

FEDERICO ASUNCION, FELOMENA ASUNCION, CEFERINO ASUNCION AND ROMANA AGUSTIN, PETITIONERS, VS. HONORABLE ANDRES PLAN, PEDRO SAN PEDRO, MARTIN NAVARRO, ZOCIMO BELTRAN, BERNARDO BEL...*G.R. No. 52359. February 24, 1981*

Ponente: ABAD SANTOS, J.

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Petition for certiorari and mandamus to review the actuaciones of the respondent judge and order him to issue a writ of execution in Special Civil Action No. BR. II-8 of the Court of First Instance of Isabela, entitled Mariano Asuncion vs. Pedro S. Beltran for partition of real property.

What the petitioners ultimately seek is the enforcement, through an alias writ of execution, of the provision of the revised partition which was jointly submitted by the parties in the aforementioned civil case and approved by the respondent Judge in an order dated October 13, 1973, whereby private respondent Pedro Beltran, as defendant in said partition case, undertook to deliver possession of 24 hectares of land to Mariano Asuncion, the plaintiff in said case and who is the predecessor-in-interest of the herein petitioners. It appears, however, that the enforcement of the said provision of the revised partition had already been effected when the other private respondents herein – the actual possessors and/or tillers of the subject land – executed contracts of lease with petitioner Federico Asuncion on January 30, 1974, and April 16, 1974, (see: Annexes "H" and "K" of the Petition – pp. 31 and 34 of rollo) whereby said petitioner leased the 24 hectares of land to said private respondents "for twelve (12) cavans per hectare for the first crop and twelve (12) cavans per hectare for the second crop". Petitioners themselves state in pars. 9 and 12 of their Petition (p. 4, rollo) that said contracts of lease were executed "in order to effect the Writ of Execution" issued in said case. Indeed, the delivery of possession of the subject 24 hectares to the herein petitioners, as required in the revised partition dated September 24, 1973, had already been accomplished by the execution of the said contracts of lease on January 30, 1974, and April 16, 1974, whereby said petitioners were constructively placed in possession of the subject property. Being fait accompli, the enforcement of the said provision of the approved revised partition cannot now be judicially mandated.

Furthermore, an alias writ of execution requiring the respondents-lessees to surrender possession of the subject land to the herein petitioners cannot legally be issued in Civil Case No. BR. II-8 ("Mariano Asuncion vs. Pedro S. Beltran") since said respondents-lessees were not parties to said case. It was for this reason that the respondent judge denied, and rightly so, the motion for the issuance of alias writ of execution in his order dated November 3, 1978 (p. 88, rollo), which order petitioners now seek to set aside. Apparently, it was the alleged failure or refusal of the respondents-lessees to pay the rentals for said land which prompted the petitioners to seek the ejectment of the respondents-lessees from the property. But whether or not a legal ground exists for the ejectment of the respondents-lessees from the property and for the recovery by petitioners of actual possession of the same is an issue entirely alien to the partition case. Thus, no writ of execution can be issued in said partition case requiring

the ejectment of respondents-lessees from the land and the delivery of possession of the same to the petitioners.

WHEREFORE, the petition for certiorari and mandamus is hereby denied for lack of merit. Costs against petitioners.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr. and De Castro, JJ., concur.

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