

PEDRO ARCILLA ET AL., PETITIONERS, VS. TECLA VDA. DE CONSTANCIO AND HON. VICENTE DEL ROSARIO, JUDGE OF FIRST INSTANCE OF CAMARINES SUR, RESPONDENTS.*G.R. No. 49038. October 29, 1943*

Ponente: OZAETA, J.

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Respondent Tecla Vda. de Constancio sued the petitioners in the justice of the peace court of Bum', Camarines Sur, for forcible entry and unlawful detainer of a parcel of agricultural land. A writ of preliminary injunction was issued by said court restraining the defendants from disturbing the plaintiff in the possession of the land in question. Subsequently, judgment was entered ordering the defendants to restore to the plaintiff the possession of the land described in the complaint, whereupon the defendants appealed to the Court of First Instance.

On April 21, 1941, after the case reached the Court of First Instance, the parties entered into an agreement whereby the writ of preliminary injunction theretofore issued by the justice of the peace court was lifted and the defendants were permitted to continue to possess and cultivate the land in question upon their filing a bond in the sum of P1,000 conditioned that "should the Court of First Instance confirm the decision of the justice of the peace court in favor of the plaintiff, the defendants and their bondsmen will pay to the said plaintiff the value of the products of the land for all the time pending the final decision of the case and from the commencement of the action." So reads the agreement of the parties. The bond that was filed pursuant to said agreement textually provides that in consideration of the lifting of the preliminary injunction the principal and the sureties "do hereby bind ourselves jointly in favor of said plaintiff, in the sum not to exceed the amount of P1,000, as damages should judgment be in plaintiff's favor."

On April 30, 1943, judgment was rendered by the Court of First Instance ordering the defendants (petitioners herein) "to vacate at once the land in question and deliver its possession to the plaintiff. Further, defendants are hereby sentenced to pay to the plaintiff the sum of P312.50 as damages, with costs in this instance." The plaintiff (respondent Tecla Vda. de Constancio) moved for the reconsideration of that judgment and prayed for additional damages. In resolving the motion for reconsideration on July 27, 1943, the Court, thru the respondent judge, said:

"* * * For the crop-year 1941-1942, the plaintiff has been awarded damages in the sum of P312.50. No damages could be awarded for the crop-year 1942-1943 for the reason that the evidence of the plaintiff is ambiguous, uncertain and incomplete. Pablo Portugal merely testified that the defendant Pedro Arcilla worked the land and harvested in 1942, without stating the quantity of palay harvested in that crop-year (labro y cosecho el afio 1942). The crop-year 1942-1943 being a tumultuous year on account of the present war, the Court does not feel justified to assume that the defendant cultivated all of the land and harvested the same quantity of rice that he harvested in 1941-1942. Specific evidence should have been introduced by the plaintiff for the harvest of that crop-year 1942-1943.

"No judgment for annual damages could be rendered against the defendant because no fixed annual and uniform damages for each year had been proved. Neither is it just to fix the annual damages at P312.50

because of present war circumstances. The plaintiff may, however, prove her damages during the pendency of this case until the possession of the land has been delivered to her before final judgment is entered in this case.

"In view of the foregoing considerations, the motion for reconsideration of counsel for the plaintiff is hereby denied."

Thereafter, and on July 31, 1943, upon an ex-parte motion of the plaintiff, the respondent judge entered an order which reads as follows:

"Upon motion of counsel for the plaintiff and this being an action for forcible entry and detainer in which the defendants were declared to be without right of ownership or possession over the property litigated, let a writ of execution issue in this case requiring the defendants to deliver the possession of the property to the plaintiff unless the defendants pay the plaintiff or the appellate court in case of appeal the sum of Three hundred twelve pesos (P312.50) and fifty centavos and file a sufficient bond in favor of the plaintiff in the sum of Six hundred pesos (P600) guaranteeing to the plaintiff the payment of annual damages from the year 1943 until the rendition of the final judgment in the case."

