

PEDRO LIM, PLAINTIFF-APPELLANT, VS. PERFECTO JABALDE, DEFENDANT-APPELLEE.

G.R. No. L-36786. April 17, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

The present appeal was certified to this Court by the Court of Appeals in a Resolution dated 5 April 1973 as it involves only questions of law.

An action for specific performance was commenced by Pedro Lim[1] on 29 August 1968 against defendant-appellee Perfecto Jabalde before the Court of First Instance of Cebu, to compel the latter to execute a deed of reconveyance or repurchase covering seven (7) parcels of land[2] situated in Labangon, Cebu City.

Defendant-appellee seasonably filed his Answer to the complaint and thereafter, a pre-trial was held where the parties entered into a Stipulation of Facts,[3] the full text of which is set out below:

"x x x x x x x x

"1. That in Civil Case No. CA-G.R. No. 36941-R (Court of First Instance of Cebu Case No. R-8671) entitled Rosie B. Abella, et al. vs. Laurence D. Abella, a Writ of Execution was issued by the Court of Appeals for the satisfaction of the support in arrears due the plaintiff-minors against Laurence D. Abella or Lorenzo Abella; a copy of the Writ is hereto attached as Annex 'A';

"2. That to satisfy the Writ aforesaid the Provincial Sheriff of Cebu attached all the rights, interest and participation of the defendant Laurence D. Abella or Lorenzo Abella consisting of his right to repurchase under a deed of sale with right to repurchase executed by him in favor of Perfecto Jabalde (defendant in the instant case).

Copy of the Notice of Levy on Execution is hereto attached as Annex 'B';

"3. That under the deed of sale with right to repurchase Laurence D. Abella or Lorenzo Abella reserved to himself the right to repurchase the aforesaid parcels of land above-described for the same amount of P30,000.00 from the said Perfecto Jabalde (as vendee a retro) within the period of exactly two (2) years counted from and after the date of the signing of this document,' a copy of said deed of sale with right of repurchase is hereto attached as Annex 'C' and is made a part hereof;

"4. That after the levy on execution, aforesaid, notice of sale at public auction was duly posted, advertised and published in a newspaper of general circulation. The date of the public sale was fixed on March 21, 1967. A copy of the notice of sale is hereto attached as Annex 'D' and is made a part hereof;

"5. That the public auction was conducted on March 21, 1967. The plaintiff was the highest bidder. Copy of the Minutes of Sale is hereto attached as Annex 'E';

"6. That the bid having been awarded to plaintiff and plaintiff having paid in cash the amount, a certificate of sale in his favor of the right of Lorenzo Abella or Laurence D. Abella to repurchase which he reserved in the

deed of sale with right to repurchase (Annex 'C') was executed by the Sheriff on March 22, 1967. A copy of the certificate of sale which was duly registered in the Register of Deeds on March 27, 1967 is hereto attached as Annex 'F';

"7. That Lorenzo Abella or Laurence D. Abella failed to exercise his right to redeem the right which was sold at public auction within a period of one year; and because thereof the Sheriff executed a Definite Deed of Sale;

"8. That on April 8, 1968, plaintiff, through counsel informed the defendant that, having been subrogated into the rights of Lorenzo Abella to repurchase the property subject of the contract of sale with right to repurchase (Annex 'C'), he is exercising the right to repurchase and is ready with the amount. A copy of said letter is hereto attached as Annex 'G' and is made a part hereof;

"9. That defendant was personally approached by plaintiff and his counsel in order to tender the corresponding repurchase price, defendant refused because according to him Laurence D. Abella or Lorenzo Abella has asked for an extension of the period to redeem and that he has granted the same extension of two (2) years from the expiration of the original period which expired on April 30, 1968;

"10. That because of the refusal of the defendant to accept the repurchase price from the plaintiff, plaintiff deposited with this Court the amount of P30,000.00 (the repurchase price) on April 16, 1968 as evidenced by Official Receipt No. G-0866849, a photo copy whereof is hereto attached as Annex 'H'. Defendant was duly notified of this consignment. But he refused to get this consigned amount and execute the corresponding Deed of Repurchase in favor of the plaintiff;

"11. That because of the refusal of the defendant to get the consigned amount and to execute the deed of repurchase, plaintiff filed this case on August 29, 1968;

"12. That defendant maintains for his defense that the tender to repurchase was premature because it should have been made exactly on April 30, 1968 and moreover he has granted an extension to Lorenzo Abella or Laurence D. Abella;

"13. That the only issue left is whether or not defendant is legally bound to accept the repurchase amount and to execute the deed of repurchase in favor of the plaintiff despite the extension he has granted Lorenzo Abella."

