

**HACIENDA NAVARRA, INC., PETITIONER, VS. FELIX MARTINEZ,
JUDGE OF FIRST INSTANCE OF CEBU, JUAN SINGSON ET AL.,
RESPONDENTS.***G.R. No. 46206. September 12, 1938*

Ponente: CONCEPCION, J.

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It is prayed that this court, by means of a writ of certiorari, annul the order of July 23, 1938, issued by the respondent judge in civil case No. 10486 of the Court of First Instance of Cebu, alleging in the petition that said order had been issued by the judge with manifest abuse of discretion and in excess of jurisdiction.

In said case judgment was rendered on November 4, 1937, absolving the defendants Juan Singson et al., respondents herein, from the complaint filed by the petitioner, Hacienda Navarra, Inc. In said decision the counterclaim of the defendants was dismissed and it was held that the intervenor Philippine National Bank had a lien on the proceeds of the 1935-1936 sugar crop raised on the lands referred to therein, which proceeds were in the possession and custody of Juan Esteves, attorney in fact of the parties. It was provided that said proceeds be applied to the payment of the balance of the indebtedness of the defendant Juan Singson set forth in the decision and that the remainder, if any remains after payment of the credit of the intervenor, be paid over to the defendant Juan Singson. On November 7, 1937, before the expiration of the period for perfecting a bill of exceptions, that is, before the decision in question became final and executory, the defendant Juan Singson asked for the execution of the judgment and for the Philippine National Bank at Cebu, by virtue thereof, to pay over to him any balance of the proceeds of the sale of the sugar sold, after deducting any lien or mortgage existing thereon. This motion was opposed by the petitioner, and on December 6, 1937, the court issued an order directing, for the considerations stated therein, that, upon the filing of a bond in the sum of P15,000 by the defendant Juan Singson, the judgment be executed and that said Attorney Juan Esteves deliver to said defendant Juan Singson the proceeds of the sugar crop which he has in his possession.

On December 10, 1937, Hacienda Navarra, Inc., filed in this court a petition for certiorari, 6. R. No. 45912, seeking the annulment of said order of December 6th for the execution of the judgment. On May 24, 1938, this court overruled the petition and on June 13th of said year denied the motion for reconsideration filed by the herein petitioner.

On June 3, 1938, the respondent-defendant Juan Singson filed a motion with the court, praying that the Philippine National Bank at Cebu be ordered to deliver, out of the money deposited by Juan Esteves as attorney in fact of Hacienda Navarra, Inc., and of Juan Singson et al., the sum of P19,685.51 to the defendants, and the sum of P3,000 to Attorney Pedro Lopez, for the latter's lien, alleging in said motion that, by virtue of the decision rendered in the petition for certiorari, the order of the court dated December 6th had acquired full force and effect. This motion was supplemented by another of the 4th of said month of June. The petitioner filed its opposition to said motion on the 6th of said month, and on June 23, 1938, the court issued the order which has given rise to this

petition, directing compliance with the order of December 6th issued for the execution of the judgment. On the same date, the petitioner sought reconsideration of said order, which was denied by the court on the 27th of the same month.

On June 24th, a writ of execution was issued, ordering the sheriff to collect from the Philippine National Bank the entire amount of money which had been deposited by the manager thereof Juan Esteves, and to deliver the same to Juan Singson or to his attorney, after deducting therefrom the sum of P3,000 to be delivered to said attorney.

The petitioner contends that the order of June 23, 1938, was issued by the respondent judge without jurisdiction because, inasmuch as the decision rendered in said civil case No. 10486 had been appealed from not only by the petitioner but also by the defendants Juan Singson et al., and as the case had been elevated to this court, the lower court has lost its jurisdiction to consider any motion for the execution of the judgment.

Upon consideration of the present petition, this court finds:

(1) That while it is true that the defendant Juan Singson appealed from the judgment, his appeal has, however, been limited to that part of the decision of the court dismissing the counterclaim of the defendants against the plaintiff, because the motion for new trial filed by him on December 6, 1937, in lieu of that filed on the 4th of said month, clearly sought the holding of a new trial only as to that part of the decision which overruled the claim for damages made in the counterclaim of the defendants against the plaintiff.

(2) That the order of June 23, 1938, which gave rise to the present petition, has for its purpose only the enforcement of the order of December 6, 1937, issued for the execution of the judgment; which order was suspended by virtue of the petition for certiorari (G. R. No. 45912, May 24, 1938, 38 Off. Gaz., 1191), filed in this court for the purpose of annulling it. In denying said petition, this court sustained the validity of said order of December 6th, and consequently, the respondent judge, in enforcing it and giving it effect by means of his order of June 23d, has not abused or exceeded the exercise of his jurisdiction as alleged in the present petition for certiorari. The petition is dismissed, with costs to the petitioner. So ordered.

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

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