46 Phil. 827

[G.R. No. 19827. April 06, 1923]

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLEE, VS. ANTONIO DE LA RIVA, DEFENDANT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

The point at issue in this case is whether or not the judgment rendered by this court on January 12, 1909,[1] in the case R. G. No. 4604 and No. 4244 of the Court of First Instance of Manila is effective between the parties in that case. Said parties were notified of that judgment on February 13, 1909, and the record of the case was returned to the Court of First Instance of origin, the same having been recorded and filed in said court on the 15th of the same month and year (folio 485 of said record).

On the 25th of the same month and year, the plaintiff, winner in that case, presented his bill of costs in the Court of First Instance, to which the case had been returned.

On the 24th of February, 1914, the plaintiff moved the Court of First Instance to enter judgment in accordance with said decision of this court which modified the judgment involved in that appeal, sentencing the defendant to pay plaintiff, instead of P94,222.50, the sum of P93,963.30 with interest thereon at 8 per cent per annum from January 1, 1906, with costs. Granting this motion, the Court of First Instance rendered judgment in harmony with the opinion of this court.

On March 19, 1918, a writ of execution was issued upon that judgment, which was returned unsatisfied to the Court of First Instance, no property of the defendant having been found.

On the 5th of November of the same year a new execution was issued, of which no return appears to have been made.

On the 15th of February, 1922, the plaintiff brought suit against the same defendant, praying that judgment be rendered reviving, and giving effect to the judgment in question.

The first point that presents itself for our consideration is whether the period of five years fixed by section 443 of the Code of Civil Procedure within which an execution can be issued upon a judgment must be computed from February 26, 1914, the date of the judgment entered by the Court of First Instance in accordance with the decision of this court, or from January 12, 1909, the date of the judgment of this court.

If the former proposition is correct then the writs of execution issued on the 19th of March, and 5th of November, 1918, were within the five-year period fixed by said section 443 of the Code of Civil Procedure. But if said period of five years begins to run not from February 26, 1914, but from January 12, 1909, then said executions issued in the year 1918 are of no legal effect.

To solve this question, it is necessary to determine the legal effect of the judgment entered by the Court of First Instance on February 26, 1914. The plaintiff alleges that such judgment was entered in accordance with the dispositive part of the decision of this court wherein, among other things, it is said:

> "Twenty days after notification of this decision, let judgment be entered in accordance herewith, and ten days thereafter, let the record be remanded to the court of origin for proper proceedings."

It is argued that as in this decision it is ordered that judgment be entered in accordance therewith, the Court of First Instance, at the instance of the plaintiff, entered such a judgment on February 26, 1914. But such an order of this court was not, and could not have been, addressed to the Court of First Instance, because right after that order it was directed that, after the entry of such a judgment in accordance with the decision, the record be remanded to

the court of origin for proper proceedings. Under these orders it was impossible for the Court of First Instance to enter judgment before the record of the case was remanded thereto.

This order of the Supreme Court, which is usually contained in its decisions, is in harmony with the provision of section 506 of the Code of Civil Procedure and rules 33 and 34 of the Rules of this court, which are as follows:

> "SEC. 506 (*Code of Civil Procedure*).—In all cases heard by the Supreme Court on bills of exception, its judgments shall be remitted to the Courts of First Instance from which the actions respectively came into the Supreme Court; and for this purpose it shall be the duty of the clerk of the Supreme Court, within ten days after the close of any term, to remit to the clerks of Courts of First Instance, notices of all judgments of the Supreme Court in actions brought from the Courts of First Instance respectively. Upon receiving the notice so remitted, the clerk of the Court of First Instance shall enter the same upon his docket and file the notice with the other papers in the action.
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> "The judgment so remitted shall be executed by the Court of First Instance, in the same manner as though the action had not been carried to the Supreme Court. But the Supreme Court may, by special order, direct any particular judgment to be remitted to the proper Court of First Instance at any time, without awaiting the end of the term."
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> "*Art. 33* (*Rules of the Supreme Court*).—Upon the publication of the decision, the clerk shall mail notice thereof to the respective parties, or their counsel, and judgment shall not be entered until ten days after such publication.
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> "*Art. 34* (*Rules of the Supreme Court*).—Five days after entry of judgment the clerk shall remand the case to the lower court, unless notice is given, pursuant to rule 40 of intention to petition the Supreme Court of the United States for a writ of certiorari, in which event the *mittimus* shall be stayed pending action by this court upon such notice."

The judgment that the Supreme Court ordered entered in accordance with its

decision was the one to be entered by the clerk of said court before remanding the case to the court of origin. And as a matter of fact, the clerk of the Supreme Court on February 3, 1909, entered the judgment required by said court to be entered, which is on folio 499 of the record of said civil case No. 4244, and which literally is as follows:

"UNITED STATES OF AMERICA
"SUPREME COURT OF THE PHILIPPINE ISLANDS

"GUTIERREZ HERMANOS,
Plaintiff and appellee,

VERSUS

"ANTONIO DE LA RIVA,
"Defendant and appellant.

