

DIONISIO IGAMA AND RUFINA REYES, PETITIONERS, VS. ANTONIO SORIA AND VICENTE NEPOMUCENO, JUDGE OF FIRST INSTANCE OF PANGASINAN, RESPONDENTS.*G. R. No. 17153. July 22, 1921*

Ponente: STREET, J.

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This is an original petition for the writ of mandamus to require the Honorable Vicente Nepomuceno, as Judge of the Court of First Instance, to execute judgment in an action of forcible entry and unlawful detainer now pending in the Court of First Instance of Pangasinan upon appeal from a decision of the justice of the peace of Manaoag. The cause is now before us upon an answer of the respondents admitting the material allegations of the petition, and we are required to determine whether under the admitted facts the plaintiff is entitled to the relief sought.

It appears that on February 1, 1919, Dionisio Igama and Rufina Reyes instituted an action of forcible entry and unlawful detainer in the court of the justice of the peace of Manaoag, Pangasinan, against Antonio Soria, to recover the possession of a lot of ground situated in the poblacion of Manaoag and more particularly described in the complaint. The ground of the complaint was alleged to be that, during the temporary absence of the plaintiffs from Manaoag, the defendant had entered by stealth upon the lot in question, of which the plaintiffs were previously in possession, and had detained the same from the plaintiffs, building thereon a house of light materials, notwithstanding the opposition of the plaintiffs. Upon issue joined and proof submitted, the justice of the peace entered judgment in favor of the plaintiffs, requiring the defendant to surrender possession of the lot in question to the plaintiffs and to pay to them the sum of P300, plus the costs. In his decision the justice of the peace found that the reasonable rental value of the lot in question was P20 per month; and the sum of P300, which he awarded to the plaintiffs, represents the rental value of the property from March, 1918, the date when the defendant took possession thereof, until the termination of the cause in the court of the justice of the peace.

From that judgment the defendant, Antonio Soria, appealed to the Court of First Instance, giving the usual appeal bond in the amount of P50, to answer for any costs which might be awarded against him in the Court of First Instance, as required in section 76 of the Code of Civil Procedure. The appellant, however, did not give the bond prescribed in section 88 of the Code of Civil Procedure, as amended by Act No. 2588 of the Philippine Legislature, with a view to the staying of the execution of the judgment. Nor did he thereafter, on or before the tenth of each month, pay, either into the Court of First Instance or to the plaintiffs in person, the sum of P20, as the reasonable value of the use and occupation of the premises. Accordingly, while the cause was as yet undetermined in the Court of First Instance, the plaintiffs moved the court to execute judgment and place the plaintiffs in immediate possession. This motion was denied, and the plaintiffs thereupon presented the present petition to the Supreme Court to compel the judge of the Court of First Instance to proceed to the immediate execution of judgment.

In overruling said motion, his Honor, the judge of the court below, observed that the bond actually given was

defective, if intended to stay execution of the judgment, and he assumed that said bond had been executed by a mistake, resulting from the use of the printed form of the bond for costs commonly used in appeals from the court of the justice of the peace. This irregularity his Honor deemed to be curable, and he accordingly made an order authorizing the appellant to file a proper bond for rents, damages, and costs within a period of fifteen days.

Upon the other point, namely, the failure of the appellant to make a deposit of P20 per month in the court, or to pay said sum to the plaintiffs, as the reasonable value of the use and occupation of the land, his Honor observed that the sum of P300 awarded to the plaintiffs by the justice of the peace was really awarded in the character of damages merely; and hence in his view the judgment of the justice of the peace should not be interpreted as determining the value of the use and occupation of the land, in the sense intended in the pertinent portion of section 88 of the Code of Civil Procedure, as amended by Act No. 2588.

