ANSELMA LAPUZ, FOR HERSELF AND AS ADMINISTRATRIX OF THE ESTATE OF JUAN ORONCO, PETITIONER, VS. THE COURT OP FIRST INSTANCE OF PAMPANGA, MELECIO ORONCO, CALIXTO ORONCO AND DONATA...

G.R. No. 22132. September 09, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of mandamus to compel the respondent Court of First Instance of Pampanga to issue a writ of execution placing the petitioner in possession of a parcel of land in litigation in a forcible entry and detainer case now before that court on appeal from the court of the justice of the peace of the municipality of Arayat, Pampanga.

The petitioner alleges that in said action, the herein respondents Melecio, Calixto and Donata Oronco are the defendants; that the judgment of the justice of the peace ordered said defendants to restore the possession of the land to the plaintiff, the herein petitioner, to pay to said plaintiff the sum of P2 per month by way of rent from June 9, 1923, and to pay the costs; that the defendants subsequently to the appeal to the Court of First Instance have failed to pay the rent fixed in the judgment appealed from or to deposit the amount of such rent with the clerk of the court as provided for in section 88 of the Code of Civil Procedure; that in the month of October, 1923, the plaintiff presented a motion to the Court of First Instance of Pampanga praying that in view of the default in the payment of "rent execution issue against the defendants for the restoration to the plaintiff of the possession of the land; but that notwithstanding said petition the court, in an order dated October 15, 1923, granted the defendants the term of five days from the date of said order within which to deposit with the clerk of the court the full amount of the monthly rent from June 9th until the month of October, 1923.

The pertinent provisions of section 88 of the Code of Civil Procedure read 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. * * * Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon the motion of the plaintiff, of which the defendant shall have notice, upon proof of the failure of the defendant to make such payments, shall order the execution of the judgment of the court which had original cognizance of the case relative to the possession of the property in litigation. * * * "

The provisions quoted are mandatory and it is therefore evident that the court exceeded its powers in granting the extension provided for in its order of October 15th. (Igama and Reyes vs. Soria and Nepomuceno, 42 Phil., 11;

Maliwat vs. Revilla and Garcia, R. G. No. 18151.1)

Let a writ of mandamus issue requiring and commanding the respondent Court of First Instance to issue its writ of execution in said civil case No. 2791 for the delivery of the possession of the land there in question to the plaintiff. No costs will be allowed. So ordered.

Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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