

HUALAM CONSTRUCTION AND DEVELOPMENT CORP. AND TAN BEE GIOK, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND STATE INVESTMENT HOUSE, INC., RESPONDENTS.

G.R. No. 85466. October 16, 1992

Ponente: DAVIDE JR., J.

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DAVIDE JR., J.:

Petitioners assail the Decision of the Court of Appeals of 5 August 1988 in C.A.-G.R. SP No. 13060[1] reversing the 7 August 1987 Decision of Branch 49 of the Regional Trial Court (RTC) of Manila in Civil Case No. 87-39946 and reinstating the 27 October 1986 Decision of Branch 27 of the Metropolitan Trial Court (MTC) of Manila in an ejectment case, Civil Case No. 111274. The decision of the RTC declared as null and void the orders of the MTC granting the motion for execution of judgment for failure to file a supersedeas bond and directing the ejectment of the petitioners, and set aside the sheriff's execution sale.

The challenged decision of the respondent Court discloses the following antecedent facts which gave rise to the instant controversy:

Private respondent is the owner of State Centre Building located at 333 Juan Luna Street, Binondo, Manila; the building is divided into several office condominium units offered for sale or lease to the general public.

Pursuant to a Contract to Sell executed on 22 September 1983 between the private respondent as Vendor, and petitioner Hualam Construction and Development Corporation[2] as Vendee, the latter occupied unit No. 1505 of said State Centre Building. The pertinent provisions of this contract read:

"3. PRICE AND TERMS OF PAYMENT -- The purchase price of the unit(s) shall be Pesos: SIX HUNDRED TWENTY TWO THOUSAND SIX HUNDRED FIFTY THREE PESOS & 71/100 (P622,653.71), Philippine currency, payable in the following manner:

- a) FIVE THOUSAND TWO HUNDRED EIGHTEEN (P5,218.00) PHIL. CURRENCY, per month for Six (6) successive month (sic) from the signing of this contract, payable on or before 9.22.83; on or before 10.22.83; on or before 11.22.83; on or before 12.22.83; on or before 1.22.84; on or before 2.22.84; which amount represent (sic) the rental and aircon cost for the corresponding months over the unit.
- b) Downpayment of ONE HUNDRED TWENTY EIGHT THOUSAND ONE HUNDRED ELEVEN & 02/100 (P128,111.02) PESOS payable as follows:

AMOUNT IN WORDS/FIGURES

PAYABLE ON OR BEFORE

THIRTY ONE THOUSAND ONE HUNDRED THIRTY TWO & 69/100 PESOS (P31,132.69)

March 22, 1984

THIRTY TWO THOUSAND THREE HUNDRED TWENTY SIX & 11/100 PESOS (P32,326.11)

April 22, 1984

THIRTY TWO THOUSAND THREE HUNDRED TWENTY SIX & 11/100 PESOS (P32,326.11)

May 22, 1984

THIRTY TWO THOUSAND THREE HUNDRED TWENTY SIX & 11/100 PESOS (P32,326.11)

June 22, 1984

c) MONTHLY AMORTIZATION -- ELEVEN THOUSAND FIVE HUNDRED NINETY & 46/100 (P11,590.46) PESOS.

FIRST MONTHLY installment payable on or before July 22, 1984 and every 22nd day of each month thereafter for sixty (60) installments.

All payments made in accordance herewith shall be applied first to payment (sic) of reimbursement of real estate taxes and other charges due including airconditioning costs hereunder; second, to interests accrued to the date of payment; and third, to the amortization of the principal obligation herein.