On 21 January 1969, the lower court, relying on the above stipulation of facts, rendered a Decision^[4] in favor of plaintiff Pedro Lim and ordering defendant-appellee Perfecto Jabalde to execute a deed of conveyance and to deliver possession of the lots involved to plaintiff. The lower court held that even if the repurchase date had been extended for another two years by defendant-appellee and Lorenzo Abella on 27 March 1967, such extension was without any effect since the latter, at that time, no longer had any right in respect of the original contract of pacto de retro sale.

Defendant-appellee moved for reconsideration of the above decision on the very same grounds he had previously raised in his Answer. The motion was denied by an Order dated 15 February 1969. A second Motion for Reconsideration dated 22 February 1969 was filed;^[5] by an Order of 28 February 1969, the second motion was denied. On 4 March 1969, he filed still another Motion^[6] to reconsider the judgment of the trial court, which motion was similarly rejected by an Order^[7] dated 11 March 1969, for being pro forma.

Upon plaintiff's motion, a Writ of Execution to enforce the lower court's decision dated 21 January 1969 was issued. Defendant-appellee filed a Motion to Quash, which motion was denied in an Order dated 27 May 1969.

On 11 July 1969, plaintiff filed an Urgent Motion to Authorize Clerk of Court to Execute Deed of Conveyance to which an Opposition was submitted by defendant-appellee alleging that he had recently discovered that only one of the seven (7) parcels of land involved had been published and advertised for sale at public auction, which matter had been raised in Civil Case No. R-11172, an action brought by Lorenzo Abella against him (as

alternative defendant) and Pedro Lim, and which would be a lawful ground for reopening the case and for staying execution of the trial court's decision. After hearing, the trial court, by an Order dated 14 August 1969, dismissed the Opposition as without merit and granted plaintiff's motion.

On 23 August 1969, Pedro Lim filed a Motion to Require Defendant to Surrender the Titles to the Branch Clerk of Court or to Declare said Titles as Ineffective and to Authorize Register of Deeds to Issue Transfer Certificates of Titles to Plaintiff. Defendant-appellee opposed the motion in a motion to reconsider the Order of 14 August 1969.

By Order dated 26 August 1969, the lower court granted the motion of Pedro Lim and rejected defendant-appellee's opposition for being pro forma and for lack of merit.

On 30 August 1969, defendant-appellee filed what was in effect a fourth motion for reconsideration of the Decision of 21 January 1969 but dissimulated as a Motion for Reconsideration^[8] of the Order of 26 August 1969, alleging that "the deputy provincial sheriff, a certain C[onrado] A[limurong], in cohorts [sic] and connivance with the attaching or judgment creditor, had committed fraud and serious irregularity in the levy and sale of the right to repurchase the seven parcels of land in question," and prayed for a retrial of the specific performance case. Plaintiff opposed contending that it would no longer be possible to reopen the case since the decision of the trial court thereon had already become final and executory; that the new matters alleged by defendant were deemed waived by the latter's failure to raise them as a defense in the Answer. Plaintiff filed, on the same date, a Motion to Declare the Owners' Duplicate Copies of Transfer Certificates of Title Null and Void and prayed for issuance of new certificates in his name.

By Order dated 13 September 1969, defendant-appellee was required to "state with particularity in writing the fraud and irregularity in the levy and sale" referred to in his motion for reconsideration. In an Order dated 25 September 1969, Deputy Provincial Sheriff Conrado Alimurong was required to appear and bring before the court the entire records of the levy and sale.

