

46 Phil. 851

[ **G.R. No. 20711. September 25, 1923** ]

**JUAN TOMBOC, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF PANGASINAN AND GERARDO NABOR, RESPONDENTS.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

Pending an appeal in the Court of First Instance of Pangasinan from a judgment of the justice of the peace court of the municipality of Sison, in a case for forcible entry and detainer, that Court of First Instance, upon motion of the victorious plaintiff in that case, issued an execution upon said judgment.

The defendant and judgment debtor, Juan Tomboc, claiming that said execution was issued in excess of jurisdiction, commenced this certiorari proceeding on April 28, 1923, to have this court declare said execution to be null and void, and order the return of the possession of the realty to him, of which the judgment debtor was deprived in the execution proceeding held under that judgment, with costs.

This court, on April 30, 1923, ordered the respondents, namely, the Judge of First Instance of Pangasinan and the judgment debtor Gerardo Nabor to appear within ten days and show cause why the remedy applied for should not be granted; and said respondents, on June 4, 1923, filed a demurrer on the ground that the facts alleged in the petition were not sufficient to establish the petitioner's right to a writ of certiorari.

This demurrer was overruled by this court on July 13, 1923, and the respondents answered the complaint, admitting all the paragraphs thereof, except the 16th and 17th which they generally and specifically denied, and praying that they be absolved from the complaint with the costs against the petitioner.

On September 1, 1923, the parties filed a written stipulation of facts, raising the question whether or not the bond given by the petitioner was sufficient to prevent the execution of the judgment of the justice of the peace court.

The bond, of which Exhibit E is an undisputed copy, is for the sum of P400 “to answer for, and secure, the payment of the rents, damages, and costs that might be adjudged on appeal against the defendant-appellant” in that case.

The judgment appealed from, which is Exhibit C, contains these findings and order for judgment:

“1. That before April 9, 1923, and for more than ten years prior thereto, the plaintiff Gerardo Nabor was in possession of the land in litigation, described in the complaint and in the beginning of this decision, which possession was quiet and peaceful and under claim of title.

“2. That on or about April 9, 1921, or a few days prior thereto, the defendant Juan Tomboc, through fraud and stratagem entered upon, occupied, and took possession of, the land above-mentioned, depriving the plaintiff unlawfully of his possession;

“3. That at the time of the unlawful taking of the land in question, it was already planted with tobacco, and after its gathering, the defendant and his coparceners sowed corn on the land; and

“4. That the gathering of the tobacco, as well as of the corn, was made by order, and for the account of the defendant, who thereby obtained one hundred fifty *quintals* of tobacco and ninety thousand ears of corn approximately, of which the share of the plaintiff as owner of the land would have been one-third; that is, fifty *quintals* of tobacco and thirty thousand ears of corn, which, at the price of last year of P5 per *quintal* of tobacco and P5 per thousand ears of corn, are worth P400 in all, which is what the land in question yielded, and can yield the plaintiff yearly, that is, P33.33 1/3 net monthly.

“Wherefore it is hereby ordered that judgment be entered in favor of the plaintiff and against the defendant, sentencing the latter to return immediately to the former the possession of the land in litigation, described in the complaint and at the beginning hereof, and to pay said plaintiff the sum of four hundred pesos (P400) as damages caused by the use and occupation of the aforesaid land by the defendant, with the costs of the action.

“So ordered.

“Sison, Pangasinan, P. I., February 16, 1922.”

As may be seen, this judgment fixes the sum of P400 as the annual product of the land and that of P33.33 1/3 as the monthly product. Under section 88 of the Code of Civil Procedure, as amended, it was the duty of the defendant in that case, besides giving the bond exhibited, to pay the plaintiff or into the Court of First Instance this sum monthly on or before the 10th day of each month; and his failure to make such payment gave the judgment creditor right to have an execution issued upon the judgment appealed from.

From the record, it appears that the defendant Tomboc, the herein petitioner, did not make such monthly payment. For this reason, the plaintiff in that case, petitioner therein, Nabor, in his motion (Exhibit H) a copy of which was sent to Tomboc, petitioned the court below to issue an execution upon said judgment and the court, after hearing the parties, granted said petition entering the order Exhibit I, which the petitioner seeks to be annulled in this proceeding.

This order being based on the facts and the law, and having been issued with complete jurisdiction, the relief applied for by the petitioner cannot be granted.

The proceeding is dismissed and the petition denied with costs against the petitioner. So ordered.

*Araullo, C.J., Johnson, Street, Malcolm, Avanceña, Villamor, and Johns, JJ., concur.*

Date created: June 17, 2014