x x x

12. CANCELLATION OF THIS AGREEMENT --- Should the VENDEE fail or refuse to make the payment of any of the monthly installments together with the interest thereon as agreed herein on ground other than those provided in Section 23 of P.D. 957, or of all the corresponding proportionate obligations or dues for taxes and assessments levied on the land and the building herein involved during the term of this contract within thirty (30) days from its due date, this Contract shall, by the mere fact of nonpayment expire by itself and become null and void without necessity of notice to the VENDEE of any judicial declaration to the (sic) effect and/any and all sums of money paid under this contract shall be forfeited in favor of the VENDOR as liquidated damages or if VENDEE is already in possession of the property; the amount forfeited together with all improvements, if there are any, made on the premises shall become rentals on the property, and in (sic) this effect, the VENDEE, should he be in possession of the Unit(s) herein purchased, shall become a mere intruder or unlawful detainer of the same and may be ejected therefrom by the means provided by law for trespassers or unlawful detainers. Immediately after the expiration of the 30-day period provided for in this section, the VENDOR, shall be at liberty to dispose of and sell said Unit(s) and its appurtenances to any interested third person." (Underscoring supplied)

x x x

For petitioners' failure and refusal to pay, despite repeated demands, the accumulated downpayment, installments, utility charges and other assessments mentioned in the Contract to Sell -- such as those for airconditioning service, electrical consumption, rentals on telephone lines and use of the parking lot, together with the association dues, the proportionate share in real estate taxes and other charges --- private respondent filed on 8 July 1985 a complaint for ejectment against the petitioners with the MTC of Manila. The case was docketed as Civil Case No. 111274 and was raffled off to Branch 27 of said court.

On 25 July 1985, petitioners filed their Answer with Special Defenses. They subsequently filed a motion to dismiss which was denied by the court. Thereupon, the court calendared the case for pre-trial conference on 7 August 1986. This setting was postponed to 11 September 1986; the parties were given due notice thereof.

On 11 September 1986, however, petitioners and their counsel failed to appear. Upon motion of the private respondent, the MTC declared the petitioners as default and allowed the private respondent to present its evidence ex-parte.

On 27 October 1986, the MTC rendered a decision in favor of the private respondent, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants, ordering the latter or any person claiming rights under them to vacate the premises of Unit 1505 State Centre Building, 333, Juan Luna, Binondo, Manila; to pay plaintiff the sum of P161,478.61 representing unpaid down payment, installments and other charges and such other amount as may become due from defendants by reason of their continued possession of the premises, which amount will be paid jointly and severally by defendants, the further sum of P5,000.00 as and for attorney's fees and to pay the costs."[3]

On 19 January 1987, petitioners filed their Notice of Appeal before the MTC.

Thereafter, private respondent filed on 9 January 1987 a Motion for Immediate Execution of the decision based on Section 8, Rule 70 of the Revised Rules of Court.

On 27 January 1987, the MTC issued an order granting the private respondent's Motion for Immediate Execution.

On 29 January 1987, petitioners, as defendants therein, filed a motion to reconsider the said order, alleging, inter alia, that (1) it is not necessary for them to post a supersedeas bond under Section 8 of Rule 70 because the case does not involve unpaid rents, but unpaid downpayment, installments and other charges, and that the perfection of their appeal automatically stays the execution of judgment; (2) the complaint, although captioned as one "For Ejectment", is in reality one for a sum of money as alleged therein and as found by the said court; (3) the case being for a sum of money which exceeds P20,000.00, said court has no jurisdiction to try the same; and (4) no writ of execution having yet been issued, justice demands that the issuance thereof be held in abeyance until after the outcome of such motion and the pending appeal shall have become known. They then prayed that the order of execution be set aside and the appeal be given due course. Private respondent filed an opposition thereto.

On 9 March 1987, the MTC denied the motion and directed the issuance of a writ of execution; the writ of execution was issued on 11 March 1987.

On 16 March 1987, pursuant to the writ of execution, Deputy Sheriff Justiniano dela Cruz of Branch 27 of the MTC restored the possession of said Unit No. 1505 to the private respondent and simultaneously levied upon the personal properties of the petitioners found in the premises to satisfy the money judgment decreed in the decision. Accordingly, he issued a Notice of Levy and Sale on Execution of Personal Properties which set the public auction sale for 26 March 1987 at 10:00 A.M..

