

ALFREDO CATOLICO, PETITIONER, VS. IRINEO RANJO, JUDGE OF THE COURT OF FIRST INSTANCE OF CAGAYAN, CIRILO LASAM, FELIX BAUTISTA AND MELQUIADES BAUTISTA, RESPONDENTS.*G.R. No. L-1827. May 31, 1949*

Ponente: REYES, J.

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On October 81, 1946, Gabriel Lasam obtained a judgment in civil case No. 2071 of the Court of First Instance of Cagayan against Felix Bautista and Melquiades Bautista for the sum of P7,207 plus interest, attorneys' fees and costs. On appeal to the Court of Appeals, the judgment was affirmed in toto, and on appeal by certiorari to this Supreme Court the decision of the Court of Appeals was affirmed on June 27, 1941. During the pendency of the case in this Court, petitioner on October 28, 1940 presented a document purporting to be an assignment in his favor of Gabriel Lasam's rights and interest in the litigation and prayed that he be substituted in place of Gabriel Lasam as one of the respondents in the certiorari case or, at least, joined as one of the respondents therein to enable him to safeguard his rights under the assignment. It should be stated parenthetically that at the time the deed of assignment was presented in this Court, Gabriel Lasam was already dead, his death having occurred during the pendency of the case in the Court of Appeals. He, however, left a will naming his son, Cirilo Lasam, his sole and universal heir. This will was probated on April 24, 1944. This Court in its decision affirming that of the Court of Appeals denied petitioner's prayer for substitution but allowed him to be joined as one of the respondents.

On July 19, 1941, petitioner asked for a modification of that decision in the sense that the judgment debtors Felix Bautista and Melquiades Bautista be expressly ordered to pay the whole amount of the judgment to him directly. The motion was denied by this Court in its resolution of October 1, 1944, which reads as follows:

"Upon consideration of the motion of counsel for the respondent Alfredo Catolico in G. R. No. 47501, Felix B. Bautista, et al., petitioners, vs. Gabriel Lasam, etc., et al., respondents, praying, for the reasons therein stated, that the decision promulgated in this case on June 27, 1941 be reconsidered insofar as the dispositive part is concerned and that said dispositive part be modified and clarified by specifically ordering the petitioners to pay the judgment to respondent Alfredo Catolico: the Court denied the motion, it being disputed whether there was in fact an assignment made in his favor, by Gabriel Lasam, before the latter's death. This denial must be without prejudice to the right of Alfredo Catolico to bring the proper action if not yet prescribed."

On December 15, 1945, Cirilo Lasam, the instituted universal heir of the deceased Gabriel Lasam, executed a deed recognizing the assignment made by his father in favor of petitioner and quitclaiming any right he had "by virtue of said document." Two days thereafter, that is, on December 17, 1945, petitioner filed in the Court of First Instance of Cagayan a motion for the execution of the final judgment against the Bautistas, attaching to said motion a copy of the deed just mentioned and asking that the judgment be paid to him. The court, through Judge Ceferino Hilario, granted the motion, but the writ of execution issued by the clerk made the proceeds of the judgment payable to the judicial administrator of the decedent judgment creditor's estate.

Learning of the issuance of this writ, the judgment debtors Felix Bautista and Melquiades Bautista on January 27, 1946 filed a motion to set aside the said writ on the ground (1) that they had not been notified of the motion for the issuance of the writ; (2) that petitioner had no personality to file the said motion; (3) that the judgment, having become final on May 9, 1940 upon its confirmation by the Court of Appeals could no longer, five years thereafter, be executed upon a mere motion; and (4) that the judgment had already been totally paid as evidenced by the fact that the heirs of the judgment creditor had already attempted to file an action for the annulment of said payment and to consign the amount with the clerk of court. The motion was later amended (on August 12, 1947) to include moratorium as one of the grounds.

