

**FLORENTINO SALINAS AND MILAGROS C. SALINAS, PETITIONERS,
VS. HON. MIGUEL R. NAVARRO, ARSENIO DE LEON AND ESTRELLA A.
DE LEON, RESPONDENTS.**

G.R. No. 50259, November 29, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for writs of certiorari and mandamus filed by spouses Florentino Salinas and Milagros Salinas to set aside the orders of the respondent court denying motions for immediate execution in an ejectment case pending before it on appeal.

On June 4, 1973, respondents spouses Arsenio De Leon and Estrella De Leon executed a deed of absolute sale with assumption of mortgage in favor of the petitioners over a house and lot at 2228 Banaag at Sikat Street, Tondo, Manila.

According to the petitioners, the De Leons pleaded that they be allowed a grace period of six (6) months from said date or up to December 5, 1973, during which they could stay in the said premises without paying corresponding rentals while they were having their new house constructed. When the period lapsed, the De Leons refused to vacate the premises thus prompting the petitioners Salinas to file an action for unlawful detainer with the City Court of Manila. In addition to praying that the private respondents be ejected, the petitioners also asked for rentals at six thousand (P6,000.00) pesos a month and attorney's fees.

In their answer, the private respondents contended that the real issue in the litigation was ownership and not mere possession and that, consequently, the city court had no jurisdiction.

The private respondents stated that they originally purchased the house and lot from a certain Manuel Torres under term payments. When the time came to make the final payment, the De Leons could not raise the necessary amounts so they borrowed money from the petitioners who were their friends. The private respondents alleged that the deed of absolute sale with assumption of mortgage did not represent the true contract between the parties but was executed only to guaranty the loan between the friends. The respondents claimed that their true agreement was a verbal one of mortgage with an understanding that the house and lot would be sold at a price between one hundred twenty thousand pesos (P120,000.00) and one hundred fifty thousand pesos (P150,000.00) and that the net gain would be divided between them, or that the De Leons would refund to the spouses Salinas the twenty five thousand pesos (P25,000.00) with a net gain of ten thousand pesos (P10,000.00), in six (6) months.

On April 4, 1978, the city court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered for the plaintiffs and against the defendants ordering the latter and all persons claiming right/title under them to vacate the premises described at 2228 Banaag at Sikat Street, San Rafael Village, Balut, Tondo, Manila; to pay the plaintiffs the amount of P600.00 a month representing the reasonable payment for the use and occupation of the subject premises, which this Court takes judicial notice

of, commencing from December 5, 1973 until after such time as when the defendants shall have had actually vacated the afore-described premises; the amount of P1,000.00 as and for reasonable attorney's fees, plus the costs of the proceedings.

"Defendants' counterclaim is hereby dismissed.

"No pronouncement nor award as to damages."

During the pendency of the ejectment case before the City Court of Manila, the private respondents filed Civil Case No. 95731 in the Court of First Instance of Manila entitled "A. DE LEON, ET AL. vs. F. SALINAS, ET AL." for the annulment of the said deed of sale with assumption of mortgage and/or to declare the same as an equitable mortgage.

On June 27, 1978, the De Leons perfected an appeal to the Court of First Instance of Manila. On January 10, 1979, the petitioners prayed that an order of execution issue on the following grounds:

"That defendants have not made a payments (sic) on the rentals of the premises at the rate of P600.00 monthly as stated in the decision appealed from and which should commence from June, 1978, the time when said appeal was filed by defendants; that such failure entitled the winning party to move, for immediate execution as per Sec. 8, Rule 70 of the Rules of Court;

"That the decision states that defendants are adjudged to pay rentals on the premises from December, 1973 to May, 1978 or a period of fifty four (54) months with a total sum of thirty two thousand four hundred pesos (P32,400.00) but with the filing of their appeal, defendants failed to file any supersedeas bond in the said amount and this is also violative of said Sec. 8, Rule 70;"

"That the above-stated amounts (P32,400.00 and P4,800.00) plus the award of attorney's fees of P1,000.00 has a totality of thirty eight thousand two hundred pesos (P38,200.00)."

The respondent court denied the motion in an order dated January 25, 1979 which reads:

"In view of the pendency of this appealed case for decision by this Court, the motion for immediate execution is hereby denied."

On March 6, 1979, the court denied a motion for reconsideration of the above order.