On 5 November 1969, Sheriff Alimurong filed his Answer stating that he had complied strictly with all the requirements of the rules on execution, praying that defendant-appellee's motion be denied; he also completed his return of service on the execution proceedings in compliance with the Order dated 9 January 1970.

In a Manifestation dated 27 May 1970, defendant-appellee submitted a letter-report of one Luis P. Abad, Administrative Officer of the Office of the Provincial Sheriff of Cebu, in support of his allegations of fraud and serious irregularities in the levy and execution sale of Abella's right of repurchase and prayed that said execution sale be set aside.

In a Supplementary Manifestation dated 8 June 1970, defendant-appellee further argued that since the seven (7) parcels of land involved were attached and levied through an expired writ, the auction sale of Abella's right of repurchase on 21 March 1967, was therefore, null and void.

On 23 September 1970, the lower court issued an Order^[9] granting defendant-appellee's motion for reconsideration, holding that:

"It is well-settled in this jurisdiction that when after judgment has been rendered and the latter [has] become final, facts and circumstances transpire which render the execution IMPOSSIBLE or UNJUST, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and with facts.' (City of Butuan vs. Ortiz, et al., L-18054 Dec. 22, 1961; Ronquillo, et al. vs. Marasigan, L-11621, May 31, 1962)

In view of a clear showing that the auction sale upon which this case is based was made without complying with the procedural requirements of the Rules of Court, the previous judgment of this court is therefore

annulled and declared without effect and this case for Specific Performance is dismissed.

The Clerk of Court is ordered to release the titles of the seven (7) parcels of land to the registered owner.

x x x x x x x x."[10]

(Underscoring supplied).

Reconsideration of the above order having been denied, Pedro Lim brought an appeal to the Court of Appeals where he raised the following assignment of errors:[11]

1. The lower court erred in reopening the case despite the fact that its decision had long become final, firm and executory and as a matter of fact it was already executed.
2. The lower court erred in allowing a reopening despite the absence of any valid formal motion for new trial or re-opening.
3. The lower court erred in taking cognizance of the claim of irregularity of the public auction and in not holding that any such irregularity can only be properly ventilated in Civil Case No. R-8671, (CA-G.R. NO. 36941-R) or in Civil Case No. R-11172.
4. The lower court erred in setting aside its final decision of January 21, 1969.

Only issues of law being involved, the above appeal, as earlier stated, was referred to us by the Court of Appeals.

The rule relied upon by the trial court, -- i.e., if after a judgment has become final, facts or circumstances have transpired which would render execution of the judgment impossible or unjust, the interested party may ask the court to modify or alter the final judgment to harmonize the same with justice and the facts -- is not applicable in the present case. That rule refers to facts or circumstances that have supervened or transpired after judgment has become final and executory.[12] It relates to new matters which developed after the judgment has acquired finality; matters which the parties were not aware of, and could not have been aware of, prior to or during trial as they were not yet in existence at that time.[13] And to warrant on this ground a reopening of an already closed case, the supervening facts or circumstances must either bear a direct effect upon the matters already litigated and settled or create a substantial change in the rights or relations of the parties therein which would render execution of the final judgment unjust or impossible.

In the case at bar, no new facts or circumstances have supervened after the lower court's decision of 21 January 1969 had become final and executory. Defendant-appellee's allegations of serious fraud and irregularities that were committed in the levy and execution sale of Lorenzo Abella's right of repurchase under a pacto de retro sale with defendant-appellee, namely -- 1) that only one of the seven (7) parcels of land involved (the lot with 694 square meters) was actually levied upon during the sixty (60) day lifetime of the writ; 2) that the attachment and levy on 15 February 1967 of Abella's right to repurchase the seven (7) parcels of land was not valid, the writ of execution issued on 7 October 1966 having already expired at that time; 3) that he and Abella failed to redeem the right sold within the redemption period because they were not notified of the execution proceedings; and 4) that the price paid for the right sold was grossly inadequate considering the actual value of the property -- do not possess the essential character of novelty.