As presented in this court the case raises two questions which we shall consider in turn. The first is whether it was competent for the judge of first instance to make an order allowing the defendant in the action of detainer to file a proper bond within the time stated in the order. It is our opinion that, upon principle, as well as upon the authority of *Tirangbuaya vs. Judge of First Instance of Rizal* (14 Phil., 613), he had this power. The ordinary bond for costs, which was in fact given, was sufficient to perfect the appeal and confer jurisdiction over the cause upon the Court of First Instance. In this connection it will be noted that in the very first sentence of section 88 of the Code of Civil Procedure, as amended, it is declared that in the action of forcible entry and detainer either party may appeal from the judgment of the justice of the peace to the Court of First Instance within five days and the suit shall be conducted therein in the same manner as appeals from justices of the peace in other civil actions. This implies that the ordinary cost bond required in other civil actions under section 76 of the Code of Civil Procedure shall suffice for the perfecting of the appeal. The special bond for rents, damages, and costs, contemplated in section 88 of the Code of Civil Procedure, as amended by Act No. 2588, is only required where a defendant who has lost before the justice of the peace desires to stay the execution of the judgment. Having thus obtained jurisdiction of the cause, upon appeal, it was competent for the Court of First Instance, in the exercise of the power which it possesses over the execution of judgments, to accept a special bond for rents, damages, and costs at any time before the judgment had been in fact executed, and it necessarily also had the power to withhold the execution of the judgment for the brief period of fifteen days to allow such bond to be given. Whether that power was properly exercised is a question upon which we express no opinion.

We may add furthermore, in this connection, that, supposing the order allowing the defendant to give the stay bond has not been complied with, the petitioners herein should again apply to the court below to have the execution issue, basing their motion on the failure of the defendant Soria—appellant in that court—to give the bond within the time stated. In such situation it is not to be supposed that the judge would hesitate for a moment to order the execution of the judgment; forthwith. But of course the writ of mandamus will not be issued by this court until the judge has refused to proceed, after having his attention called to the failure of Soria to comply with the terms of the order.

The second question is whether the judge of the Court of First Instance was unconditionally bound to order execution to issue on account of the admitted failure of the appellant in the detainer suit to pay to the plaintiffs, or into court, the sum of P20, on or before the tenth of each month, as the value of the use and occupation of the premises.

We are clearly of the opinion that, upon the facts already stated, the petitioner herein was entitled to the immediate execution of the judgment of the justice of the peace, and the writ of mandamus to compel the respondent judge to execute said judgment must accordingly issue from this court.

The pertinent provision of section 88 of the Code of Civil Procedure, as amended by Act No. 2588, is as follows:

"During the pendency of the appeal in any case in which a stay of execution of a 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 under the contract, if any, as found by the judgment of the justice of the peace to exist, or, in the absence of a contract, to pay to the plaintiff or into court, as above provided, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment * * *."

In the case before us the justice of the peace expressly found that the reasonable rental value of the land was P20 per month. This is equivalent to a finding that P20 per month is the reasonable value of the use and occupation of the land under the provision above quoted from Act No. 2588; and the defendant was obligated to make monthly payment of this amount, under said Act, exactly the same as if the amount, had been determined by stipulation in a rental contract. We can discover no sufficient ground for making any distinction at this point between the obligation imposed on a mere intruder, such as the defendant appears to be in this case, and that imposed on a lessee who holds over in contravention of the terms of an express contract. Whether a defendant in an action of this kind be the one or the other, if he loses before the justice of the peace and desires to stay the execution of the judgment pending the appeal, he must not only give the bond required in section 88 of the Code of Civil Procedure, as amended by Act No. 2588, but must make the monthly payment contemplated therein, provided the rental value is determined by contract or the value of the use and occupation is determined in the decision of the justice of the peace. The measure of damages for the unlawful detention of property, whether by a mere intruder or a person holding in contravention of a contract of lease, where the rental value is undetermined, is the same, namely, the reasonable value of the use and occupation. (*Veloso vs. Ang Seng Teng*, 2 Phil., 622, 626; *Sparravohn vs. Fisher*, 2 Phil., 676, 679.)

It being thus apparent upon the admissions of the answer that the petitioner is entitled to the relief sought, judgment absolute will be entered that the writ of mandamus issue as prayed, with costs against the respondent Antonio Soria, So Ordered.

Mapa, C. J., Johnson, Araullo, Avancena, and Viillamor, JJ., concur.

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