

TRANQUILINO O. CALO, JR., PRESENTACION CALO, AMADO CALO, URBANO CALO, ERLINDA CALO, CARMELITA CALO, AND PURIFICACION CALO, PETITIONERS, VS. FRANCISCO CABANOS, ANIANA CABANOS, TH...

G. R. No. L-19704. October 19, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for certiorari and prohibition with preliminary injunction directed (1) against the order of the respondent court dated June 6, 1961 in its Civil Case No. 7849 (Francisco Cabanos, et al., v. Tranquilino Calo) and (2) against the steps taken by respondent sheriff pursuant to said order.

The order complained of is for the execution of the judgment of the respondent court, affirmed by this Court on October 30, 1958 .

The antecedent facts which form the background of the Instant petition are reproduced below, as stated by respondent Court of First Instance in its decision of September 30, 1954 , rendered after a partial new trial ordered by the Court of Appeals and attached as Annex A to the petition.

"On May 13, 1940 , the spouses Tranquilino Calo and Sofia Oca sold a parcel of land (description of land omitted) to the spouses Basilio Javier and Jacoba Abaquin for the sum of P2,500.00 subject to redemption within a period of six (6) years from date of sale.

On June 18, 1942, Tranquilino Calo, then a widower, executed a power of attorney In favor of the plaintiffs (Francisco Cabanos and Aniana Cabanos) authorizing them to pay with their own money to the spouses Basilio Javier and Jacoba Abaquin, the price of 230 cavaness of palay at P4.00 a cavan, representing the rentals for two (2) years and to repurchase from said spouses for P2,500.00 the parcel of land. On the same day, June 18, 1942, Aniana Cabanos and Francisco Cabanos paid to Basilio Javier, in Philippine Currency, the sum of P3,420, and in consideration thereof, the spouses Basilio Javier and Jacoba Abaquin executed a deed ceding and transferring all their right, Interest and participation in the said parcel of land to the plaintiffs subject to the terms and conditions set forth in the deed of sale with right of repurchase. On the same day, Tranquilino Calo leased from said plaintiffs the land in question In consideration of a yearly rental of 115 cavaness of palay.

On July 6, 1942 , the defendant Tranquilino Calo sold to the herein plaintiffs another parcel of land (description of land omitted) for the sum of P600.00 subject, however, to redemption within five (5) years from date of sale. On the same date, defendant leased the said property from the plaintiffs in consideration of an annual rental of 20 cavaness of palay.

For the year 1942-43, Tranquilino Calo delivered to the plaintiffs twenty (20) cavaness of palay out of 135 cavaness which were the aggregate yearly rental for the two lots. In view of this default, the plaintiffs on May 1, 1944 ,

filed an action against the defendant for the recovery of the overdue rentals for the two lots. The complaint was subsequently amended (to include a prayer for rescission of the lease contract and for recovery of possession of the two lots).

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After due trial, the trial court on November 29, 1947 , rendered a decision the dispositive part of which reads as follows:

'IN VIEW OF THE FOREGOING, the plaintiffs Francisco Cabanos and Aniana Cabanos are hereby declared owners of the two parcels of land described in this decision and that the defendant Tranquilino is hereby ordered: (1) to deliver to the plaintiffs the possession of the said two parcels of land; (2) to deliver to said plaintiffs six hundred fifty-five (655) cavanese of palay as unpaid balance of the rentals from the year 1942 to the year 1947, inclusive, or the agreed price of P4.00 a cavan, stipulated and adopted as the basis of computation of the annual rental in palay at the time the lease agreements were made by the parties; (3) to pay to the plaintiffs a further rental of one hundred thirty-five (135) cavanese of palay for every year commencing with the agricultural year 1947-1948 until the delivery by the defendant to the plaintiffs of the said two parcels of land and (4) to pay the costs.'

Tranquilino Calo appealed from this decision and on April 20, 1953 , the Court of Appeals promulgated a decision the dispositive part of which reads as follows:

'IN VIEW OF THE FOREGOING, appellant Tranquilino Calo is hereby given thirty (30) days, from the date on which this decision shall have become final within which to redeem the two (2) lots in question. Should he exercise the right of redemption within said period, he shall be relieved of the obligation to pay the stipulated rentals to the Cabanos, as well as of the obligation to return the property in question to them, from the date of said redemption. In all other respects, the decision appealed from is hereby affirmed, without special pronouncement as to costs in this instance.'

