

ANTONIO DEL ROSARIO, ET AL., PLAINTIFFS AND APPELLANTS, VS. CARLOS SANDICO, ET AL., DEFENDANTS. CARLOS SANDICO, APPELLEE.

G.R. No. L-7077. July 30, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On December 29, 1949, this Court rendered a decision in G. R. No. L-867 entitled Antonio del Rosario, et al. vs. Carlos Sandico, et al., in favor of appellees and against appellants but in the dispositive part the following appears : "In view of all the foregoing, the appealed order is affirmed with cost against the appellees" This decision became final and the case was remanded to the lower court.

Said decision having become final, Carlos Sandico, one of the appellants who lost the case on appeal, filed with the court a bill of costs for P50 and, on July 19, 1950, he filed a motion for execution to enforce the collection of said costs. To this motion, the appellees filed a written opposition disputing the propriety of the assessment of the costs against them because they were the parties who won the case and contending that the Supreme Court must have merely committed an error in condemning them to pay the costs instead of the appellants.

On May 26, 1951, Sandico filed an amended bill of costs, this time charging P394 in lieu of the original . claim of P50. On June 8, 1951, appellees' again opposed said amended bill of costs basing their objection on the same ground they advanced in their original opposition.

On October 25, 1951, the clerk of court, motu proprio, issued a writ of execution commanding the sheriff to take the necessary steps in order that the amount of P394 claimed by appellant Sandico as costs may be paid out of the properties¹ of the appellees, which writ of execution, also motu proprio, was reiterated by the clerk of court on November 21, 1951.

Realizing perhaps that the two writs of execution he had issued were premature because they were issued prior to the assessment of the costs as required by law, the clerk of court submitted to the court on December 20, 1951 his taxation of the costs wherein he approved in its entirety the amended bill of costs submitted by appellant Sandico in the amount of P394. Appellees, in due time, appealed to the court from said assessment where they not only disputed, the amount claimed but reiterated the argument that said costs¹ had been mistakenly assessed against them in view of a clerical error committed in the decision of the Supreme Court, but the court sustained the taxation made by its clerk in an order entered on January 16, 1952. Appellees took steps to appeal from this order to the Supreme Court but the court refused to approve the record on appeal on the ground that the decision of the court which awarded the costs had already become final and is not appealable. Considering this to be an error, appellees sued out a petition for mandamus, and this having been granted, the appeal was given due course and the case is now before us for the determination of the issues raised relative to the validity of the costs and of the writs of execution issued by the clerk of court to enforce the claim.

It also appears that, in pursuance of the two writs of execution issued on October 25 and November 21, 1951 by

the clerk of court, the provincial sheriff levied in execution the land of the appellees which was originally the subject of litigation between the same parties, and on May 9, 1952, the sheriff sold at public auction said land to appellant Sandico for the sum of P1,000.

The issues now posed in this appeal are: (1) Can the claim of appellants, (formerly appellees) that the costs assessed against them in the decision rendered by this Court in G. R. No. L-867 were assessed merely through a clerical error be entertained?; and (2) Are the two writs of execution issued by the clerk of court on October 25 and November 21, 1951 for the payment of said costs which were carried out by the sheriff on May 9, 1952 by selling the property in litigation to Carlos Sandico for the sum of P1,000 legal and valid?

With regard to the first issue, the answer is in the negative. In the first place, the decision wherein said costs were charged against the appellees, now appellants, has become final since January 31, 1950, and the appellants, or their counsel have not taken any step in order that the error may be corrected if there has been one. They have not, filed any motion for reconsideration to effect such correction within the reglementary period and allowed the decision to become final and executory.

