FELIPE PEREZ, PETITIONER, VS. EULOGIO P. REVILLA, JUDGE OF FIRST INSTANCE OF BULACAN, RESPONDENT.

G.R. No. 22509. August 14, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This case is now before the court upon a demurrer to the petition for a writ of mandamus.

The petitioner alleges that in an action of forcible entry and unlawful detainer, the justice of the peace of the town of Santa Maria de Pandi, Province of Bulacan, on December 4, 1923, rendered a judgment in favor of the petitioner herein in which the final and disposing clause reads as follows:

"In view of the foregoing, this court sentenced the defendants Mariano Mendoza, Marcelino Clemente, Hilarion Geronimo and Josefa Francisco in default, and in accordance with the provisions of section 54 of Act 190, judgment was rendered in favor of the plaintiff Felipe Perez to recover the premises and that he recover rents in the amount of six pesos (P6); also that he recover the costs of this proceeding in the amount of seven pesos (P7), all against the defendants jointly and severally."

The petitioner further alleges that upon the rendition of the aforesaid judgment the defendants in said forcible entry and detainer case perfected an appeal therefrom to the Court of First Instance of Bulacan, paying to the petitioner the sum of P6 as rents and accepted the following receipt:

"Received of Hilarion Geronimo, Marcelino Clemente and Josefa Francisco the sum of six pesos (P6) as rents corresponding for the period October 12 to December 11, 1923, for the use and occupation of the premises they are now occupying and for which a judgment has been rendered in my favor by the justice of the peace of the municipality of Sta. Maria, Province of Bulacan, in the civil case No. 285, on December 3, 1923.

(Sgd.) "FELIPE PEREZ

"STA. MARIA, BULACAN, Dec. 7, 1923"

The petition and the exhibits made a part thereof further show that on February 29, 1924, while the appealed case was still pending in the Court of First Instance, the plaintiff Felipe Perez, the herein petitioner, presented a motion to said court asking that the judgment of the justice of the peace be executed on the ground that the defendants had failed to pay the reasonable value of the use and occupation of the land detained as determined by the judgment of said justice of the peace; that in a subsequent pleading the petitioner insisted in his motion of February 29, 1924, and alleged argumentatively that not only might the rate of the value of the use and occupation of the land be inferred from the sentence, but that, in addition thereto, the receipt accepted by the defendants for the P6 paid to him also showed said value; that notwithstanding the plaintiff's representations, the Court of First Instance of Bulacan refused to receive evidence offered by the petitioner and refused to order the execution of the judgment.

The petitioner therefore prays that a writ of mandamus issue ordering the respondent judge to accept the evidence offered by the plaintiff in accordance with section 88 of the Code of Civil Procedure and to issue a writ of execution of the judgment of the court of the justice of the peace of Santa Maria de Pandi on December 4, 1923.

To this petition the respondent demurs on the ground that the facts alleged do not constitute a cause of action, and the demurrer must be sustained. Section 88 of the Code of Civil Procedure, as amended by Act No. 2588, provides that "* * * 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 described 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. * * ?"

There was no contract in the case in question and the judgment of the justice of the peace contains nothing from which the value of the use and occupation of the land may be determined with certainty. The petitioner argues that the receipt accepted by the defendants in the case shows that the P6 paid by them was the rental value of the land for two months. That may be so but has nothing to do with the case. In order to entitle the plaintiff-appellee in an action of forcible entry and detainer to payment of compensation for the value of the use and occupation of the land in dispute pending the appeal in the Court of First Instance, the rate of such value must be determined by the judgment itself, and no other evidence is admissible for that purpose. Until the case has been tried on its merits the Court of First Instance has no power to order what practically amounts to an amendment or reformation of the judgment of the justice of the peace.

The demurrer must accordingly be sustained and it being evident that the petition suffers from defects not curable by amendment, an order absolute will be entered dismissing the case, with costs. So ordered.

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

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