JUDGMENT

February 3, 1909. 16 Judgment Book Register No. 4604.

"This Court having regularly acquired jurisdiction for the trial of the above entitled cause, submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 12th day of January, nineteen hundred and nine;

"By virtue thereof the judgment of the Court of First Instance of Manila dated the twenty-first day of May, nineteen hundred and seven, and from which this appeal was taken, is hereby modified by changing the amount of P94,222.50 therein stated for P93,963.30, and as thus modified, said judgment is affirmed, and it is ordered that judgment be entered against the defendant for the sum of P93,963.30, with interest thereon at the rate of eight per centum per annum from January 1, 1906, with the costs in the court below, and without special pronouncement as to the costs on this appeal.

"It is further ordered that * * * recover from * * * the sum of P * * * as costs.

(Sgd.) "J. E. BLANCO
"*Clerk of the Supreme Court of the*

"Philippine Islands"

Therefore the judgment entered by the Court of First Instance on February 26, 1914, is not the judgment ordered by the Supreme Court to be entered, for such judgment had already been entered by the clerk of this court on February 3, 1909. Such a judgment of the Court of First Instance under date of February 26, 1914, was and is an unnecessary proceeding and has no legal effect.

The true and legally effective judgment is the one entered by the clerk of the Supreme Court on February 3, 1909. And from this date the five years mentioned in section 443 of the Code of Civil Procedure must be, and are computed, which section provides:

> "The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement, as hereinafter provided."

Therefore the writs of execution issued in the year 1918 were issued long after the period of five years fixed by the legal provision just quoted and consequently they have no legal effect.

The other point remaining to be considered has reference to the action brought by the plaintiff by the filing of a complaint on February 15, 1922, from which this appeal originated. The question at issue is whether or not this action is tenable, taking into account the date it was filed. It is based on section 447 of the Code of Civil Procedure, the English and Spanish texts of which are as follows:

> "*Enforcement of judgment after lapse of five years*.—In all cases, a judgment may be enforced after the lapse of five years from the date of its entry, and before the same shall have been barred by any statute of limitation, by an action instituted in regular form, by complaint, as other actions are instituted."
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> "*Del cumplimiento de la sentencia despues de transcurridos cinco*

> *años*.—En todos los casos puede exigirse el cumplimiento de una sentencia despues del vencimiento de cinco años desde la fecha de su inscripcion y antes que quede prescrita, por virtud de cualquier ley de prescripcion, mediante demanda interpuesta en la forma acostumbrada."

The question that presents itself for our consideration is whether or not the judgment under discussion has already prescribed, to solve which it would be necessary to determine when the period of prescription of said judgment has begun to run. If it began on the day it was rendered, that is to say, February 3, 1909, then the complaint which was filed on February 15, 1922, cannot prosper because the judgment has already prescribed, inasmuch as from the first to the last of said dates more than ten years have elapsed which is the period of prescription of judgment under section 43, No. 1, of the Code of Civil Procedure.

> "Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:
>
> "1. Within ten years: An action upon an agreement, contract, or promise in writing, or upon the judgment or decree of a court. * * *"

But if the period of limitation did not begin to run on February 3, 1909, but after the lapse of the five years within which the plaintiff could get an execution upon said judgment, then under the section just quoted, the complaint by which this action was commenced was presented on time, having been filed before the expiration of the prescriptive period. But in adopting this view, we encounter a serious difficulty and that is the fact that section 447 of the Code of Civil Procedure above quoted provides that *and before the same shall have been barred*. So that the action provided in this section must be brought before the judgment prescribes. If the words we have underscored had not been added to this provision, it would not be difficult to hold that the action referred to in this section may be brought within ten years from the expiration of the five years within which execution can be issued upon the judgment, considering, without admitting, that the action provided by Jaw in said section accrues and exists only after the expiration of the five years fixed for the

execution of the judgment. But it must be noted in the first place that in interpreting this section 447 of the Code of Civil Procedure, we must not, according to the maxim "*noscitur a sociis*," lose sight of the provisions concerning the prescription above-mentioned; and construing said section 447 in this way, the conclusion one arrives at is that after the expiration of the five years within which execution can be issued upon a judgment, the winning party can revive it only in the manner therein provided so long as the period of ten years does not expire from the date of said judgment, according to section 43, No. 1, of the same Code.

In the second place, it cannot be said that the cause of action of the winning party to enforce a judgment accrues only after the expiration of the five years within which he may obtain an execution. The right of said winning party to enforce the judgment against the defeated party, begins to exist the moment the judgment is final; and this right, according to our Code of Procedure, consists in having an execution of the judgment issued during the first five years next following, and in commencing after that period the proceeding provided in section 447 to revive it, and this latter remedy can be pursued only before the judgment prescribes, that is to say, during the five years next following. It is so much an action to ask for an execution as it is to file a complaint for reviving it, because, as we know, by action is meant the legal demand of the right or rights one may have.