Tranquilino Calo moved for the reconsideration of the foregoing decision in so far as it held that the deposit was not a valid consignment and in not holding that the plaintiffs were liable for the loss of the amount consigned in Court for the reason that judicial notice of the deposit was served upon and acknowledged by them. The plaintiffs objected to the motion for reconsideration on the ground that the notice and acknowledgment of the deposit, Annexes "A" and "B" did not form part of the records of the case on appeal and they could not be taken into consideration. On September 3, 1953 , the Court of Appeals, resolved to grant defendants' motion for reconsideration in the sense that –

'... that portion of the decision of this Court pointing out that no notice of the consignment had been made and the consequences resulting therefrom is hereby set aside and that the record of this case is hereby remanded to the court of origin for new trial for the admission of Annexes "A" and "B" above-mentioned and for rendition of judgment in accordance with the additional evidences thus introduced, and the other evidences already appearing in the record, and in conformity with the other portions of the aforesaid decision of this Court.' "

After the new trial the lower court, finding that no notice had been given by the defendant prior to the deposit of the money in court and therefore no valid consignment had been effected, rendered judgment as follows:

"WHEREFORE, In conformity with the resolution of the Court of Appeals in CA-G. R. No. 3682-R dated September 3, 1953 , judgment is hereby rendered granting Tranquilino Calo or his successors in interest a period of thirty (30) days from the date of this decision shall have become final, within which to redeem the two parcels of land in question. Should he exercise the right of redemption within the said period, he shall be relieved of the obligation to pay the stipulated rentals to the plaintiffs, as well as the obligation to return to them the said property, from the date of redemption. Tranquilino Calo and/or his successors in interest are

hereby ordered to deliver to the plaintiffs six hundred fifty-five (655) cavanese of palay as unpaid balance of the rentals from 1942 to 1947, inclusive, or the agreed price of P4.00 a cavan stipulated and adopted as the basis of computation of the annual rental in palay at the time the lease agreements were made and a further rental of one hundred thirty-five (135) cavanese of palay for every year commencing with the agricultural year of 1947-1948 until the redemption of the two parcels of land as herein authorized or until the delivery thereof to the plaintiffs should Tranquilino Calo and/or his successors in interest fail to exercise the right of redemption. Tranquilino Calo and/or his successors in interest are ordered to pay the costs in this instance."

In the meantime the original defendant Tranquilino Calo died and was substituted by his heirs and successors -in-interest (now petitioners before us), who appealed from the judgment last mentioned on a question of law.

On October 30, 1958 the Supreme Court affirmed, and its decision became final and executory on September 30, 1959.

On October 27, 1959, the substitute defendants tendered to the plaintiffs the sum of P4,100.00 as payment of the redemption price and of the back rentals adjudged by the Court. The plaintiffs refused to accept the money and so the defendants, after due notice, deposited the sum of P4,100.00 with the Clerk of Court, who on the same day informed the plaintiffs of the deposit thus made.

On December 19, 1960, the plaintiffs filed a motion for execution, which was granted by the Court in its order dated June 6, 1961, the dispositive part of which is as follows:

"WHEREFORE, it is hereby declared that the tender of payment made by the defendants to the plaintiffs in the exercise of their right of redemption of the two parcels of land involved in this case was effected within the time prescribed in the decision appealed from and accordingly the plaintiffs are hereby directed to execute the corresponding deed of reconveyance of said properties in favor of the defendants to be effected within a period of thirty (30) days from notice of this order. The award made in the decision corresponding to the payment of the rentals for the properties in question had already become final and executory and as the same has remained unsatisfied, the Clerk of Court is ordered to issue a writ of execution against the defendants to deliver to the plaintiffs 655 cavanese of palay as unpaid balance of the rentals from the year 1942 to 1947, inclusive, plus 135 cavanese of palay per year for 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, and 1959, or to pay in lieu thereof the agreed price of P4.00 a cavan, but from the total amount due should be deducted the sum of P80.00 which was the excess of the sum deposited by the defendants with the Clerk of Court for the redemption of the two lots and should be applied partially to the payment of rentals."