The petitioners raised the following points in their petition:

"1. DID THE RESPONDENT JUDGE EXERCISE SOUND DISCRETION IN DENYING THE MOTION FOR EXECUTION FILED BY PETITIONERS BASED ON SEC. 8, RULE 70 OF THE RULES OF COURT AND THE RULING OF OUR SUPREME COURT IN THE CASE OF DEHESA VS. MACALALAG, L-29096, FEBRUARY 23, 1978?

"2. IF SAID RESPONDENT JUDGE ABUSED SAID DISCRETION, CAN HE BE COMPELLED OR ORDERED TO ISSUE A WRIT FOR THE EXECUTION OF THE DECISION OF THE LOWER COURT APPEALED FROM?"

The petitioners rely on Section 8, Rule 70 of the Rules of Court which provides for execution of the judgment even when an appeal has been perfected unless the appellant files the necessary supersedeas bond and deposits with the appellate court the amount of rent due from time to time.

We agree with the petitioners. Section 8, Rule 70 of the Rules of Court provides:

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 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 accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court 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. In the absence of a contract, he shall deposit with the court the reasonable value of the use and occupation of the premises for the preceding month or period. The supersedeas bond shall be transmitted by the justice of the peace or municipal court, with the other papers, to the clerk of the Court of First Instance to which the action is appealed.

All moneys so paid to the appellate court shall be deposited in the provincial or city treasury, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits. (Emphasis supplied) (Sec. 8, Rule 80 of the Rules of Court)

The rule is explicit. In ejectment cases, the judgment must be executed immediately when it is in favor of the plaintiff in order to prevent further damages to him arising from the loss of possession. However, the defendant may stay execution (a) by perfecting an appeal and filing a supersedeas bond and (b) by paying from time to time either to the plaintiff or to the Court of First Instance the reasonable value of the use and occupation of the property as may be fixed by the justice of the peace court in its judgment (*Base v. Leviste*, 99 SCRA 575). Thus, in an eviction case where the defendant did not file a supersedeas bond and did not make any monthly deposit of the rentals, we ruled that the lessor is entitled as a matter of right to the immediate execution of the municipal or city court's judgment for the restoration of possession and the payment of the accrued rentals, or compensation for the use and occupation of the premises. In such a case, the duty of the court to order immediate execution is ministerial and imperative (*Philippine Holding Corporation v. Valenzuela*, 104 SCRA 401).

It is true that in *Vda. de Legaspi v. Avendaño* (79 SCRA 135, 144-145) this Court ruled:

"Now, coming to the basic procedural issue before Us in the instant case, which is, whether or not the final judgment in the ejectment case, Civil Case No. 953 of the San Pedro court, should be fully executed before the final termination of the action for quieting of title, Civil Case No. 929 in the Court of First instance of Laguna, it is Our considered opinion that it is at least a matter of equity that petitioner's physical possession of the premises in controversy should not be disturbed in the meanwhile. Actions of forcible entry and unlawful detainer are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In other words, the special civil action under Rule 70 has been designed to summarily restore possession of land or building to one who has been forcibly deprived thereof, without prejudice to the settlement of the opposing claims of the parties to legal possession in the corresponding appropriate proceeding. Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership.x x x"

but the exception to the rule in this case of *Vda. de Legaspi* is based on strong reasons of equity not found in the present petition. The right of the petitioners is not so seriously placed in issue in the annulment case as to warrant a deviation, on equitable grounds, from the imperative nature of the rule. In the *Vda. de Legaspi* case, execution

of the decision in the ejectment case would also have meant demolition of the premises, a factor not present in this petition.

The records show that the respondents have delinquent accounts from December 1973 to May, 1978 adjudged by the municipal court to be P32,400.00. They have failed to deposit monthly rentals from June, 1978 to the present at the rate of P600.00 monthly. No supersedeas bond has been filed. The letter of the Rule and strong grounds of equity favor the petitioners. In accordance with Section 8 of Rule 70, the respondent judge should have ordered the immediate execution of the decision of the municipal court instead of denying it.

WHEREFORE, the petition is hereby GRANTED. The respondent judge is directed to issue the writ of execution in Civil Case No. 232733 and the sheriff is ordered to expeditiously attend to its implementation. Costs against the private respondents. This decision is immediately executory.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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