On 23 March 1987, petitioners filed with the RTC of Manila a petition for certiorari with injunction against the Hon. Jose R. Bueno, presiding Judge of Branch 27 of the MTC of Manila, the Sheriff and the private respondent. The same was docketed as Civil Case No. 87-39946 and was raffled off to Branch 49. The petitioners sought the issuance of an order enjoining the respondents therein from enforcing the writ of execution issued in Civil Case No. 111274. For such purpose, they asked that a preliminary injunction be issued and, after hearing, for judgment to be rendered declaring such injunction permanent and ordering the respondents to restore to the petitioners the possession of the properties levied upon as well as of the premises in question.

At 10:00 o'clock in the morning of 26 March 1987, Sheriff dela Cruz, Jr. proceeded with the public auction sale of the levied properties. Private respondent was the sole bidder with a bid of P30,145.00; a Certificate of Sale was therefore issued to it on that date. On the same day, however, the RTC issued a restraining order enjoining the respondents in said Civil Case No. 87-39946 from enforcing the Writ of Execution earlier issued by the MTC together with the Notice of Levy and Sale on Execution of Personal Properties. However, this order, to which a copy of the petition for certiorari was attached, was received by the Sheriff only at 1:35 o'clock in the afternoon; the private respondent itself received notice thereof ten (10) minutes later. Clearly then, notice was received by both after the termination of the public auction sale.

On 15 April 1987, private respondent filed its Answer in Civil Case No. 87-39946.

On 27 August 1987, the RTC rendered its decision in Civil Case No. 87-39946, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered granting the Petition at bar, and declaring null and void the Orders, Annexes 'F' and 'J' and Ejectment Execution (sic), Annex 'K', all of the Petition, issued by the Respondent Judge, (of the MTC) and the levy on Petitioners' personal properties, the sale thereof at public auction and the Certificate of Sale, Annex 'B' of the Supplemental Complaint, all executed by the Respondent Deputy Sheriff.

Accordingly, the Respondents Deputy Sheriff and Private Respondent State Investment House, Inc. are hereby ordered to return to the Petitioners the personal properties sold at public auction to the Private Respondent and to restore the Petitioner corporation to the possession of the aforementioned condominium unit; and to pay the costs of suit.

SO ORDERED."[4]

In finding for the petitioners, the RTC ruled that since the MTC did not, in its decision, fix the rentals due up to the rendition of the judgment subject of the petition, it was not necessary for the petitioners to file a supersedeas bond to stay the execution of judgment. The purpose of a supersedeas bond under Section 8 of Rule 70 is to assure the plaintiff that the rents, damages and costs accruing "down to the time of the judgment appealed from" will be paid in case said plaintiff eventually prevails. Hence, the amount of the bond will depend upon the amount of rentals or damages fixed in the decision. The decision of the MTC fixed neither the rentals nor the damages. The adjudged amount of P161,478.61 constitutes the totality of the unpaid installments on the downpayment of the purchase price of the condominium unit, as well as the following charges: parking fees, electric bills, real estate taxes, telephone charges, association dues and charges for the use of the airconditioning unit. It does not, however, include back rentals or the reasonable value for the use of the condominium unit. Moreover, it rejected the claim of private respondent that the award could fall under the concept of damages provided for in Section 8 of the aforesaid Rule 70 because the damages contemplated therein refer to and cover only the reasonable compensation for the use and occupation of the premises, generally measured by the fair rental value of the property, and does not include other kinds of damages such as unpaid downpayments, association charges, costs of electricity and airconditioning, real estate taxes, parking dues and the like.