> "Many definitions of the term 'action' have been given by the courts. It has been defined as the legal demand of one's right, or rights; the lawful demand of one's rights, or rights; the lawful demand of one's rights in the form given by law; a demand of a right in a court of justice; the lawful demand of one's right in a court of justice; the legal and formal demand of one's rights from another person or party, made and insisted on in a court of justice; a claim made before a tribunal; an assertion in a court of justice of a right given by law; a demand or legal proceeding in a court of justice to secure one's rights; the prosecution of some demand in a court of justice; the means by which men litigate with each other; the means that the law has provided to put the cause of action into effect; the formal means or method of pursuing and recovering one's right in a court of justice; the rightful method of obtaining in court what is due to any one; the prescribed mode of enforcing a right in the proper

> tribunal; a remedial instrument of justice whereby redress is obtained for any wrong committed or right withheld; a proceeding in court, whether of equity or law; a suit or process by which a demand is made of a right, in a court of justice; a proceeding at law to enforce a private right or to redress a private wrong; a civil proceeding taken in a court of law to enforce a right; a judicial proceeding for the prevention or redress of a wrong; a proceeding by one party against another to try their mutual rights; an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense; a judicial proceeding which will, if prosecuted effectually, result in a judgment." (1 Corpus Juris, pp. 924, 925.)

As may be seen, this word *action* has many meanings among which is included not only the bringing of a suit in court, but also the claiming of a right one may have, such as the right to have an execution issued upon a favorable judgment.

The definition given by our Code of Civil Procedure of the word *action* has not escaped our attention, which definition describes an ordinary action; but this narrow meaning of the word *action* is not the one to be given when it is desired to define what is meant by *cause of action* in section 43 of said Code. This is the more true in this case because in the Spanish translation of said section 1, the word *action* is not defined, but instead the meaning of the word "*juicio*" is explained.

In the third place, if it is held that after the expiration of the five years within which execution can be issued upon a judgment, the winning party has still ten years within which to revive it, then the judgment would not prescribe until after fifteen years, which is against No. 1 of section 43 of the same Code.

And it cannot be said that such is the letter, and much less, the intention of the law, for there is nothing in section 447 of the said Code, making this new period different from the one prescribed in said section 43, No. 1, or reconciling these two provisions, there being no other way of reconciling them than to say that after the expiration of the first five years next following the

judgment, there remain to the victorious party only another five years to revive it.

Prescription is a matter of positive legislation and cannot be established by mere implications or deductions.

> "The views of the courts as to the character of statutes of limitation have varied considerably. Originally such a statute was regarded as one of repose and not one of presumption. Subsequently the tendency of judicial opinions was that the statute was one of presumption rather than of repose. Following this the courts again viewed with favor the doctrine first advanced, and adopted the view, which prevails at the present day, to the effect that it is a statute of repose, the object of which is to suppress fraudulent and stale claims from springing up at great distances of time, and surprising the parties or their representatives, when all the proper vouchers and evidence are lost, or the facts have become obscure from the lapse of time, or the defective memory or death or removal of witnesses. * * *" (17 R. C. L., 664, 665.)

As a consequence of all of the foregoing, the writs of execution issued in the year 1918 upon the judgment of February 3, 1909, are of no legal effect and the herein complaint filed February 15, 1922, was presented after said judgment has prescribed.

Wherefore the conclusion is inevitable that the plaintiff has no right to bring this action and its complaint must be dismissed.

For all of the foregoing the judgment appealed from is reversed, and the complaint dismissed, without express finding as to costs. So ordered.

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

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[1] Gutierrez Hermanos *vs*. De la Riva, 12 Phil., 458.

DISSENTING

OSTRAND, J., with whom concurs **AVANCEÑA, J.:**

I dissent. The action is brought under section 447 of the Code of Civil Procedure to revive a judgment and the limitation for such an action is ten years (subs. 1, sec. 43, Code of Civil Procedure). The statute of limitations does not begin to run before the cause of action accrues. There can, of course, be no cause of action for the revival of a *live* judgment and it stands to reason that an action cannot be brought until there is a cause of action, namely, after the expiration of five years from the date of the entry of the judgment which it is sought to revive.

Assuming, therefore, that under the practice which, perhaps, has been generally followed here, the judgment in question might be considered entered as of the date of February 3, 1909, the cause of action for its revival did not accrue until February 4, 1914, and the ten years limitation did not begin to run until then and will not expire until February 3, 1924. It may be noted that we are dealing with a limitation of action and not with prescription of title.

With all due respect, I am unable to understand the argument that the word "action" in the chapter on limitation of actions in section 447 of the Code of Civil Procedure has a different meaning from the definition of the word given in section 1 of the same Code.

The judgment appealed from should be affirmed.

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