

GERVASIA ENCARNACION AND URBANO NAVARRO, PETITIONERS AND APPELLANTS, VS. THE PROVINCIAL SHERIFF OF RIZAL AND AYALA & COMPANY, RESPONDENTS AND APPELLEES.

G.R. No. 45302. April 10, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The question to decide in this appeal of the petitioners is whether the judgment rendered by the Court of First Instance of Rizal is in accordance with the law. The dispositive part of said judgment recites:

"Wherefore, we declare that the respondent Ayala y Compania is entitled to the enforcement of the writs of execution issued in civil cases Nos. 1415 and 1416 of the Justice of the Peace Court of San Pedro Makati, Rizal and the provincial sheriff is authorized to remove the houses from their present location and transfer them to a place which the defendants may deem convenient, and if necessary, to destroy them in order that the land may be placed at the complete disposal of the respondent Ayala y Compania. Consequently, the writ of preliminary injunction issued in the present case is set aside, with costs against the petitioners."

This is an action for injunction filed by the appellants in the Court of First Instance of Rizal to restrain the appellee sheriff from executing the order of removing and destroying, if necessary, their houses which are located on the lots belonging to the appellee Ayala y Compania, described in the cases of eviction in the justice of the peace court of San Pedro Makati, Rizal (civil cases Nos. 1415 and 1416) entitled "Ayala y Compania vs. Urbano Navarro" and "Ayala y Compania vs. Gervasia Encarnacion," respectively, by virtue of the writs of execution issued by said justice of the peace court after the judgments had become final on the failure of the interested parties to appeal.

The appellants were lessees of the appellee Ayala y Compania: they entered into the possession of the lands in question by virtue of a contract of lease whereby petitioner Urbano Navarro was to pay rent at P1.60 a month and petitioner Gervasia Encarnacion was to pay rent at P3.80 a month. Both lessees failed to pay rent on the lands leased by (them since November 5, 1935 and May 1, 1935, respectively). They were asked to comply with the order in the aforementioned judgments and were told that in case they failed to remove their houses from the lands of the appellee Ayala y Compania, the sheriff would do so, to enforce the writ of execution placed in his hands, of which the appellants had personal knowledge, but nothing was done. On the contrary, they instituted this action in the lower court for the obvious purpose of continuing in the possession of the lands without paying anything and from which they should be ejected by virtue of judgments which they themselves acknowledge. It is evident how unjust and unreasonable such a conduct is, especially considering that long before that date, or on the 26th of October, 1936, the National Assembly promulgated Act No. 89 which, it may be said, definitely settles the question before us because of its provisions reading:

"Section. 1. The provincial sheriff, in executing the decision of a competent court in ejectment cases, shall not destroy, demolish, or remove the improvements constructed or planted by the defendant or his agent or servant on the premises, unless expressly authorized by the court. The court may authorize the provincial sheriff to do

so, upon petition of the plaintiff or his attorney, after due hearing, and upon the failure of the defendant to remove the aforesaid improvements within a reasonable time after being so ordered by the court." This law being procedural in nature, it may validly have a retroactive effect (*Enrile vs. Court of First Instance of Bulacan and Bernabe*, 36 Phil., 574; *Hosana vs. Diomano and Diomano*, 56 Phil., 741), that is, it may confer authority on the lower court to do what it did on the date of the appealed judgment, as if said law were already in force, empowering the respondent sheriff to remove the houses of the appellants from the lands in question and, if necessary, to destroy them in order to place the lands at the complete disposal of the appellee Ayala y Compania. This is our opinion and the conclusion we have reached.

Wherefore, we affirm the appealed judgment, with costs against the appellants. So ordered.

Avanceña, C. 3., Villa-Real, Imperial, Laurel, and Moran, JJ., concur.

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