Its motion to reconsider said decision having been denied in the Order of 7 October 1987, private respondent filed with the Court of Appeals a petition for certiorari, which was docketed as C.A.-G.R. No. 13060, on 2 November 1987. It alleged therein that the RTC committed the following errors:

- a) In holding that herein petitioners were not obliged to file with the MTC any supersedeas bond to stay execution of said court;
- b) In giving due course to, and granting the Petition for Certiorari notwithstanding that appeal is the proper

remedy available to them;

c) In holding and declaring the orders of the MTC of 27 January 1987 granting the immediate execution of the decision of 9 March 1987 denying the Motion for Reconsideration, and of 11 March 1987 granting the so-called ejectment execution as having been issued whimsically, capriciously and without legal basis; and

d) In holding and declaring as null and void the aforesaid orders and Ejectment Execution, and in ordering the return to the petitioners therein of the personal properties sold at public auction and to restore them to the possession of the condominium unit.[5]

An Answer to said petition was filed in due course by herein petitioners; consequently, the Court of Appeals rendered the challenged decision on 5 August 1988, the dispositive portion of which reads:

"WHEREFORE, finding the instant petition meritorious the same is granted and the decision of respondent court under review dated August 7, 1987 together with all subsequent orders issued thereunder is hereby REVERSED and SET ASIDE. Another one is, hereby entered REINSTATING the decision dated October 27, 1986 of the Metropolitan Trial Court of Manila, Branch 27, in Civil Case No. 111274CV, together with all subsequent orders issued thereunder. This decision, however, is without prejudice to private respondents, if they so desire, prosecuting their appeal in the appropriate Regional Trial Court below. Costs against private respondents.

SO ORDERED."[6]

In ruling for the herein private respondent, the respondent Court, after noting the special nature of transactions involving condominium units -- where the so-called periodic rental payments for the occupation thereof constitute partial consideration for the eventual vesting of ownership of the unit in the occupant-vendee -- held that the amount of P161,478.61, which the petitioners were supposed to pay by virtue of the MTC order, represents more than just back rentals or the reasonable value for the use and occupation of the condominium unit; thus, the filing of a supersedeas bond for at least an equal amount in order to stay the immediate execution of judgment, pursuant to Section 8 of Rule 70, was necessary. Citing *Arcilla vs. Del Rosario*,[7] it held that the filing of the bond to stay execution is mandatory. It further declared that the petitioners' remedy is not a petition for certiorari but an ordinary appeal, and since they had already filed a notice of appeal, they should have prosecuted it. Also, a petition for certiorari may not be availed of as a substitute for appeal.[8] Moreover, the execution of judgment was a *fait accompli*. Accordingly, the remedy of restoration may be obtained under Section 5, Rule 39 of the Rules of Court.

Their motion for the reconsideration of the foregoing decision having been denied by the respondent Court in its Resolution of 17 October 1988, the petitioners filed the instant petition under Rule 45 of the Rules of Court. They contend that the respondent Court erred:

"I

x x x IN HOLDING THAT THE PETITIONERS WERE OBLIGED TO FILE SUPERSDEAS (sic) BOND TO STAY EXECUTION OF JUDGMENT OF THE INFERIOR COURT DESPITE THE FACT THAT THE PETITIONERS WERE NOT ADJUDGED TO PAY RENTS OR DAMAGES.

II

x x x IN EXPANDING THE MEANING OF THE WORDS 'RENTS', 'DAMAGES' AND 'COSTS' MENTIONED IN SECTION 8, RULE 70 OF THE REVISED RULES OF COURT TO INCLUDE 'UNPAID DOWN PAYMENT', 'INSTALLMENTS' AND 'OTHER CHARGES' REFERRED TO IN THE DECISION OF THE INFERIOR COURT.

III

x x x IN HOLDING THAT CERTIORARI IS NOT THE APPROPRIATE LEGAL REMEDY DESPITE THE FACT THAT THE INFERIOR COURT HAD ALREADY ORDERED EXECUTION OF THE JUDGMENT RENDERING THE REMEDY OF APPEAL INEFFECTUAL, AND/OR INADEQUATE.

IV

x x x IN HOLDING THAT ORDINARY APPEAL IS THE ONLY APPROPRIATE LEGAL REMEDY TO EFFECT THE RESTORATION OF SUBJECT PREMISES AND RESTITUTION OF THE LEVIED PROPERTIES AFTER EXECUTION.

