

ANGEL ESLER, PLAINTIFF AND APPELLANT, VS. DOMINGO ELLAMA AND FELOMINO DE LA CRUZ, DEFENDANTS, DOMINGO ELLAMA, DEFENDANT AND APPELLEE.

G. R. No. 18236. January 31, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal directly prosecuted to this Court from an order of the Court of First Instance of Iloilo dated December 9, 1960, issued in its Civil Case No. 4859 entitled "Esler vs. Ellama and De la Cruz", directing the plaintiff to return the parcel of land subject of an action for unlawful detainer appealed to the Court of First Instance from a Justice of the Peace Court, but reserving to plaintiff the right to bring the corresponding action of detainer in the Court of Agrarian Relations.

On June 26, 1957 plaintiff filed an action in the justice of the peace court of Igaras, Iloilo, alleging that plaintiff is the owner of a parcel of land containing an area of more than 8.7 hectares; that in September, 1950 he delivered one hectare thereof to defendant under a verbal agreement whereby defendant undertook to deliver a one-third share of the produce as yearly rental, and that defendant gave the agreed rentals yearly until 1957, but thereafter refused to abide by the contract. He prayed that defendant vacate the land, return possession thereof to plaintiff and pay damages and costs.

The defendant answered the complaint denying the material allegations, alleging that the land belonged to the State, and praying that plaintiff pay him damages for molesting him with the case. The justice of the peace court after trial ordered defendant to vacate the premises and pay plaintiff P5.00 a month from January, 1951 to September, 1957 and to pay the costs.

The defendant having appealed from the judgment of the Justice of the Peace Court to the Court of First Instance, in the latter court plaintiff moved for execution pending appeal. The judge granted the motion and issued an execution. This order is dated March 22, 1958. But on August 20, 1960, the court itself revoked the order of execution and ordered the dismissal of the action on the ground that under the provisions of Republic Act No. 1199, known as the Agricultural Tenancy Act, the Court of Agrarian Relations has jurisdiction of the suit. The defendant sought to reconsider the order, praying that instead, the judgment of the justice of the peace court be revoked, as well as the order for its execution, and that plaintiff be ordered to return the land with P520 as damages. After various motions and counter-motions, the court issued the order of December 9, 1960. A motion to reconsider the order was denied, hence this appeal by plaintiff-appellant.

The gist of the appeal is that since the order for the dismissal of the case was issued on August 20, 1960, and said dismissal had become final, the court could no longer issue its order of December 9, 1960 directing the return of the property. The argument while apparently correct would be productive of clear injustice. As a matter of principle courts should be authorized, as in this case, at any time to order the return of property erroneously ordered to be delivered to one party, if the order was found to have been issued without jurisdiction. Authority for

the return of the property is expressed under the provision of Section 5 of Rule 39, Rules of Court, which reads as follows:

"Sec. 5. Effect of reversal of executed judgment. Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."

Wherefore, the appeal should be, as it is hereby, dismissed, with costs against appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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