In this certiorari proceeding petitioners seek to annul the order last above quoted, contending that the respondent judge exceeded his jurisdiction and abused his discretion in the premises (1) because the motion for execution was granted ex-parte in violation of section 2 of Rule 39; (2) because the order in question did not state good reasons for the issuance of the writ of execution pending appeal, as required by the same rule and by the doctrine laid down by this Court in *Heiman vs. Cabrera*, 2 Off. Gaz., 40; and (3) because even applying section 9 of Rule 72, the petitioners cannot be compelled to pay or deposit the sum of P312.50 "inasmuch as the said amount was to be in payment of damages caused to the plaintiff, in accordance with the judgment of the court, and not the monthly value for the use and occupation of the land in question as provided for by section 8, Rule 72"; that the petitioners "could not be obliged to file a bond in the amount of P600 to respond for future damages from the year 1943, inasmuch as no such damages were proven nor could they have been proven during the trial, and the defendants were not condemned to pay damages from the year 1943"; and that, moreover, the petitioners had filed a bond of P1,000 to respond for all the products which they might obtain from the land while in possession of the property, "so that whatever damages plaintiff may suffer during the pendency of the aforesaid case, are sufficiently guaranteed by that bond."

Section 2 of Rule 39 and the case of *Heiman vs. Cabrera* cited by petitioners refer to executions of judgments in ordinary civil actions. They are not applicable to forcible entry and detainer, which is specially governed by Rule 72.

Section 8 of Rule 72 reads in part as follows:

"Sec. 8. Immediate execution of judgment. How to stay same.—If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff—to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or, in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment * * *."

Section 9 of the same rule reads as follows:

"Sec. 9. Stay of execution on appeal to Court of Appeals or Supreme Court.—Where defendant appeals from judgment of the Court of First Instance, execution of said judgment shall not be stayed unless the appellant

pays either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same manner as therein provided."

The order of immediate execution entered by the respondent judge was not only authorized but required by section 9, in relation to section 8, of Rule 72 above quoted. The provision of said section is mandatory. (*Sumintac vs. Court of First Instance of Rizal*, 40 Off. Gaz., 14th Supp., 16.) The error committed by the respondent judge lies not in entering said order but in failing to fix the reasonable value of the use and occupation of the land in question which the defendants should pay to the plaintiff or into court during the pendency of the appeal, as contemplated in sections 8 and 9 of Rule 72, and in assuming that "the plaintiff may, however, prove her damages during the pendency of this case until the possession of the land has been delivered to her before final judgment is entered in this case." We say that that was error (1) because the court impliedly reserved the holding of a second hearing, which was unnecessary and improper; and (2) because in a case of unlawful detainer the rent or the reasonable value of the use and occupation of the premises detained may and should be fixed by the court in its decision on the merits, regardless of the actual benefit that the defendant may obtain therefrom; for he may squat on the land without putting it to any beneficial use, or he may reap little or no harvest because of incompetence, indolence, or for any other reason, and yet that would not exempt him from liability to pay to the plaintiff what the latter could have obtained from said land were it not for the unlawful detainer, or in the words of the statute, "the reasonable value (to the plaintiff) of the use and occupation of the premises." However, that error is not now in issue and cannot be corrected in this proceeding but in the appeal from the judgment. We only mention it here to explain the confusion into which counsel for the petitioners has apparently fallen on account of said error.

The bond of P1,000 above mentioned covers only the damages suffered by the plaintiff up to the date of the decision of the Court of First Instance. It is not the bond contemplated in sections 8 and 9 of Rule 72, which guarantees the payment of "the rents, damages, and costs down to the time of the final judgment in the action." (*Pascua vs. Endencia*, 40 Off. Gaz., 3671.)

Altho the judgment entered by the respondent judge does not provide, as it should have provided, for the payment to the plaintiff or into court during the pendency of the appeal of the reasonable value of the use and occupation of the land in question, we cannot conclude that the petitioners are definitely free from liability therefor and for damages, because, in the first place, the respondent judge himself, in his subsequent order denying plaintiff's motion for reconsideration, recognized such liability of the defendants and, in the second place, the appellate court may modify said judgment and provide for the payment by the defendants of damages and/or the reasonable value of the use and occupation of the premises down to the time of the final judgment in the action, should the evidence adduced during the trial so warrant. Therefore, the bond of P600 required by the respondent judge to stay the execution is neither unjustified nor improper.

Wherefore, the order in question is affirmed and the writ of preliminary injunction heretofore issued by this court is dissolved, with costs against the petitioners.

Yulo, C. J., Moran, and Bocobo, JJ., concur.

Paras, J., concurs in the result.

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