

CONRADO VICTORINO, ET AL., PETITIONERS AND APPELLEES VS. PRIMITIVO ESPIRITU, RESPONDENT AND APPELLANT.*G. R. No. L-17735. July 30, 1962*

Ponente: BAUTISTA ANGELO, J.

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Conrado Victorino, et al. filed on February 11, 1959 a petition before the Court of Agrarian Relations praying for the liquidation of their crop for the agricultural year 1958-1959 as tenants of Primitivo Espiritu based on a 75-25 ratio in their favor contrary to the liquidation made between them in previous years. They prayed that, pending termination of the case, a provisional liquidation of the crop be made by delivering 50% thereof to petitioners and 25% to respondent, depositing the balance of 25% in a bonded warehouse subject to future disposition. This interlocutory petition was granted. Since respondent failed to appear or answer the petition, he was declared in default on August 20, 1959. Thereupon, after the reception of petitioners' evidence, the court rendered decision, which was later amended, granting the liquidation of the crop for the agricultural year 1958-1959 on the basis of a sharing ratio which is warranted by the equities of both petitioners and respondent, and after a portion of the proceeds of the palay deposited had been delivered to petitioners in partial satisfaction of the judgment rendered in their favor, a deficiency judgment of P320.53 resulted in favor of petitioners.

On September 22, 1959, a writ of execution was issued for the payment of this deficiency judgment. The sheriff levied on some personal properties which allegedly belonged to respondent, but after said levy was effected, a third party claim was filed by one Eliseo Espiritu, which was however stayed because of an indemnity bond filed by petitioners. Then the sale was restrained in view of an injunction issued in an action taken by Eliseo Espiritu against the sheriff before the Court of First Instance of Rizal.

The writ of execution having been foiled, petitioners filed a petition before the agrarian court for the examination of respondent to determine if he had some other properties that may be subject to execution pursuant to Section 34, Rule 39, of the Rules of Court. This petition was granted. And after the examination of respondent, the agrarian court, on May 19, 1960, issued an order directing respondent to pay to petitioners the deficiency judgment of P320.53 in monthly installments of P50.00 beginning June 1, 1960 intimating therein that said installments should be paid to the clerk of court who in turn should turn them over to the judgment creditors. .

Despite the fact that respondent has been notified of the aforesaid order, he failed to comply therewith by not paying the first installment on June 1, 1960, whereupon, petitioners filed a motion praying that he be declared in contempt; and acceding to this request, the court required respondent to appear before it on July 6, 1960 to show cause why he should not be punished for contempt. Respondent appeared before the court as bidden, and the reasons he has given being unsatisfactory, the court declared him guilty. As a consequence, the court ordered his confinement in the city jail of Manila until he complies with its order of May 19, 1960.

Respondent interposed the present appeal.

The issues posed by appellant are: (1) Whether or not process for contempt to enforce compliance with a

judgment will lie if payment can be enforced by execution; (2) Whether or not the failure of appellant to pay the judgment due to financial incapacity is contemptuous; and (3) Whether or not payment of a judgment can be enforced by compulsory process of contempt.

It should be noted that when the deficiency judgment entered against appellant was rendered unsatisfied because the writ of execution levied by the sheriff upon certain personal properties belonging to said appellant became ineffective as a result of an injunction issued in an independent action, appellees filed a motion for the examination of appellant under Section 34, Rule 39, of the Rules of Court, and after said examination was made, the court, making use of its discretion, ordered appellant to pay the deficiency judgment in monthly installments of P50.00 beginning June 1, 1960. And when appellant failed to comply with said order, the court declared him in contempt and ordered his confinement in the city jail until he complies with the aforesaid order, invoking Section 38, Rule 39, which we quote:

"SEC. 88. Order for application of property and income to satisfaction of judgment.—The judge may order any property of the judgment debtor, or money due him, not exempt from execution, in the hands of either himself or other person, or of a corporation or other legal entity, to be applied to the satisfaction of the judgment, subject to any prior rights of the holders of such property: and if, Upon an investigation of his current income and expenses, it appears that the earnings of the judgment debtor for his personal services are more than is necessary for the support of his family, the judge may order that he pay the judgment in fixed monthly, installments, and upon his failure to pay any such installment when due without good excuse may punish him for contempt."

Indeed, it would appear that, upon the authority of the above provision, the court may, upon an investigation of the current income and expense of a judgment debtor, order that he pay the judgment in fixed monthly installments, and upon his failure to pay any installment without good excuse, may punish him for contempt if it appears that his earnings are more than necessary for the support of his family.

The question to be determined is: Is the agrarian court justified in resorting to such coercive measure considering the financial condition of appellant as was brought out in the course of his examination?

The agrarian court in its order of May 19, 1960 found that appellant is possessed of real and personal properties which were giving him a total net income of about P600.00 a month. As broken down, the real properties are:

- "1. the landholdings in question (9 balitangs)—located at Matalbak, Bagumbayan, Quezon City;
2. lot (about 1/2 hectare) and the house thereon—located at Santolan, Pasig, Rizal;
3. lot (about more than 1 hectare used for sand and soil business)—located at Santolan, Pasig, Rizal"

And the income that he derives therefrom is:

- "1. about more than 100 cavans of palay as share from the landholdings in question;
2. about P10.00 a day from his sand and soil business;
3. produce from his lease from the Mandaluyong Estate for which he pays a rental of P700.00 a year;
4. P210.00 a month as pension as former Philippine Constabulary personnel."

Note that the above properties were not included among those that were levied in execution when the sheriff proceeded to carry out the writ issued by the agrarian court, for the only properties levied upon were personal in nature which consist of the following:

One (1) Piano Arsonic)

Three (3) Upholstered sofas, and

One (1) Upholstered armchair.

Considering that the deficiency judgment only amounts to P320.53, there is indeed reason to believe that an alias writ of execution could still be issued for its satisfaction. the remaining properties of appellant being more than sufficient to pay off such judgment even if we deduct the portion exempt by Law from execution. The foregoing shows that the claim that the agrarian court has improperly exercised its discretion in ordering his confinement despite other available legal remedies is not entirely devoid of merit. .

It may be well to emphasize once more that courts should be slow in jailing people for non-compliance with their orders and judgments. Only in cases of dear and contumacious refusal to obey should the power be exercised. The power to punish for contempt should be sparingly exercised. The power " 'should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.' Such power being 'drastic and extraordinary in its nature * * * should not be resorted to * * * unless necessary in the interest of justice.' "[1]

Wherefore, the order of the agrarian court dated September 26,1960 is hereby modified in the sense that, instead of ordering appellant's confinement in jail, an order should be entered directing that an alias writ of execution be issued for the satisfaction of the deficiency judgment having in view the remaining properties of appellant. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1]Gamboa vs. Teodoro, et al., 91 Phil., 270, citing Villavicencio vs. Lukban 39 Phil., 778 17 C.J.S., p. 58.

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