

ANDRES RIOS AND SIMPLICIO B. PEÑA, PETITIONERS, VS. JAIME M. BEYES, AS JUDGE OF THE COURT OF FIRST INSTANCE OF ALBAY, AND SATURNINO ROS, RESPONDENTS.

G.R. No. 49057. December 15, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

This certiorari proceeding is incidental to a forcible entry and unlawful detainer case commenced in the justice of the peace court of Malinao, Albay, on October 7, 1936, by the herein respondent Saturnino Ros against Valeriana Vda. de Velasco. Ros obtained judgment in said court whereby the defendant was ordered to restore the possession of the land in question to the plaintiff and to return to the latter 834 bundles of palay or its value amounting to P150.25 and to pay the costs.

The defendant perfected an appeal to the Court of First Instance and filed an appeal bond, with the present petitioners as sureties, as required by section 88 of Act No. 190,

the pertinent portion of which reads as follows :

"* * * If the defendant appeals from the judgment of the justice, and desires to stay execution of the judgment pending the appeal, he shall give to the plaintiff security by an obligation, with sufficient sureties, approved by the justice of the peace, to enter the action in the Court of First Instance, and to pay rents, damages, and costs; and the defendant and the sureties shall be liable upon their obligation for damages and costs down to the time of the final judgment in the action. * * *"

The Court of First Instance dismissed the case on the ground that the decision of the justice of the peace was rendered after the lapse of more than one week from the date of the hearing. The plaintiff in turn appealed to this Court (G. R. No. 47782), which reversed the order of dismissal and remanded the case for further proceedings, with costs against the appellee. After the decision of this Court had become final, and after the record had been received in the Court of First Instance, the plaintiff Saturnino Ros (respondent herein) in July 1943 procured from the respondent judge a writ of execution against the herein petitioners as sureties on the bond to satisfy the costs awarded by this Court.

At that stage of the case the petitioner Simplicio B. Peña, who had been and still is the attorney for the defendant, in his double capacity as such attorney and as surety-bonds- man for his client and also as attorney for his cosurety and copetitioner herein Andres Rios, raised various incidents to defeat the collection of the costs above mentioned and once more to throw the main case out of court. To that end he filed a motion (1) to set aside the writ of execution for the costs, (2) to cancel the bond, and (3) to dismiss the case.

That motion having been denied by the respondent judge in his order dated August 19, 1943, the present petition for certiorari was filed, praying for a writ of preliminary injunction to restrain the respondent judge from executing the judgment of this Court for costs against the sureties, and for the following reliefs:

"(2) That judgment render declaring:

"(a) That Civil Case No. 6222 is not that of forcible entry and detainer but one of 'Delivery of Personal Property,' and consequently the special bond in the amount of P300 posted by the defendant in the justice of the peace court to stay execution is a superfluity and that the motion of the herein petitioners to have said bond cancelled should have been granted;

"(b) That the respondent Judge, Hon. Jaime M. Reyes, had no jurisdiction to order the execution of the special bond;

"(c) That the respondent Judge, Hon. Jaime M. Reyes, had no jurisdiction over the subject-matter of the case (Civil Case No. 6222) when the complaint was amended substituting Andres Rios for the deceased original defendant, Valeriana Vda. de Velasco, inasmuch as the 'amended and supplemental complaint' in which said Andres Rios is made defendant in substitution of the original party-defendant changes entirely the nature of the case as originally filed in the court of the justice of the peace; and that the motion of Andres Rios to dismiss should have been granted and the amended and supplemental complaint filed by the plaintiff Saturnino Ros thru his attorney, Mr. Ramon C. Fernandez, should have been thrown out of court.

"The petitioners pray further that the respondent Saturnino Ros be condemned to pay the costs, and for such further and other relief as may be deemed just and equitable in the premises."

The respondent Saturnino Ros has undergone an odyssey of seven long years, from the lowest to the highest court of the land, to secure final adjudication of his complaint for forcible entry and unlawful detainer, without any prospect of an early attainment of his objective due to the obstructionist tactics of the defendant represented by the petitioner Simplicio B. Pena, who is also one of the suretybondsmen. He is also the attorney for his cosurety Andres Rios who, as purchaser of the land in litigation, has substituted the original defendant. It is alleged that the original defendant has in the meantime passed beyond the bourne from which no man ever returns and where there is no more litigation.

We find this petition to be wholly unmeritorious. The attempt to evade the obligation on the bond is based on an irrelevant clause of section 88 of Act No. 190, the pertinent provision being: that hereinbefore quoted. That attempt must therefore fail.

The other attempt—to have the bond canceled on the ground that "after re-reading carefully several times the original and supplemental complaint" for forcible entry and unlawful detainer filed by the plaintiff, Attorney Peña "discovered that the plaintiff, Saturnino Ros, did not allege therein facts sufficient to constitute a cause of action of forcible entry and detainer"—is equally futile and even more astonishing. After seven years of litigation from the justice of the peace court to the Supreme Court, the startling discovery now claimed to have been made by counsel for the first time would seem to be mere dilatory tactics. Moreover, the alleged discovery would not affect the validity of the bond given by him, which was conditioned upon the payment of the costs "down to the time of the final judgment in the action." There was a judgment rendered by a competent court after due hearing, and to stay its execution said bond was given, as required by law. Were it not for that bond the judgment of the justice of the peace in favor of the plaintiff would have been executed more than seven years ago. Thanks to that bond, the defendant and her successor in interest have been able to continue in the possession and enjoyment of the land in litigation. And yet after the costs were incurred and after his client has enjoyed the possession and use of the land in question, counsel has the temerity now to ask the Court to cancel said bond so that the surety-bondsmen may not respond for the costs. The manifest unfairness of the proposition is its best refutation.

The admission by the respondent judge of the amended complaint is within his authority and sound discretion, which, we find, he has not abused.

The order complained of is affirmed and the petition is dismissed, with double costs against the petitioners.

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

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