

TERESA LANDRITO AND FLAVIANO GARCIA, PLAINTIFFS AND APPELLANTS, VS. RICARDO GONZALEZ, MAXIMA SAN PEDRO, PERPETUA SAN PEDRO, AND THE PROVINCIAL SHERIFF OF RIZAL, DEFENDANTS AND A...

G.R. No. 46043. April 18, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

This is a petition for certiorari with injunction filed in the Court of First Instance of Rizal by the petitioners or plaintiffs against the respondents or defendants Ricardo Gonzalez, justice of the peace of the municipality of Tagig of the said province, Maxima San Pedro, Perpetua San Pedro and the provincial sheriff; dismissed by the Judge of the said Court of First Instance, and thereafter appealed to this court by the petitioners. The latter allege that the court of origin erred (1) in denying their motion for a writ of preliminary injunction by its orders of September 2 and December 28, 1936, and (2) in finally dismissing the case with abuse of discretion and to the prejudice of their rights.

The facts bearing on the case are the following: The appellees Maxima San Pedro and Perpetua San Pedro brought a forcible entry and detainer suit, No. 152, in the justice of the peace court of Tagig, Rizal, entitled, Maxima San Pedro et al. vs. Teresa Landrito et al. The latter lost the case by virtue of an adverse judgment ordering them to vacate the questioned land and to remove therefrom the bay-window of a certain house which they had constructed thereon, giving them until September 1, 1936, to do so. For failure to perfect an appeal, the judgment became final and executory, and shortly thereafter, the plaintiffs therein asked for and obtained the execution thereof with all the legal formalities. There was, consequently, no reason to justify the issuance by the court of origin of the writ of preliminary injunction asked for. Wherefore, the first error attributed to said court by the appellants is imaginary and does not actually exist.

It should be stated that the lower court did not commit the other error assigned by the appellants consisting, according to them, in the unjustified dismissal of the case and in the failure to reinstate the same notwithstanding their protests. While the appellants litigated as paupers in this case in the Court of First Instance and in this instance, nevertheless they did not do so in the justice of the peace court, nor did they there state that they were poor when case No. 152 was being tried, wherein they were ordered to vacate the land in question. In view thereof and of the fact that they cannot be presumed to be paupers because they there paid all the necessary fees and there litigated as solvent parties, they were under a duty, had they wished to take an appeal, to post the bond required by law. Not having done so and not having taken any further step until long after the said judgment had been executed, it is obvious that their petition in this case is without merit and that the lower court correctly acted as it did.

Wherefore, the appealed orders of the Court of First Instance of Rizal are affirmed, and as the appellants are poor, no pronouncement as to costs is here made. So ordered.

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

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