

BENJAMIN Y. GOLEZ, REYNALDO B. ARALAR, HONORABLE GERINO M. TOLENTINO, PRESIDING JUDGE OF BRANCH IV, CITY COURT OF MANILA, FRANCISCO L. GARCIA, DEPUTY SHERIFF OF THE CITY OF MANI...

G.R. No. 56587. August 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

It appears that petitioner Benjamin Y. Golez, assisted by his counsel, petitioner Reynaldo B. Aralar, filed an ejectment case against private respondent Vicente V. Aldaba which was docketed as Civil Case No. 035129-CV and assigned to Branch IV of the City Court of Manila presided by petitioner City Judge Gerino M. Tolentino. On September 25, 1978, petitioner Manila City Judge Tolentino rendered a decision by default against private respondent Aldaba, who thereafter filed a petition for relief on November 13, 1978 which was docketed as Civil Case No. 119568 and assigned to Branch XXXVIII of the Manila Court of First Instance presided by Judge Tomas Leonidas who issued on November 21, 1978 a writ of preliminary injunction to stay the execution of the decision of September 25, 1978 rendered by petitioner Manila City Judge Tolentino.

On February 8, 1979, after hearing, respondent Judge Leonidas dismissed Civil Case No. 119568 for relief from judgment upon finding that the allegations of the petition are not true.

After receipt of the order dismissing said Civil Case No. 119568, petitioner Golez reiterated, and petitioner Manila City Judge Tolentino granted on February 12, 1979, the pending motion of petitioner Golez for execution pending appeal; and the decision in the ejectment case No. 035129-CV was accordingly executed.

After such execution of said judgment, private respondent Aldaba filed on March 2, 1979 a petition for contempt in the same Civil Case No. 119568 against petitioners Golez, Aralar, City Judge Tolentino and the sheriff on the ground that the February 8, 1979 order of dismissal issued by respondent Judge Leonidas in said Civil Case has not yet become final.

Respondent Judge Leonidas denied on June 3, 1980 the motion to dismiss the petition for contempt filed on May 16, 1980 by herein petitioners Golez and Aralar, and on March 16, 1981 their motion for reconsideration.

Hence, this petition.

When respondent Judge Leonidas dismissed the petition for relief from judgment such dismissal necessarily carried with it the lifting of the writ of preliminary injunction he issued upon the filing of the petition for relief from judgment, said writ being interlocutory and ancillary in character which is automatically lifted upon dismissal of the main case (*Roldan, Jr. vs. Arca*, 65 SCRA 336, 344 [1975]; *National Sugar Workers' Union, etc. vs. La Carlota Sugar Central, et al.*, 45 SCRA 104, 109 [1972]; *Lazaro vs. Mariano*, 59 Phil. 627, 631 [1934]; *Saavedra vs. Ibañez*, 56 Phil. 33, 37 [1931]; *Hi Caiji vs. Phil. Sugar Estates and Development Company*, 50 Phil. 592, 594 [1927]), regardless of whether the period for filing a motion for reconsideration of the order dismissing

the case or appeal therefrom has expired or not.

Moreover, the writ of execution was issued on February 20, 1979, one day before respondent Aldaba filed on February 21, 1979 his motion dated February 17, 1979 for reconsideration of said order of dismissal.

At the bottom left of the writ of execution, appears a notice to vacate signed by herein petitioner deputy sheriff Francisco L. Garcia giving private respondent Aldaba and all other persons living under him five (5) days from February 22, 1979 or up to February 26, 1979 to voluntarily vacate the premises (Annex 4-B, p. 32-A, rec.). And upon ex parte motion of said deputy sheriff to force open the premises, City Judge Tolentino granted such authority on March 1, 1979 provided that such forcible opening of the premises is done in the presence of a police officer (Annex 5, p. 33, rec.). The notice of sale or execution of the personal properties seized from the premises occupied by private respondent Aldaba pursuant to the writ of execution, was issued on March 26, 1979 by the acting executive sheriff (Annexes 9 & 9-A, p. 40, rec.).

Evidently, the writ of execution was implemented with all the formalities of the law and with the least inconvenience to private respondent.

Hence, the respondent judge erred in entertaining the petition for contempt filed by private respondent against herein petitioners.

WHEREFORE, THE ORDERS OF RESPONDENT JUDGE LEONIDAS DATED JUNE 3, 1980 AND MARCH 16, 1981 ARE HEREBY SET ASIDE AND THE RESPONDENT JUDGE IS HEREBY DIRECTED TO DESIST FROM FURTHER PROCEEDING IN THE PETITION FOR CONTEMPT IN CIVIL CASE NO. 119568. NO COST.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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