

EUFROSINO ROM, PLAINTIFF-APPELLEE, VS. CLEMENTE COBADORA, DEFENDANT-APPELLANT.

G.R. No. L-24764. July 17, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from a judgment finding appellant guilty of contempt for disobedience of or resistance to a lawful writ of execution or possession of the property in litigation.

The factual background follows: -

Both parties dispute the possession and ownership of a ten-hectare parcel of land, described in the complaint. (Lot 2 of the survey plan marked as exhibit by both parties). On August 31, 1954, appellant Cabodora filed a complaint against appellee Rom for forcible entry before the Justice of the Peace Court. Appellant therein alleged that appellee had by means of force, intimidation, strategy, threats and stealth, entered upon the northern portion of the land, driving appellant therefrom and gathering the coconuts. The Justice of the Peace Court upheld appellee's right of possession but on appeal, docketed as Civil Case 2116, of the Court of First Instance of Leyte, in its decision of October 21, 1957, declared the appellant entitled to the possession of the property and ordered appellee to return the same together with the products thereof in the sum of P160.00 a year, from July, 1954, until delivered. The Court of Appeals affirmed the decision in favor of appellant in Case CA-G. R. No. 22736-R, March 4, 1960, holding that "we are not here concerned with the question of ownership; and as far as prior possession of the land is concerned, we agree with the trial court that the preponderance of evidence is in favor of the plaintiff." (appellant). This decision was thereafter duly executed, with appellant Cobadora having been restored in possession of the property and paid the corresponding amount due him thereunder.[1]

Appellee Rom meanwhile filed against appellant Cobadora on November 22, 1957, in the Court of First Instance of Leyte, Civil Case No. 431 for quieting of title over the same parcel of land. After trial, the Court this time rendered judgment in favor of appellee, declaring the appellee as owner of the land, ordering the restoration thereof to appellee, and sentencing appellant to pay appellee the amount of P1,000.00 as attorney's fees and P2,000.00 as actual damages. The Court of Appeals, in CA-G. R. No. 31113-R, affirmed the trial court's judgment. Appellant sought to have this Court review on Certiorari the Court of Appeals' judgment (G. R. L-21934), but his petition was dismissed for lack of merit.

The judgment declaring appellee Rom to be the lawful owner of the land having become final, the Court a quo issued the writ of execution. Appellant Cobadora having refused to comply with the writ by refusing to sign the same and by remaining on a portion thereof, was charged with contempt by appellee. After receiving the appellant's plea of not guilty and having the evidence of the parties, the lower Court found appellant "guilty beyond reasonable doubt of contempt in violation of Rule 71, section 3(b) of the new Rules of Court for disobedience of or resistance to a lawful writ of execution or possession of the property in litigation" and sentenced him to pay a fine of P200.00 with subsidiary imprisonment in case of insolvency not to exceed 15 days.

The lower court's findings were as follows: -

"x x x At the hearing the Court found that on April 2, 1964, a writ of execution was issued by this Court (Exhibit A) of the judgment in the above-entitled case adjudicating the property described in said writ of execution. (Exhibit A-3) in favor of the plaintiff. The writ of execution was registered on April 7, 1964, (Exhibit A-2) and; according to the return of the writ (Exhibit A-1), the Deputy Sheriff on April 5, 1964, served copy of the writ of execution on the defendant Clemente Cobadora in the presence of witnesses but refused to sign the same for the reason that a motion for reconsideration was allegedly still pending in the Court of Appeals. A return of the writ (Exhibit B) dated June 3, 1964, states that on May 5, 1964, Deputy Sheriff Antonio A. Ruiz placed the plaintiff Eufrosino Rom in possession of the parcel of land described both in paragraph 2 of the complaint and in the writ of execution, in the presence of the boundary owners of said parcel of land (Exhibits B-1, B-2 and B-3) and in the presence of Eufrosino Rom, Clemente Cobadora, Jose Cadogdog and Antonio Dequeña, the last two both members of the Municipal Police Force of Culaba, Leyte, who were witnesses to the execution proceedings.

"The respondent in his defense attempted to show to the Court by his own testimony that the property sought to be executed and placed in the possession of the plaintiff is different from the land in litigation. This was corroborated by the testimony of his witness Cresenciano Avila. However, when pressed by the Court, he admitted that he refused to deliver the property and vacate the premises because it belongs to him, citing the judgment in Civil Case No. 216 for forcible entry in which possession of the property was adjudicated to him. It is clear, therefore, that both his motion to quash the petition for contempt and his oral testimony in court admit the identity of the land in litigation to be the same land sought to be executed and placed in the possession of the plaintiff. His contention that Civil Case No. 216 for forcible entry is res adjudicata in the present case between the same parties is true only upon the same cause of action (possession) but is not res adjudicata upon a different cause of action (title) which is involved in the present case. The Court understands that respondent is trying to retain a part of the land in question where his house is located along the shore. This cannot be legally done."