The alleged irregularities, on the assumption (arguendo, merely) that they had in fact existed, relate to incidents that developed during the implementation of the writ of execution issued by the Court of Appeals in CA - G.R. No. 36941. These are matters already in existence and hence available to the parties even prior to the commencement of the specific performance case. The record of the execution proceedings, except for the sheriff's return of service, was already within the parties' disposal when they entered into a stipulation of facts during

pre-trial, from which record irregularities (if they existed) could have been easily discerned. The supposed irregularities in the enforcement of the writ of execution issued on 7 October 1966 against the right to repurchase of Abella in a contract of pacto de retro sale with defendant-appellee, do not constitute the "new facts and circumstances" referred to in our case law which would justify a modification or non-enforcement of a final and executory judgment.

There is another equally compelling reason why the judge of the lower court should have simply disregarded all testimony and other evidence submitted before it by defendant-appellee relating to alleged defects in the levy in execution by the sheriff upon the right to redeem which originally belonged to Laurence D. Abella. Such evidence clearly controverted the stipulation or agreement of facts entered into by the parties at pre-trial, the pertinent portions of which may be quoted once more for convenience:

"X X X X X X X X

2. That to satisfy the Writ aforesaid the Provincial Sheriff of Cebu attached all the rights, interest and participation of the defendant Laurence D. Abella or Lorenzo Abella consisting of his right to repurchase under a deed of sale with right to repurchase executed by him in favor of Perfecto Jabalde (defendant in the instant case).

Copy of the Notice of Levy on Execution is hereto attached as Annex 'B';

X X X X X X X X

4. That after the levy on execution, aforesaid, notice of sale at public auction was duly posted, advertised and published in a newspaper of general circulation. The date of the public sale was fixed on March 21, 1967. A copy of the notice of sale is hereto attached as Annex 'D' and is made a part hereof;

5. That the public auction was conducted on March 21, 1967. The plaintiff was the highest bidder. Copy of the Minutes of Sale is hereto attached as Annex 'E';

6. That the bid having been awarded to plaintiff and plaintiff having paid in cash the amount, a certificate of sale in his favor of the right of Lorenzo Abella or Laurence D. Abella to repurchase which he reserved in the deed of sale with right to repurchase (Annex 'C') was executed by the Sheriff on March 22, 1967. A copy of the certificate of sale which was duly registered in the Register of Deeds on March 27, 1967 is hereto attached as Annex 'F';

7. That Lorenzo Abella or Laurence D. Abella failed to exercise his right to redeem the right which was sold at public auction within a period of one year; and because thereof the Sheriff executed a Definite Deed of Sale;

X X X X X X X X

13. That the only issue left is whether or not defendant is legally bound to accept the repurchase amount and to execute the deed of repurchase in favor of the plaintiff despite the extension he has granted Lorenzo Abella." (Underscoring supplied)

The above stipulations of fact constitute judicial admissions by both parties which, under Section 2, Rule 129 of the Revised Rules of Court, not only do not require proof but more importantly, "cannot be contradicted unless previously shown to have been made through palpable mistake." [14]

In the present case, there was no showing that defendant-appellee acted under a "palpable mistake" at the time he entered into the stipulation of facts. The stipulation or agreement was accordingly binding upon both parties. We note also that although the agreement relates to facts, by such agreement the parties also effectively stipulated upon the validity of the acts referred to in paragraphs 2, 4 and 5 of the stipulation of facts, quoted above. For

paragraph 13 makes clear the parties agreed that only one legal issue remained, and that issue related to the legal effect of the extension of time which, according to defendant-appellee, he had granted to Laurence D. Abella of another two (2) years to redeem the seven (7) parcels of land.

Thus, by entertaining defenses which defendant-appellee was legally precluded from raising, and by vacating its own, long final and already partially executed, decision of 21 January 1969 and dismissing the specific performance case, the lower court fell into error, error serious and palpable and reversible. The lower court no longer had jurisdiction to reopen the specific performance case, having lost such authority when its decision thereon became final and executory. The rule in this jurisdiction is that once a decision becomes final and executory, no further amendment or correction can be made by the court which rendered it, except to order its execution and to correct clerical errors or mistakes.[15] The court loses jurisdiction over the case and not even an appellate court would have power to review a judgment that has already acquired finality.

