

**GERVASIA ENCARNACION AND URBANO NAVARRO, PETITIONERS,
VS. THE PROVINCIAL SHERIFF OF RIZAL, FACUNDO SAN AGUSTIN,
JUSTICE OF THE PEACE OF SAN PEDRO MAKATI, RIZAL, AND AYALA
Y CIA....***G. R. No. 45250. September 21, 1936*

Ponente: IMPERIAL, J.

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This petition for certiorari has been filed to set aside the alias writs of execution issued by the justice of the peace court of San Pedro Makati, Rizal, on July 25, 1936, in civil cases Nos. 1415 and 1416. Upon petition of the petitioners, who filed a bond in the sum of P500, a preliminary injunction was issued restraining the respondents, until further notice, from executing or carrying out the alias executions questioned in the petition.

In said justice of the peace-court, the respondent Ayala y Compania brought actions of ejectment against the petitioners, civil cases Nos. 1415 and 1416, for failure of the latter to pay the stipulated rent corresponding to several months. The petitioners were the owners of two houses, valued at P1,500, built on lands belonging to said respondent, both the occupation thereof and the rent having been stipulated in contracts of lease. In the complaints, the respondent prayed that the petitioners be ordered to pay the rent due and payable and also to vacate the lands occupied by their houses. After the trial, judgment was rendered by the justice of the peace court ordering the petitioners to pay their indebtedness and to vacate the lands, with costs. The petitioners did not appeal and the judgments became final. Writs of execution were then issued and the sheriff enjoined the petitioners to remove their houses otherwise they would be demolished at their own expense. To avoid said executions, the petitioners instituted civil case No. 6494 in the Court of First Instance of Rizal, praying in the complaint that a preliminary injunction, which should later become final, be issued, and that Ayala y Compania and the sheriff be enjoined from carrying out their design to demolish their houses. The preliminary injunction was issued because the petitioners had filed the bonds required. However, after the trial wherein evidence was presented, the Court of First Instance dismissed the complaint principally because, as the judgments of the justice of the peace court in the ejectment cases had become final, the respondent Ayala y Compania was entitled to the execution thereof and the sheriff was obliged to carry them out. The petitioners excepted thereto and, their motion for a new trial having been denied, they announced their intention to file the bill of exceptions which was subsequently approved. The appeal has been docketed in the office of the clerk of this court under G. R. No. 45302. In the case instituted in the Court of First Instance of Rizal, the respondent justice of the peace was not joined in the complaint and therefore was not a party thereto.

The foregoing facts raise only one question and it is whether or not the respondent justice of the peace acted with abuse of discretion in issuing the alias writs of execution in the civil cases in question. If he abused his discretion, the remedy should be granted (sec. 217 of the Code of Civil Procedure; *De Castro and Morales vs. Justice of the Peace of Bocaue*, 33 Phil., 595; *Valdez vs. Querubin*, 37 Phil., 774; *Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia. vs. Del Rosario*, 41 Phil., 45; *Larrobis vs. Wislizenus and Smith, Bell & Co.*, 42 Phil., 401). This

court is of the opinion that said justice of the peace acted with abuse of discretion in issuing the writs of execution in question, not because he failed to give previous notice to the petitioners that he was going to take such step, but because, as the judgment rendered by the Court of First Instance in civil case No. 6494 has been appealed from by the petitioners, if the alias executions were carried out, the appeal now pending would be a delusion and this court would be deprived of its jurisdiction to render a final judgment to determine, once and for all, the rights of the parties and the controversies raised by them. The remedy of certiorari lies, among other cases, when it is for the purpose of preventing a wrong which, under the circumstances, would be irreparable (11 C. J., p. 129, sec. 78).

The fact that the justice of the peace had not been joined as a party in civil case No. 6494 of the Court of First Instance of Rizal, is not an obstacle to the foregoing conclusion. The truth is that failure to prevent compliance with the alias execution would cause irreparable damage to the petitioners because their appeal, now pending, would be a delusion. This court does not wish it understood in this decision that it advances its opinion on the merits of the pending appeal. The petition is granted rather to maintain the present status quo and, principally, in order that the rights of the parties interested in said appeal may be carefully considered and finally determined.

For the foregoing reasons, the alias executions issued by the respondent justice of the peace on July 25, 1936, are set aside, and the preliminary injunction issued in the case cancelled, without costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

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