Appellant appeals from his conviction for contempt. In this appeal, appellant reiterates his contention that the earlier judgment in his favor in the forcible entry case constitutes res judicata and that the later judgment against him in the title and ownership case was null and void. Appellant further contends that appellee Rom should be the one punished instead for contempt of court. Appellant's contentions are clearly untenable.

The judgment in the forcible entry case involved only the right to possession of the land. Such judgment as to the right of possession could not bar, much less, constitutes res judicata as to a subsequent action to quiet title and settle the issue of ownership over the land as was done here. When possession is the issue, forcible entry and detainer is the proper remedy and lies even against the very owner of the property, and the issue of ownership, when not essential to the question of possession, should be threshed out in an action to quiet title.[2] That this was known to the appellant and his counsel is brought out pointedly by appellee, who quotes from appellant's brief as appellee before the Court of Appeals in the forcible entry case, where appellant correctly argued that "the issue of possession can be determined without resolving the question of ownership. The only issue to be determined in cases of forcible entry and detainer is actual, physical possession of real property." [3] Even though the parties invoked their title in and to the land in question in the forcible entry case, this was evidently done merely to bolster their alleged right to continue in possession of the land.[4] And as already stated earlier, the Court of Appeals in affirming the judgment in the forcible entry case in favor of appellant, expressly stated that it was not concerned with the question of ownership and was resolving only the issue of prior possession of the land on the basis of preponderance of the evidence. Appellee's title and ownership of the land, however, were subsequently upheld by final judgment of the Court of Appeals in the appropriate action to quiet title subsequently filed by appellee, and appellant is bound thereby notwithstanding the earlier judgment for possession in his favor.

This is not to say, however, that appellant was properly convicted for contempt 'for trying to retain a part of the land in question where his house is located along the shore, "and for which appellee urges that "he be committed to imprisonment until he fully vacates the land in question." [5] Although appellant has not raised the question at all, relying solely on his untenable contention that the judgment against him in the ownership case was null and void, Rule 39, sections 13 and 14 of the Rules of Court expressly provide the procedure for execution and enforcement of a judgment for the delivery or restitution of property, and for removal of improvements on the property subject of execution, as follows:

"SEC. 13. How execution for the delivery or restitution of property enforced. -- The officer must enforce an execution for the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution.

"SEC. 14. Removal of improvements on property subject of execution. -- When the property subject of execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court."

The order of execution issued by the lower Court is addressed solely and exclusively to the sheriff, who under the above-cited rules is called upon to oust the defeated party from the property and make the delivery or restitution by placing the prevailing party in possession of the property, and mere refusal or unwillingness on the part of the defeated party to relinquish the property, would not constitute contempt. The acts punishable for contempt under Rule 71, section 3(b) are those of disobedience of or resistance to lawful writs or orders addressed directly to defendant such as a writ of injunction requiring him to do a specific act or restraining him from performing certain acts.[6] Also, if after having been dispossessed or ejected from the property by judgment of the Court, a defendant should enter or attempt or induce another to enter into the property, for the purpose of executing acts of ownership or possession, or in any manner to disturb the possession given to the person adjudged to be entitled thereto, he would be liable for contempt. But such is not the case here. Per the return of the writ of execution, as recited in the lower Court's decision, the Sheriff duly carried out the writ of execution and placed appellee in possession of the property in the presence of the adjoining owners, the parties themselves and two members of the Municipal Police Force of Culaba, Leyte, save that appellant "tried to retain a part of the land where his house is located." Under Rule 39, section 14, the appellant's house could not be removed pending appellee's recourse to the Court for a special order for the demolition and removal of such improvements constructed by the appellant, which order is to be issued "upon petition of the judgment creditor after due hearing, and after the former has failed to remove the same within a reasonable time fixed by the Court." [7] Appellee's proper recourse, therefore, was to apply for such special order of the Court for demolition and removal of appellant's house, with due notice to appellant, and not the institution of the contempt charge against appellant.

ACCORDINGLY, the judgment of contempt appealed from is hereby reversed, with costs against appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Barredo, JJ., concur.

[1] Appellant's Brief, pp. 16-17.

[2] Prado vs. Calpo, 10 SCRA 801 (April 30, 1964).

[3] Appellee's Brief, p. 13.

[4] Cf. Torralba vs. Rosales 16 SCRA 674 (April 29, 1966), Clemente vs. CA, 19 SCRA 74 (Jan. 24, 1967).

[5] Appellee's Brief, p. 19.

[6] Cf. U. S. vs. Ramayrat, 22 Phil. 183.

[7] Rule 39, section 14, Rules of Court.

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