

**AGATON T. LANDICHO AND LUCENA M. LANDICHO, PETITIONERS,
VS. HON. RICARDO P. TENSUAN, JUDGE, CFI OF RIZAL, BR. IV; HON.
MINERVA C. GENOVEA, FORMERLY PRESIDING JUDGE, CITY COURT
O...**

G.R. No. 51216. June 30, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This petition for certiorari, mandamus, prohibition and preliminary injunction involves an ejectment case that was filed by private respondent Leonida Aseron against petitioners in the City Court of Quezon City wherein after trial on the merits a decision was rendered on September 15, 1978, the dispositive part of which reads:

"WHEREFORE, the cause of action having been sufficiently established, the Court renders judgment in favor of the plaintiff, and against the defendants, ordering the latter and all persons claiming right under them:

- 1) to vacate the building located at Naranghita Street, Project 2, Quezon City;
- 2) to pay the plaintiff the sum of P400.00 a month for August, 1977 and every month thereafter until the building is finally vacated and possession thereof is surrendered to the plaintiff;
- 3) to pay the sum of P2,000.00 as attorney's fees; and
- 4) to pay the costs.

IT IS SO ORDERED."^[1]

Upon appeal to the Court of First Instance of Quezon City a decision was rendered thereafter in due course on March 15, 1979 affirming in toto the appealed judgment.^[2] Within the reglementary period for appeal petitioners filed a notice of appeal and appeal bond to which an opposition was filed by private respondents alleging that the proper remedy was a petition for review not an ordinary appeal. In an order of July 2, 1979, the trial court dismissed the appeal on the ground that it is not the proper remedy.^[3] Since the period for appeal had lapsed, petitioners filed a motion for execution of judgment which was granted by the trial court on July 24, 1979.^[4] Hence this petition.

In a resolution of August 15, 1979, this Court, without necessarily giving due course to the petition, issued a temporary restraining order enjoining respondents, or any person or persons acting in their behalf from enforcing the said writ of execution.^[5]

The allegations of the petition are confusing which private respondents correctly characterize as "topsy turvy". All the judges from the inferior court and the trial court who had anything to do with the case one way or the other were impleaded as respondents. The judgment even of the inferior court that had been appealed and affirmed in toto is being questioned in this proceeding. While this petition is pending consideration, petitioners voluntarily vacated the premises in question, so their counsel was asked whether the petition can now be dismissed. He

insisted the case must proceed. All these hardly add credit to his track record.

What the Court can gather from the many issues raised in the petition is that the key question is whether the appeal was correctly dismissed by the trial court.

Time and again, We are faced with the common error of members of the Bar on this aspect. Section 45 of the Judiciary Act as amended by Republic Act No. 6031 does not allow an appeal by record on appeal and notice of appeal from a decision of the Court of First Instance in an appealed case falling within the exclusive original jurisdiction of the Municipal or City Courts. The correct remedy is a petition for review.[6] This is reiterated in Section 22 of Batas Pambansa Blg. 129. Thus, respondent Judge Ricardo Tensuan, now Associate Justice of the Court of Appeals, did not commit any grave abuse in dismissing the appeal. Other issues raised by petitioners are factual which this Court cannot consider in this proceeding. Obviously, petitioners interposed this extraordinary remedy in lieu of the remedy of appeal which they have lost. This cannot be allowed.[7]

Moreover, considering the findings of facts of the court a quo which are conclusive on petitioners?

"As reviewed by the Court, the following facts are revealed by the records: The plain-tiffs-appellees bought the property for and in the name of the minor Leonida Aseron from Pilar Ybay married to Cesar Burla and Nicanor P. Bernarte married to Agripina M. Bustos ---- sometime in November, 1977 (Exh. 'A').

When the property was sold, the apartment building was under a contract of lease with spouses Agaton Landicho --- for a monthly rental of P400.00.

One week after the purchase on November 4, 1977, Leonor Aseron went to the premises and talked to Mrs. Landicho and told her that she is the new owner of the property and gave notice that they should vacate the pre-mises within three months, so they could have the place repaired. The defendants-appellants refused to leave the premises. At the time of the transfer of the property to the plaintiff-appellee, the defendants-appellants were already in default in paying the rent, in fact, since August, 1977. Since the trans-fer of ownership to the plaintiff-appellee, not a single monthly rental has been paid to her by the defendants.

