

SALVADOR CAMPOS Y CIA., PETITIONER, VS. SIMPLICIO DEL ROSARIO, JUDGE OF FIRST INSTANCE OF MANILA, RICARDO SUMMERS, CLERK OF COURT, AND CAYETANO TUASON, RESPONDENTS.

G. R. No. 16695. August 24, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action, commenced in the Supreme Court, for the writ of certiorari. The petition is based upon the following facts:

- (a) That an action of forcible entry and detainer was commenced in the court of the justice of the peace of the city of Manila by Cayetano Tuason against Salvador Campos y Cia., for the purpose of obtaining the possession of a certain piece or parcel of land;
- (b) That judgment was rendered by the said justice of the peace, ordering the defendant Salvador Campos y Cia. to deliver the possession of the property in question to the plaintiff and to pay P200 per month;
- (c) That from that judgment the defendant Salvador Campos y Cia appealed to the Court of First Instance, and issue was there again joined by a petition and answer;
- (d) That during the pendency of said action in the Court of First Instance the defendant-appellant continued to deposit with the court, as required by law, the said sum of P200 per month;
- (e) That during the pendency of the action in the Court of First Instance the plaintiff-appellee (Tuason) presented a motion, praying that all of the money which had been deposited by the defendant-appellant be paid to him. Notwithstanding the opposition of the defendant-appellant to said motion, the respondent judge granted the same and ordered the clerk to pay to the plaintiff all of the money deposited by the defendant as above indicated.

The appellant, petitioner herein, now asks that the said order directing the clerk to pay to the plaintiff-appellee (Tuason) the money which had been deposited with the clerk be annulled and set aside, for the reason that said order is not within the power or jurisdiction of the court to make, and is contrary to law.

The respondent (Tuason) demurred to the petition and alleged that the facts stated in the petition did not justify the remedy prayed for.

The petitioner relies upon the provision of section 88 of Act No. 190 as amended by Acts Nos. 1778 and 2588. Act No. 2588, in cases like the present, provides that "during the pendency of the appeal in any case in which a stay of execution of the judgment restoring possession has been allowed, it shall be the duty of the defendant to pay to the plaintiff or into the Court of First Instance, at the option of the defendant, the amount of rent due from time to time, * * * All money so paid to the Court of First Instance shall be deposited in the provincial treasury or, in the city of Manila, in the Insular Treasury, there to be held until the final disposition of the appeal."

It will be observed that said Act (No. 2588) provides that all money so paid "shall be deposited, in the city of Manila, in the Insular Treasury." That provision of the law is mandatory. The judge has no right, authority, nor discretion to disobey its terms.

The respondent (Tuason), however, argues that certiorari is not the proper remedy. Section 220 of Act No. 190 provides, in certiorari proceedings, that the court shall hear the parties and determine whether the inferior tribunal, board, or officer has regularly pursued its authority; and if it (the court) finds that said inferior tribunal, board, or officer has not regularly pursued its authority, it shall thereupon give final judgment, either affirming, or annulling, or modifying the proceedings below, as the law requires. Said section, applying to certiorari proceedings, directs the superior court, when an inferior court, board, or officer has not regularly followed the law, to annul the proceedings and direct the inferior tribunal, etc., etc., to follow the law.

The doctrine has been frequently announced that although a court may have unquestioned jurisdiction over the principal cause of action, it may nevertheless act irregularly or in excess of its jurisdiction during the course of the proceedings in granting an auxiliary remedy. In such a case the party aggrieved may prosecute a proceeding by the writ of certiorari in the Supreme Court. (*Herrera vs. Barretto and Joaquin*, 25 Phil., 245; *Leung Ben vs. O'Brien*, 38 Phil., 182.)

While the lower court had jurisdiction to hear and determine the appeal in the present action, it did not have authority to grant, during the pendency of the action, a remedy which contravenes the positive law. The inferior court, in making the order requiring the clerk to turn the money deposited by the petitioner herein over to the respondent did not regularly pursue the authority, but in fact violated the positive provision of the law.

Therefore, the demurrer presented by the respondent is hereby overruled and the prayer of the petition is hereby granted; and it is ordered and decreed that the order of the respondent judge directing the clerk to deliver the money in question to the respondent be and the same is hereby annulled and declared of no effect. It is so ordered, with costs against the respondent.

Carson, Araullo, Malcolm, Avancena, Moir and Villamor, JJ., concur.

DECISION ON THE MOTION FOR RECONSIDERATION OF SEPTEMBER 2, 1920.

JOHNSON, J.:

This is a motion for a reconsideration of the decision promulgated by this court upon the 24th day of August, 1920. The original action was brought in this court for the purpose of obtaining the writ of certiorari to prohibit the respondent judge from paying to the appellee in a *desahucio* proceeding pending on appeal in the Court of First Instance of the city of Manila, the money deposited by the appellant with the clerk of the court as the amount of the rent of the property involved during the pendency of the appeal. The petition for certiorari was granted and the respondent Cayetano Tuason was ordered to pay the costs. He now presents a motion for reconsideration and prays that he be relieved from the necessity of paying the costs, citing section 220 of Act No. 190 in support of his contention.

Section 220 provides among other things that "costs shall not be adjudged against a justice of the peace" in a certiorari proceeding "unless the court shall find that in exceeding the jurisdiction he (the justice of the peace) acted in bad faith." The respondent Cayetano Tuason makes no contention that he is a justice of the peace. It is difficult to see, therefore, upon what theory he invokes the provisions of said section.

Cayetano Tuason overlooks the provisions of Act No. 1159 which requires the petitioner in certiorari proceedings to "make as a party defendant the person or persons interested in sustaining the proceeding in the Court of First Instance." He also overlooks the provisions of said Act No. 1159 to the effect that "if costs shall be awarded in favor of the party instituting such proceedings in the Supreme Court, such costs shall be awarded only against the party in interest."

In view, therefore, of the provisions of Act No. 1159 we see no reason nor justification in changing or modifying the judgment heretofore announced by this court with reference to costs. The motion of Cayetano Tuason is, therefore, hereby denied. So ordered.

Araullo, Malcolm, Avanceña, Moir and Villamor, JJ., concur.

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