It remains only to deal specifically with the supposed irregularity concerning the enforcement of the writ against Abella's right of repurchase, on the basis of which the trial court purported to set aside its own final and executory judgment: the circumstance that at the time of the levy of the writ of execution upon such right of repurchase, that original writ was more than sixty (60) days old. There was, of course, a procedural defect here;[16] an alias writ of execution should have been obtained and that writ enforced instead of the original one. Petitioner, however, was entitled to issuance of an alias writ of execution as a matter of course, indeed as a matter of right, since five (5) years had not elapsed since the finality of the trial court's judgment. We believe and so hold, therefore, that that defect was not of such a fundamental nature as to result in the nullity of the levy and of the subsequent sale of the asset levied upon. It was, in other words, a procedural defect that could be and was effectively waived by failure of the defendant-appellee to raise it as a defense in his answer and by entering into the agreement or stipulation of facts discussed earlier. Moreover, it was simply too late for defendant-appellee to plead any such irregularity or procedural defect as a defense for the first time in what was in truth a fourth motion for reconsideration of the decision on the merits, a decision already final and already partially executed. To hold otherwise would render litigation endless and no question could ever be deemed finally settled. As this Court held in *Banogon v. Serna*. [17]

"'Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.'

There should be a greater awareness on the part of litigants that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable."

Defendant-appellee's contention that his newly raised defenses could properly be regarded as newly discovered evidence is also without merit. For new trial to be allowed on the ground of "newly discovered evidence," it is imperative that, aside from complying with the requirements under Section 1 (b) of Rule 37, the motion for trial de novo itself must have been filed within the period for perfecting an appeal.[18]

ACCORDINGLY, the Order of the Court of First Instance of Cebu dated 23 September 1970 in Civil Case No. R-10776, is SET ASIDE and its decision dated 21 January 1969, is hereby REINSTATED. Costs against defendant-appellee.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Pedro Lim died on 9 February 1972, while his appeal was pending before the Court of Appeals. He was accordingly substituted by his surviving spouse and his children, now appellants herein.

[2] One (1) lot consists of 640 square meters in area and the other six (6) lots consist of 500 square meters each.

[3] Record on Appeal, pp. 25-30.

[4] Id., pp. 57-64.

[5] The Motion was cast in the form of a motion for reconsideration of the Order dated 15 February 1969.

[6] This third Motion for Reconsideration was also disguised as a motion for reconsideration of the Order of 28 February 1969. On this same date, Lorenzo Abella also filed a Motion for Leave to Intervene, which motion was denied by Order dated 25 March 1969.

[7] Id., p. 86.

[8] Id., pp. 122-124.

[9] Id., pp. 173-184

[10] Id., pp. 183-184.

[11] Brief for the Appellant, pp. 1-2.

[12] *Cabrias vs. Adil* 135 SCRA 354 (1985); *De Luna vs. Kayanan*, 61 SCRA 49 (1974); *Abellana vs. Dosdos*, 13 SCRA 244 (1965); *Candelario vs. Canizares*, 4 SCRA 738 (1962); *City of Butuan vs. Judge Montaña*, 3 SCRA 659 (1951).

[13] Ibid.

[14] *Bunag v. Court of Appeals*, G.R. No. 39013, 29 February 1988; *Board of Administrators, Philippine Veterans Administration v. Agcaoili*, 58 SCRA 72 (1974); *Yuliongsiu v. Philippine National Bank*, 22 SCRA 585 (1968); *Ortua v. Rodriguez*; 63 Phil. 809 (1936); and *Irlanda v. Pitargue*, 22 Phil. 383 (1912).

[15] *Mutual Security Insurance vs. Court of Appeals*, 153 SCRA 678 (1987).

[16] Sec. 11, Rule 39, Revised Rules of Court.

[17] 154 SCRA 593 at 597 (1987).

[18] Section 1, Rule 37 of the Revised Rules of Court.

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