On January 18, 1962 the Deputy Clerk of Court of respondent Court issued an alias writ of execution. The sheriff, on March 9, 1962, sent Tranquilino Calo, Jr., one of the petitioners, a letter which reads:

"This is acknowledged (sic) receipt the attached Alias Writ of Execution for service. Being one of the heirs of the defendant Tranquilino Calo who is already deceased (sic). You are hereby given 15th (sic) days upon receipt the said writ to settle in our office the amount of Seven Thousand Pesos (P7,000.00) in favor of the plaintiffs Francisco Cabaños. The other heirs were also served with copies but all of them rely in your decision. Failure in your part to settle the said amount this office will confiscate the land mentioned in the case (sic)."

On March 17, 1962 the defendants filed with respondent court a motion for clarification, with a prayer to stop the sheriff from modifying or supplementing the judgment sought to be executed, alleging: (1) that the redemption prices of the two lots were P2,500.00 and P600.00, respectively, or P3,100.00 in all, and since they had deposited P4,100.00 there was an excess of P1,000.00 which should be applied to the unpaid rentals; and (2) that inasmuch as the redemption was effected in 1959 the yearly rental of 135 cavanese of palay corresponding to the agricultural year 1958-59 should be excluded from the computation. The motion was denied by respondent court on March 27, 1962, and petitioners then filed the instant petition, alleging grave abuse of discretion and lack of jurisdiction

in the issuance of the order of June 6, 1961 and in threatened action of respondent sheriff pursuant to said order.

The allegations contained in petitioners' motion for clarification before respondent court are reiterated here in support of the petition. The first allegation is groundless. When the Cabanos spouses redeemed the first lot from the original vendees they paid not only P2,500.00 but also the price of 230 cavans of palay, at P4.00 a cavan or P920.00 representing the rents in arrears for two years. Added to the P600.00 they paid to Tranquilino Calo for the other lot, the total amount disbursed by them was P4,020.00, just P80.00 less than the sum of P4,100.00 deposited by the petitioners in court. This excess of P80.00 was properly applied to the rents still unpaid.

The second allegation of the petitioners is likewise without merit. From 1942 to 1947 the unpaid rents on the two lots amounted to 655 cavans of palay. Thereafter, until the redemption was effected on October 30, 1959, or for a period of twelve (12) years, the rents amounted to 1,620 cavans. Contrary to the petitioners' claim the rent for the agricultural year 1958-1959 was properly included, since the redemption of the lands by them took place after the said agricultural year had ended in March 1959. All in all, the petitioners' liability for rents under the judgment summed up to 2,275 cavans of palay, equivalent to P9,100.00 at P4.00 a cavan. From this amount the supersedeas bond of P2,000.00, which had been paid to the respondents, should be deducted, thus leaving a balance of P7,100.00, to which again the sum of P80.00 should be credited. This computation is the basis of the sheriff's letter of March 9, 1962, sent to petitioner Tranquilino Calo, Jr., demanding payment of P7,000.00 pursuant to the order of execution issued by respondent court.

The petitioners say that in said letter they are being made to pay the aforesaid amount jointly and severally, when there is nothing in the judgment sought to be executed which imports solidarity. This claim is without basis. The demand was logically for the whole judgment debt, and was addressed to Tranquilino Calo, Jr. alone, not because he was solidarily liable but because he was the lawyer of the other petitioners and all of them, according to the sheriff, were relying on his decision. As pointed out by the respondents, it is of no importance to them how the petitioners share in the obligation as long as it is satisfied in full, failing which the two lots in question may properly be levied upon and sold at public auction. This is precisely what was explained in the letter of the sheriff to which the petitioners take such vehement exception. The threatened levy on the land -which after all belonged to the original defendant, Tranquilino Calo, Sr., - in order to satisfy the indebtedness contracted by him, does not render the liability of his successors-in-interest, the petitioners herein, joint and several.

The writ prayed for is DENIED, with costs against the petitioners.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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