended complaint upon the ground that the demolition of plaintiff's houses had been made in obedience to an order of the court; that the same is expressly authorized by the Rules of Court to order the execution of a judgment or order even before the expiration of the time to appeal therefrom (Section 13, Rule 39, Rules of Court) and that plaintiffs do not claim or allege either that the court had erred in issuing the order aforementioned or that they had attempted to appeal therefrom. Defendants objected to this motion, asserting that the same is based upon grounds requiring the introduction of evidence. This objection was sustained, but, on motion for reconsideration filed by the defendants, the lower court reversed its stand, by an order dated March 20, 1957, from which plaintiffs have appealed, upon refusal of the lower court to reconsider it.

Plaintiffs maintain that the order of dismissal of the amended complaint is erroneous, it being alleged in said pleading that the order of demolition was executed before it had become final. It appears, however, that said order directed the "immediate" demolition of said houses, so that the sheriffs merely acted in compliance with a judicial command, and cannot be held liable therefor. Plaintiffs argue that this fact should not have been considered by the

lower court, for it was not alleged in the amended complaint. But, said fact was not denied by the plaintiffs. On the contrary, they admitted, and still admit, the peremptory tenor of the order of demolition. Hence, it is clear that the acts complained of were performed in obedience to an order, the validity of which is not questioned, so that no cause of action could possibly arise from said acts against the defendants herein.

Wherefore, the order appealed from is hereby affirmed, with costs against plaintiffs-appellants. It is so ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes and Dizon, JJ., concur.

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