On August 13, 1947, Cirilo Lasam asked permission to intervene, alleging an interest adverse to both the petitioner and the judgment debtors, and upon the permission being granted, filed a complaint in intervention, alleging among other things that the deed of assignment executed by his deceased father in favor of petitioner was "fictitious and without proper consideration" so that his own deed of cession and quitclaim was "without value and not binding, it being based on a fictitious document;" and that the professional fees claimed by petitioner in the deed of assignment were excessive, exorbitant and unconscionable, besides being already paid.

Petitioner filed his opposition to the complaint in intervention alleging, among other things, that if its purpose was to annul the deed of assignment of October 30, 1939, the said complaint should have been presented as an original action independently of this case.

After hearing the lower court, now presided by Judge Irineo Ranjo, rendered an order of which the dispositive part reads as follows:

"After an exhaustive argument made by the parties regarding their respective contentions and considering the reservation made by the Honorable Supreme Court in its order of October 31, 1940, wherein Mr. Alfredo Catolico was allowed to join as one of the respondents in the certiorari proceedings with the further reservation that the order was without prejudice to his right in bringing the proper action, if his right has not yet prescribed, and considering further, the three antagonistic contentions a matter not belonging to this record, being a separate one wherein the three contending parties may fully discuss and prove their respective assertions, the order of execution in this case is hereby set aside, pending the final determination of the conflicting rights of the three parties herein-mentioned, without prejudice to their rights to file in Court whatever pleadings they may deem fit for their own interests."

While the order was rendered after hearing, it does not appear that a regular trial was held for the presentation of evidence in support of the parties' respective contentions.

Complaining against the order, petitioner has filed the present action for "certiorari and mandamus" to have the order set aside and to require the respondent judge to issue a writ of execution effective upon the lifting of the moratorium. The action is based on the theory that the order complained of was rendered "with grave abuse of discretion amounting to lack of jurisdiction."

The petition can not be granted.

When petitioner, for the first time, asked that the judgment obtained by the deceased Gabriel Lasam against Felix Bautista and Melquiades Bautista be made payable to him, that is, that the said judgment debtors be expressly ordered to pay the judgment to him directly by virtue of the assignment made to him by the said deceased, this Court denied the motion, "it being disputed whether there was in fact an assignment made in his favor, by Gabriel Lasam, before the latter's death," although the said denial was to be without prejudice to his right to bring the proper action. It does not appear that such action has been brought; and we do not think that the situation has changed simply because petitioner has now presented a quitclaim deed signed by Cirilo Lasam, the heir of Gabriel

Lasam, considering that the validity of this deed has been put in question by Cirilo Lasam himself, who now claims that it was based on a former assignment which was "fictitious and without consideration." In fact, petitioner's position has been made worse by the fact that the judgment debtors, upon learning of the order of execution issued by Judge Hilario, have asked for the setting aside of said order on the ground, among others, that the judgment debt has already been paid by them. If formerly it was deemed needful for petitioner, as assignee, to bring proper action to enforce this assignment, the need for such a step now 'would appear to be no less imperative.

We can not subscribe to the pretension that by virtue of Cirilo Lasam's quitclaim deed petitioner's right to the judgment debt has become "absolute" and "ceased to be disputed as a fact." Such a claim can not be made in the face of the objection put up by Cirilo Lasam that the said deed is invalid. As to whether the objection is well-founded or not, is a matter that should be litigated and not merely assumed.

Cirilo Lasam's alleged tardiness in filing his intervention does not appear to have caused any substantial damage to the petitioner, the said intervention having been made in time to be heard and decided together with the judgment debtors' motion to have the order of execution set aside. And there can be no question as to the timeliness of the latter motion since the same was made promptly after the judgment debtors learned of the issuance of the writ of execution.

In the circumstances, we can not say that the respondent judge has committed a grave abuse of discretion in setting aside the order of execution pending, to use his own words, "the final determination of the conflicting rights of the three parties hereinmentioned, without prejudice to their rights to file in Court whatever pleadings they may deem fit for their own interests."

The petition for certiorari and mandamus is, therefore, denied, with costs against the petitioner.

Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, and Montemayor, JJ., concur.

REYES, J.:

I hereby certify that Mr. Chief Justice Moran and Mr. Justice Ozaeta voted in favor of this decision.

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