V

x x x IN NOT HOLDING THAT ALTHOUGH THE COMPLAINT IS DENOMINATED AS ONE FOR 'EJECTMENT', IT IS IN REALITY ONE FOR A SUM OF MONEY AND/OR SPECIFIC PERFORMANCE ARISING FROM EXECUTION OF A CONTRACT TO SELL.

VI

x x x IN NOT HOLDING THAT THE INFERIOR COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER AS THE CASE IS ONE FOR A SUM OF MONEY AND/OR SPECIFIC PERFORMANCE AND THE AMOUNT INVOLVED EXCEEDS P20,000.00.

(VII)

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT THE CASE IS ONE FOR EJECTMENT AND NOT FOR A SUM OF MONEY AND/OR SPECIFIC PERFORMANCE, THE DECISION RENDERED BY THE INFERIOR COURT IS NULL AND VOID BECAUSE IT WAS A JUDGMENT BY DEFAULT WHICH IS NOT SANCTIONED BY THE RULE ON SUMMARY PROCEDURE."[9]

We gave due course to the petition after deliberating on the private respondent's Comment to the same, petitioners' Reply thereto and the private respondent's subsequent Rejoinder.

It must at once be stressed that the main decision of the MTC in Civil Case No. 111274 and the merits of the appeal therefrom are not in issue in this instant petition. Consequently, the fifth and sixth assigned errors are either entirely misplaced or adroitly incorporated to befuddle the real issues and obtain a review of the decision despite the fact that the petitioners had apparently neglected to further pursue the remedy of appeal below. For this reason, too, the dispositive portion of the challenged decision reinstating the MTC decision is erroneous since the RTC decision did not modify, reverse or set aside the latter.

The pivotal issue raised is whether or not it was necessary for the petitioners to file a supersedeas bond in order to stay the execution of the adverse judgment of the MTC. Corollary, the resolution thereof hinges on the determination of whether the amount adjudged by the MTC represents rents, damages and costs accruing down to the time the decision was rendered.

It is the thesis of the petitioners that the amount of P161,478.61 does not represent back rentals or the reasonable value for the use of the subject unit, but constitutes the totality of the unpaid downpayment and installments of the purchase price of the condominium unit, as well as parking fees, cost of electric consumption, real estate taxes, telephone charges, association fees and the cost for the use of the building's airconditioning units. Hence, no supersedeas bond is necessary to stay the execution of said judgment. The filing of the notice of appeal was

sufficient. In fine, petitioners allege that since "unpaid downpayment", "installments" and "other charges" are not the same as "rent", "damages" and "cost", they do not fall within the purview of Section 8, Rule 70 of the Revised Rules of Court which provides:

"SEC. 8. Immediate execution of judgment. How to stay the 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 a 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 at the rate determined by the judgment, on or before the tenth day of each succeeding 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. x x x"

The term rent needs no further elucidation.

As to damages, We have on several occasions ruled that since the only issue raised in forcible entry or unlawful detainer cases is that of rightful physical possession,[10] the "damages" recoverable in these cases are those which the plaintiff could have sustained as a mere possessor, i.e., those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.[11] Municipal and city courts, therefore, have no jurisdiction to award damages based on any other ground. Simply put, "damages" in the context of Section 8 of Rule 70 is limited to "rent" or "fair rental value" for the use and occupation of the property.[12]

The costs mentioned in said Section 8 refer to the costs under Rule 142 of the Rules of Court which are, with respect to Civil Case No. 111274 (MTC), more specifically covered by Section 9 thereof. As shown earlier, the adjudged amount does not include such costs.