In view of the foregoing circumstances, the plaintiff, thru her mother, Leonor Aseron, demanded from the defendants payment of the accrued rentals and to vacate the premises. Leonor Aseron sought legal advice and her lawyer sent a letter which was served personally on March 11, 1978, on Lucena Lan-dicho, who refused to acknowledge receipt thereof (Exh. 'B'). In this letter, final demand was made for the defendants to vacate the premises within seven days from receipt of the letter, otherwise ejectment proceedings and collection of unpaid rentals, among others, would be commenced. The letters were ignored, hence, this complaint for un-lawful detainer was duly instituted.

It appears that the arrangement between Mrs. Surla (the previous owner) is that Lan-dicho will collect the rentals for the entire building. Landicho agreed on condition that he would not be driven out of the apartment. Mrs. Surla's arrangement with Landicho was that the collector would come every 16th and end of the month because he would be paying one-half of the rent every fifteen days since only two occupants pay in full while he would pay one-half rent every fifteen days. Since July, 1977, however, the collector failed to come.

In August, 1977, since the collector still did not appear, Landicho went to one Manuel Icasiano, Technical Assistant and Chief, Public Information Unit, of the Office of the Presidential Assistant Ronaldo Zamora, who advised him to wait a little while and, if the owner still fails to come to collect from him, then for him (Landicho) to report the same to him (Icasiano). The owner did not come so he sought Icasiano anew bringing with him a letter dated September 5, 1977 (Exhibit '68') and the rental amounting to P500.00 for July and August for his and Mangubat's share of P140.00 and P120.00, respectively. This time he was advised by Icasiano, to deposit the money in Court. Landicho insisted, however, that Icasiano keep the money, and the

latter obliged him.

Thus, all the rentals from July 1977 to March 1978, appeared to have been received by Icasiano from Landicho and Mangubat (Exhs. 69 to 69-G).

On April 19, 1978, the amounts deposited were withdrawn by Landicho's counsel, Atty. Jose C. Castro, and later deposited with the City Court on May 17, 1978.

Landicho's story goes further to show that during the entire period of the lease with Dr. Surla, he never came to know the place of residence of Dr. Surla, and therefore, he was never able to locate her to tender payment of the rental.

The issue to be resolved here boils down to --- whether the defendants-appellants were really delinquent or not in paying their monthly rental. The records clearly shows that from the time the plaintiff-appellee bought the premises, the herein defendants-appellants refused and still refuse to the present time to recognize the plaintiff-appellee as the owner of the premises, despite the fact that Mrs. Aseron had already introduced herself as the new owner of the property. The defendants-appellants, for reasons of their own, refuse to acknowledge the plaintiff-appellee as the new owner thus they never made any attempt to pay to the plaintiff-appellee even when the latter already made a demand from the former.

Delinquency in the payment of the rentals due to the plaintiff-appellee is therefore clear and undisputed.

Furthermore, the defendants-appellants did not make a valid consignment when they deposited the back rentals in the Office of the Presidential Assistant."^[8]

There is no doubt that due to non-payment of rentals their ejectment is a necessary consequence.

Their protestation that they deposited the rentals due though belatedly in the Office of then Presidential Assistant Ronaldo Zamora does not help their cause at all. The law prescribes that such consignment or deposit of rentals should be made with the Court and/or under Batas Pambansa Blg. 25 in the bank and not elsewhere.^[9]

Finally, since the judgment has become final and executory the issuance of the writ of execution was inevitable.

WHEREFORE, the petition is DISMISSED for lack of merit and the restraining order that the Court issued on August 15, 1979 is hereby dissolved, with costs against petitioners. This decision is immediately executory.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Sarmiento, JJ., concur.

[1] Page 34, Rollo.

[2] Annex B, Petition; pp. 35-37, Rollo.

[3] Annex C, Petition; page 42, Rollo.

[4] Annex 3, Petition; p. 78, Rollo.

[5] Page 39, Rollo.

[6] Gutierrez vs. Magat, 67 SCRA 263, 265; Government Service Insurance System vs. Court of Appeals, 120 SCRA 935, 936-937, citing Gutierrez and Buenbrazo vs. Marave, 101 SCRA 849.

[7] Mabuhay Insurance vs. Court of Appeals, L-28700, March 30, 1970, 32 SCRA 245.

[8] Pp. 35-37, Rollo.

[9] Art. 1258, Civil Code.

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