

PLACIDO SUMINTAC, ET AL., PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF RIZAL, PEDRO HERNAEZ, AND THE PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.

G.R. No. 47830. April 08, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for a writ of certiorari to review the decision of the Court of First Instance of Rizal, dated September 10, 1940, setting aside its previous order of September 2, 1940, and permitting the execution of the judgment of the justice of the peace court of Pasay, Rizal, in civil case No. 2870.

The facts of this case are not in dispute. In an ejectment suit (Civil case No. 2870) of the justice of the peace court of Pasay, Rizal, instituted by the respondent, Pedro Hernaez, against the herein petitioners, judgment was rendered ordering the latter to vacate the premises in question, and the former to pay to the latter several counterclaims amounting to P2,480. On August 3, 1940, petitioners announced their intention to appeal said judgment and paid P25 and P16, evidenced by Official Receipts Nos. H-6194493 and H-6194494, for bond and filing fee respectively. On August 30, 1940, Pedro Hernaez moved for the issuance of a writ of execution based on section 8, Rule 72 of the New Rules of Court, which was denied. Upon a reconsideration of this order, the respondent court, on September 10, 1940, rendered the following order, the legality of which is the main subject of this proceeding:

"Considerada la mocion del demandante de fecha 3 de septiembre de 1940, y encontrando el Juzgado fundadas las razones alegadas en la misma:

"Por la presente, se deja sin efecto la orden de este Juzgado de fecha 2 de septiembre de 1940 y se concede la ejecucion de la sentencia pedida por el demandante, previa prestacion de una fianza en la suma de P2,480 para responder del importe total de la reconvencion concedida a los demandados."

A motion for reconsideration of the abovescribed order was denied. In the meanwhile, a petition of the respondent praying that the provincial sheriff be ordered to remove or demolish the houses and other improvements made by the petitioners on the premises was granted, and the petitioners were allowed thirty days within which to follow the terms of the order of September 10, 1940. Hence, this application for certiorari.

The legal question presented is, whether or not, upon the facts, the Court of First Instance of Rizal properly ordered the execution of the judgment of the justice of the peace court.

Under section 8, Rule 72, of the Rules of Court, when the judgment in a detainer case is in favor of the plaintiff, said judgment becomes immediately executory, unless the defendant, to stay execution, files a sufficient bond to respond for the rents, damages, and costs down to final judgment, and pays, from time to time, either to the plaintiff or to the Court of First Instance, during the pendency of the appeal, the amount of rents fixed by the justice of the peace court in its decision. This provision is mandatory, and the obligation therein ordained may not be

evaded. (*Igama and Reyes vs. Soria and Nepomuceno*, 42 Phil, 111; *Guillena vs. Borja and Sumanpan*, 53 Phil., 379.) Failure by the appellants to file the bond or make the required payment, as in this case, authorizes the Court of First Instance, on motion of the plaintiff and upon satisfactory proof of nonperformance or nonpayment, to issue execution. Petitioners argue, however, that although they are indebted for rents of the land in the total sum of P918, this amount is adequately secured by the counterclaims awarded in their favor. We are of the opinion that this contention is without merit, and that the mere existence of such counterclaim does not relieve the petitioners from the duty imposed by the rule. Besides, the respondent had already put up a bond to answer for the satisfaction of said counterclaims.

The writ prayed for is hereby denied, without any pronouncement regarding costs. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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