Petitioners admit that the above amount adjudged by the MTC includes unpaid downpayments and installments provided under the Contract to Sell. Clause no. 12 thereof, which was earlier quoted, evidences the intention of the parties to consider the monthly installments as the reasonable rent or fair rental value for the use of the unit. Thus, it therein provides for the cancellation of the agreement should petitioners fail or refuse to pay the monthly installments, etc., within thirty (30) days from the different due dates; said cancellation shall take effect by the mere fact of non-payment. Thereupon, the contract shall be considered to have expired and will be deemed as null and void without the need for any notice to be given to the petitioners or any judicial declaration to that effect; all sums of money paid under the contract shall then be forfeited in favor of the private respondent as liquidated damages or, if the petitioners are already in possession of the property, the amount forfeited together with the improvements made on the premises, if there be any, "shall become rentals on the property." In the body of its decision, the MTC made a categorical declaration of default and treated the installment payments due as rentals; in the dispositive portion thereof, it described the adjudged amount as representing, inter alia, unpaid downpayments and installments, and further ordered petitioners to pay "such other amount as may become due from defendants by reason of their continued possession of the premises." While concededly, the latter directive is phrased rather imprecisely, its reference to the monthly installments provided for under the contract is unmistakable for these are the very amounts which, in the ordinary course of events, could become due under the said contract. However, the other charges included therein, itemized in the Statement of Account[13] -- namely, airconditioning charges, association dues, parking fees, telephone charges, real estate taxes, electric bills and penalty charges -- cannot be subsumed under the concept of damages for purposes of the supersedeas bond.

Accordingly, the respondent Court erred in holding that the supersedeas bond should fully cover the adjudged amount of P161,478.61. Nevertheless, the filing of a supersedeas bond to cover that portion representing the unpaid downpayments and installments was necessary to stay the execution of judgment; this is a mandatory requirement. In short, the adjudged amount is divisible. So much thereof that would represent the unpaid downpayment and installments already due as of the rendition of the decision should be covered by the supersedeas bond.

In forcible entry and unlawful detainer cases, the execution of judgment in favor of the plaintiff is a matter of right and mandatory.[14] The duty to order the immediate execution is ministerial and imperative;[15] it cannot be avoided.[16] The only way to stay execution is by perfecting an appeal from the decision and filing a supersedeas bond, depositing from time to time with the Regional Trial Court, during the pendency of such appeal, the amounts of rent or the reasonable value for the use and occupation of the property as fixed by the court of origin. The reason for this is to prevent further damages to the plaintiff caused by the loss of his possession of the property.[17] There are, of course, exceptions to this rule, as (a) where delay in the deposit is due to fraud, accident, mistake or excusable negligence,[18] or (b) where supervening events occurring subsequent to the judgment bring about a material change in the situation of the parties which makes execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances.[19] The first exception also applies to the filing of the supersedeas bond.[20] These exceptions are not invoked in this case.

Thus, the MTC did not act without jurisdiction or with grave abuse of discretion in granting the motion for immediate execution because no supersedeas bond for that portion of the adjudged amount -- which represents the unpaid downpayment and installments -- was filed by the petitioners. On the contrary, it was the court's ministerial duty to grant the same. The respondent Court then correctly reversed the decision of the RTC which nullified the said MTC order, together with the subsequent related orders, and set aside the sheriff's execution sale.

We are, however, unable to agree with the opinion and conclusion of the respondent Court that the proper remedy to assail the orders of the MTC is an ordinary appeal and not a petition for certiorari. Under the circumstances obtaining in this case, the special civil action for certiorari under Rule 65 of the Rules of Court could be availed of by the petitioners. They had filed a notice of appeal. The MTC took no action thereon either by denying or giving due course to the same. In the meantime, a motion for execution under Section 8, Rule 70 of the Rules of Court was filed and granted by the MTC; thus, petitioners' ouster from the premises was imminent. If the petitioners' theory -- that a supersedeas bond was not necessary -- were correct, then certainly the MTC, in granting the motion, would have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. The appeal earlier interposed cannot then be said to constitute an adequate remedy to prevent their ouster from the premises. They cannot be confined or restricted to the sole remedy of an appeal and, as suggested by the respondent Court, simply wait for the judgment thereon by the RTC. Under Section 5 of Rule 39, the said court may issue such orders of restitution as equity and justice may warrant in the event of a partial or total reversal of the appealed decision. Under such circumstances, the appellate process would be too slow and the wait too long; it is also evident that such mode of review would be inadequate and insufficient. It is settled that although the extraordinary writ of certiorari is not proper when an ordinary appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insufficient and will not promptly relieve a party from the injurious effects of the order complained of,[21] or where appeal is inadequate and ineffectual.[22]