In the second place, the claim that the costs were charged against the appellees (now appellants) due merely to a clerical error because they were the winners of the case, is not justified, for there are cases where a winning party may also be ordered, for special reasons, to pay the costs. Thus, while as a general rule, costs are allowed to the prevailing party as a matter of course, however, the rule also provides that "the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable" (section 1, Rule 131). It is true that in the decision of this Court the reasons for the imposition of the costs upon the appellees (now appellants) are not expressly stated, but this is not necessary. These reasons may be gathered either from the decision itself or from other pleadings appearing in the record. They do not need to be expressly stated in the decision. The same principle governing the issuance of a writ of execution during the pendency of an appeal¹ applies in this case. As we know, the court may, before the expiration of the time to appeal, issue an execution on motion of the prevailing party with notice to the adverse party upon good reasons to be stated in a special order (section 2, Rule 39), and this Court has said in a number of decisions that said reasons need not be stated in the order but that they may be stated elsewhere. Thus, it has been held that the statement of the reasons may be made by reference (*Joven vs. Boncan*, 67 Phil., 252), or may be found somewhere in the record or in the motion for execution. (*Lusk vs. Stevens*, 64 Phil., 154; *Guevara, et al. vs. Court of First Instance of Laguna*, 70 Phil., 48). These rulings apply with equal force to cases which involve the award of cost contemplated in section 1 of Rule 131.

A different consideration should be made with regard to second issue. It appears that the clerk of the court a quo submitted his assessment of the costs only on December 20, 1951, or two months after the issuance of the first writ of execution and one month after the issuance of the second writ of execution, and he issued said two writs *motu proprio*, or without any previous motion from appellant, now appellee, Carlos Sandico. It also appears that the appellees therein, now appellants, appealed from said decision to the court, and when said appeal was overruled, appellants took steps¹ to appeal from the order of the court to the Supreme Court. But, notwithstanding the appeal taken by the appellants, let alone the irregularity above pointed out, the clerk of court ignored said appeal and went ahead with the execution of the award for costs over the objection of the appellants. We consider this action of the clerk of court unwarranted and in excess of the powers given to him by law. The law provides that "execution shall issue upon a final judgment or order upon the expiration of the time to appeal when no appeal has been perfected" (section 1, Rule 39). Here the order relative to the payment of the costs has not yet acquired finality in view of the appeal interposed by the appellants. It is true that the decision wherein said costs were awarded had already become final, but that is not so with regard to the costs for the payment of which the

law requires that certain steps be first taken, such as the assessment by the clerk of court and the appeal, if any, from that assessment to the court (section 8, Rule 131). Unless these steps are taken, the judgment as to costs cannot be executed. And then we have also to consider the appeal that may be taken by the losing party to the appellate court as regards the costs assessed by the clerk of court.

This is the situation we have on hand. The appellants have appealed from the taxation made by the clerk of court and until this appeal is finally disposed of, the writ of execution for the payment of the costs cannot be enforced. The only way by which the order of the court may be executed pending appeal is if the prevailing party asks for its execution and the court grants it, for good reasons, in a special order under section 2, Rule 39. But this is not the case here. There is no special order authorizing the execution of the award for costs. It is for this reason that we hold that the two writs of execution issued by the clerk of court, as well as the sale at public adjudication of costs to the losing party was not due to auction made by the sheriff to implement them, are null and void for having been carried out in contravention of the rules.

Wherefore, the order appealed from dated January 16, 1952 is hereby affirmed, but the writs of execution issued by the clerk of court on October 25 and November 21, 1951, as well as the public auction made on May 9, 1952 by the sheriff, are hereby annulled and set aside. No costs. ,

Bengzon, Acting C.J., Padilla, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Jugo, J., concurs in the result.

CONCURRING AND DISSENTING OPINION

REYES, A., J., concurring and dissenting:

I concur in so far as the annulment of the writs of execution for costs is concerned, it appearing that the writs were issued before the costs were assessed and their amount fixed. But I dissent from the ruling that the mere clerical error. Perusal of the decision in the case gives no clue to the reason of the court in adjudging costs to the losing party. The majority cites cases in support of the proposition that the judge did not have to specify his reason. This is not contemplated in the Rules of Court and the cases cited are clearly inapplicable. As a mere clerical error, the adjudication of costs may be corrected by amendment after the judgment has become final. (I Freeman on Judgments, 302-303.)

CONCURRING OPINION

MONTEMAYOR, J., concurs:

Ordered affirmed, but execution is set aside and annulled.

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