

102 Phil. 426

[ G. R. No. L-8769. November 21, 1957 ]

**DOMINGA MICIANO, PLAINTIFF AND APPELLANT, VS. EMILIANO WATIWAT, ET AL., DEFENDANTS AND APPELLEES.**

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

### **BAUTISTA ANGELO, J.:**

This is an action to recover the possession of a parcel of land situated in Pinamalayan, Mindoro, as well as of a residential house erected thereon valued at P1,400. The complaint asked for payment of the sum of P2,000 annually representing the value of the fruits of the land from the filing of the action to the delivery of the possession of the property. Defendants set up certain special defenses and prayed for the dismissal of the case.

When the case was called for hearing, the parties submitted a stipulation of facts and were allowed to present additional evidence. Thereafter, the case was submitted for decision. On August 26, 1952, the court rendered judgment dismissing the case but "without prejudice to the right of the plaintiff to institute a separate action against the herein defendants to enforce the corresponding payment of her share in usufruct from the time the plaintiff took possession of the property in question." The claim of plaintiff for damages was denied for lack of sufficient evidence. After plaintiff has taken the case to the Court of Appeals, it was certified to Us on the ground that only questions of law are involved therein.

Dominga Miciano was the legal wife of Jorge Watiwat. On May 10, 1982, Jorge Watiwat died intestate leaving as heirs his widow Dominga Miciano, his brother Emiliano Watiwat, and his two sisters Veronica and Faustina Watiwat. He also left real and personal property. On September 8, 1937, these three collateral relatives filed an action in the Court of First Instance of Mindoro for the liquidation and distribution of the conjugal properties belonging to the spouses Jorge Watiwat and Dominga Miciano (Civil Case No. 716). Only the widow was made party defendant.

On May 17, 1941, the court rendered decision declaring the properties referred to as 1 and

3 in paragraph 4 of the complaint as belonging to the conjugal partnership, whereas those referred to as 2 and 4 in the same paragraph as belonging exclusively to the widow, requiring at the same time the parties to submit, within a period of 30 days a project of partition in accordance with law, and stating that, in the absence thereof, the court will appoint commissioners of partition charging their fees equally against the parties.

In the meantime, war broke out and apparently no further action was taken on the case, until December 23, 1946 when, upon motion of plaintiffs, the court appointed three commissioners to effect the appraisal and partition of the conjugal properties as decreed in the decision, On February 8, 1949, the commissioners submitted their report which, after due notice given to the widow, was approved by the court on August 27, 1949 in an order whereby one-half of the land was adjudicated to the plaintiffs and the other half to the defendant. The residential house was adjudicated to the widow on condition that she pay the plaintiffs the sum of P700. In the same order, the widow was given 20 days within which to deliver to the plaintiffs their respective shares, and to pay the sum of P700. On December 6, 1949, a writ of execution was issued and, as a result, the properties were placed in the possession of the plaintiffs. Dominga Miciano, the widow, has commenced this action on April 16, 1951 to recover the possession of said properties on the ground that the proceedings had in Civil Case No. 716 were null and void.

Appellant's main contention is that the order of the trial court dated August 27, 1949 approving the report of the commissioners who effected the partition of the properties in dispute, as well as the writ of execution issued on December 6, 1949 in pursuance of an order of the court in Civil Case No. 716, are null and void for the reason that the decision rendered in said case on May 17, 1941 has become final for over 5 years and, therefore, can no longer be executed unless the same is revived as provided for in Section 6, Rule 39, of the Rules of Court.

This section provides:

*“SEC. 6. Execution by motion or by independent action—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.”* From the above it appears that a judgment can only be executed within 5 years from the date of its entry.

Otherwise, it can only be enforced by ordinary action. This means that a judgment can only be executed after the same has become final, for if it is not, such as an interlocutory or incidental judgment, the same is not executory (section 2, Rule 41). The question then that arises is whether the judgment rendered by the court on May 17, 1941 in Civil Case No. 716 has become final for lack of appeal within the reglementary period, in which case the period of 5 years shall be deemed to have expired. Whereas, if such decision was only incidental in the sense that the same cannot be enforced because there was still some matter to be settled in a subsequent proceeding, then the judgment has not become final and, therefore, the 5-year period for its execution has not yet expired.

In determining the character of a judgment that may be rendered ineffective if not enforced within a period of 5 years, this Court has held in a number of cases that only *final judgments* may be revived by separate action after the expiration of said period.

Thus, in one case where there was still an accounting to be made, it was held that there could be no final judgment until such accounting has been effected and acted upon. The only course left to the plaintiff was to follow through the order or accounting and liquidation so that the case could be placed in a state where it could be definitely settled (Carrascoso, Jr. vs. Fuentebella, 92 Phil., 948).

In another case where a judgment was rendered giving the owner of the land an option, under Article 361 of the old Civil Code, either to pay for the building or to sell his land to the owner of the building, but failed to determine the value of the land or of the building, as well as to fix the time within which the option may be exercised and the amount to be paid thereof, this Court held that, while the procedure followed was erroneous, the judgment has not become final because certain matters were left to be settled in a subsequent proceeding. The Court said: "And execution cannot be had, the sheriff being ignorant as to how, for how much, and within what time may the option be exercised, and certainly no authority is vested in him to settle these matters which involve exercise of judicial discretion. Thus the judgment rendered by Judge Felix has never become final, *it having left matters to be settled for its completion' in a subsequent proceeding, matters which remained unsettled* up to the time the petition is filed in the instant case." (Ignacio vs. Hilario, 76 Phil., 605; italics supplied.)

Again, in an action for partition of real property, a judgment was rendered ordering the partition prayed for but leaving the matter of partition either to the parties or to the commissioners that may be appointed by the court. The court held that judgment to be

merely interlocutory and not final, because there was something more to be done for the complete disposition of the case, that is, the making of the partition by the commissioners, the rendition of report by such commissioners, and the action of the court upon such report. The order or judgment approving such report was held to be the final order or judgment (Ron, et al. vs. Mojica, 8 Phil., 328).

Having in view the doctrines above enunciated, we may say that the judgment rendered by the court on May 17, 1941 in Civil Case No. 716 has not acquired such finality as to make it executory, for according to the very decision the parties were given 30 days to submit a project of partition, or the court would appoint commissioner's to make a partition of the property. These are matters which can only be settled in a subsequent proceeding and as such prevent the running of the period during which it may be enforced. That judgment only became final when the court approved the report of the commissioners on August 27, 1949. The proceedings had in said case for the implementation of the decision are therefore legal and valid.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

*Paras, C.J., Bengzon, Padilla Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.*