Prescinding, therefore, from the foregoing discussions, it is clear that the dispositive portion of the challenged decision of the respondent Court is correct, except insofar as that portion reinstating the decision of the MTC is

concerned.

WHEREFORE, the Petition is DISMISSED for lack of merit and the Decision of the respondent Court of Appeals of 5 August 1988 is AFFIRMED subject to the modification above indicated.

Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 52-66; per Associate Justice Segundino G. Chua, concurred in by Associate Justices Fidel P. Purisima and Nicolas P. Lapeña, Jr.

[2] Represented by co-petitioner Tan Bee Giok.

[3] Rollo, 56-57.

[4] Rollo, 52.

[5] Rollo, 59.

[6] Id., 66.

[7] 74 Phil. 445 [1943].

[8] Citing Francisco vs. Caluag, 3 SCRA 694 [1961]; Fernando vs. Vasquez, 31 SCRA 288 [1970]; Philippine Virginia Tobacco Administration vs. Lucero, 125 SCRA 337 [1983].

[9] Rollo, 153-155.

[10] Galgala vs. Benguet Consolidated, Inc., 177 SCRA 288 [1989]; Caparros vs. Court of Appeals, 170 SCRA 758 [1989]; Dela Cruz vs. Court of Appeals, 133 SCRA 520 [1984]; Alvir vs. Vera, 130 SCRA 357 [1984]; Dalida vs. Court of Appeals, 117 SCRA 480 [1982] Ortigas and Co., Ltd. Partnership vs. Court of Appeals, 106 SCRA 121 [1981].

[11] Vasquez vs. Garcia, 89 Phil 152 [1951] Santos vs. Santiago, 38 Phil 575 [1918]; De Castro and Morales vs. Justice of the Peace of Bocaue, 33 Phil 595 [1916]; Veloso vs. Ang Seng Teng, 2 Phil 622 [1903].

[12] Shoemart, Inc. vs. Court of Appeals, 190 SCRA 189 [1990]; Felisilda vs. Villanueva, 139. SCRA 431 [1985]; Baens vs. Court of Appeals, 125 SCRA 634 [1983]; Reyes vs. Court of Appeals, 38 SCRA 138 [1971].

[13] Original Records, Civil Case No. 87-39946, 21-25.

[14] Arcilla vs. Del Rosario; supra.; Quimpo vs. Dela Victoria, 46 SCRA 139 [1972].

[15] Philippine Holding Corp. vs. Valenzuela, 104 SCRA 401 [1981].

[16] Sumintac vs. Court of First Instance of Rizal, 71 Phil. 445 [1941].

[17] Balagtas Realty Corp. vs. Romillo, 114 SCRA 28 [1982]; Ng Lit vs. Llamas, 118 SCRA 215 [1982]; Salinas vs. Navarro, 126 SCRA 167 [1983]; Patalinghug vs. Court of Appeals, 137 SCRA 487 [1985].

[18] Zamora vs. Dinglasan, 77 Phil. 46 [1946]; Cunaan vs. Rodas, 78 Phil. 800 [1947]; Ng Lit vs. Llamas, supra.

[19] Laurel vs. Abalos, 30 SCRA 281 [1969].

[20] De Laureano vs. Adil, 72 SCRA 148 [1976]; Philippine Holding Corp. vs. Valenzuela, *supra*.

[21] St. Peter Memorial Park vs. Campos, 63 SCRA 180 [1975].

[22] Romero vs. Court of Appeals, 40 SCRA 172 [1971].

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