

MAXIMO GUILLENA, PETITIONER, VS. CANDELARIO BORJA, JUDGE OF THE TWENTIETH JUDICIAL DISTRICT, AND MACARIO SUMAMPAN, RESPONDENTS.

G.R. No. 30279, August 26, 1929

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This is a petition for a writ of certiorari.

In a civil case for unlawful detainer of lands before the justice of the peace of Talisayan, Province of Misamis, with Maximo Guillena as plaintiff and Macario Sumampan as defendant, judgment was rendered in favor of the plaintiff, and the defendant was ordered to vacate the premises, and in case he appealed, to deposit with the Court of First Instance the sum of P10 as rental for each month, on or before the tenth day of the succeeding month, during the pendency of the case.

An appeal was taken from that judgment to the Court of First Instance of Misamis, and the defendant, having failed to pay the tenpeso rental, the court, on motion of the plaintiff, ordered the execution of the judgment on April 9, 1927, without prejudice to prosecuting the appeal interposed.

Subsequently on the 17th of March, 1928, another judge of the same Court of First Instance, on motion of the defendant, set aside the order of April 9, 1927, on the ground that the improvements on the land were made by the defendant, and ordered that the latter be restored to the possession of the premises, after giving security by an obligation of P1,000.

The law providing that in case the defendant appeals, he must pay to the plaintiff or into the Court of First Instance the amount fixed as rent on or before the tenth day of each calendar month, and that failure to do so shall cause the judgment to be executed, is mandatory and cannot be evaded. The court has no discretion to give or not to give this effect to such failure to pay. The ground alleged by the court below, that the defendant made the improvements on the land, does not necessarily mean that the defendant has a right to the fruits of such improvements, inasmuch as he may have made them in bad faith.

The petition is hereby granted, and the order of the court of March 17, 1928, is set aside, and that of April 9, 1927, is hereby in force, without special pronouncement as to costs. So ordered.

Johnson, Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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