

JESUS LANCITA, ET AL., PETITIONERS AND APPELLANTS, VS. GONZALO MAGBANUA ET AL, RESPONDENTS AND APPELLEES.

G. R. No. L-15467. January 31, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On March 21, 1951 , respondents Gonzalo Magbanua and Alfredo Magbanua filed with the Justice of the Peace Court of Buluan, Cotabato, a complaint (Civil Case No. 7), for Forcible Entry, against Jesus Lancita, et al., now the petitioners. On July 17, 1951 , said Court rendered judgment, to wit:

"This case having been called to trial after several postponements made by the defendants, the court after meting out justice to the Plaintiffs, the Plaintiffs took basis for the continuation of the trial or the postponement of the trial not well grounded. The Court under Rule 4, Section 13, of the Rules of Court declared the defendants in default and proceeded to hear the testimonies of the plaintiffs and their witnesses.

The Court found in accordance with the facts alleged in the complaint that the plaintiffs had prior physical possession over the land in question. The Defendants are hereby ordered to vacate the land in question and deliver upon the plaintiffs the possession of the land. The Defendants are also hereby ordered to pay damages jointly and severally in the amount of TWO hundred (P200.00) pesos, and also to pay the costs."

On August 21, 1951 , the Lancitas presented a Motion for Reconsideration of the above judgment. On the same date also, without waiting for the resolution of the Motion for Reconsideration, they filed a Notice of Appeal, which was abandoned, for failure to file the requisite bond. Under date of October 24, 1951 , the JP Court granted the motion for reconsideration and notified the parties to appear on November 15, 1951 , for trial of the case and ordered the stay of the decision. On November 27, 1951 , the JP Court promulgated the following Order, stating—

"* * *. Considering the fact that this case has been dragging for almost a year already, and five to six postponements having already granted to the defendants, delay of Justice have already been tremendously felt by the parties.

In view of the foregoing, the decision dated July 17, 1951 , is hereby revived and to take effect immediately."

On November 26, 1956, counsel for respondent Magbanua presented with the Justice of the Peace Court a Motion for an Alias Writ of Execution, pointing out the fact that the Provincial Sheriff repeatedly failed to eject the defendants (now petitioners), from the premises in question. A written opposition thereto, was filed claiming that (1) the judgment of July 17, 1951 cannot be executed now by merely filing a motion, as the period of five (5) years within which to execute said judgment by motion, had already expired; and (2) admitting for the sake of argument that the aforesaid judgment can be executed by mere motion, the issuance of the writ, will cause irreparable damage to the defendants and to others who were not parties to the case. The JP Court issued the alias writ of execution on March 27, 1957 .

Defendants therein, now Petitioners, presented with the CFI of Cotabato on April 22, 1957, a Petition for Certiorari with Injunction Ex-Parte and Damages in the sum of P2,000.00 alleging that the respondent JP acted

without or in excess of jurisdiction and with grave abuse of discretion in entertaining the motion for Execution.

Petitioners maintained that the period of five years had already elapsed, since the judgment in the Forcible Entry case became final and executory immediately on July 17, 1951, and the same judgment was being executed only on November 26, 1956. Respondents contended that the judgment in the Forcible Entry case became final only on November 27, 1951, or thereabouts, because the effects of the July 17, 1951 judgment was stayed by the JP Court, upon motion for reconsideration by petitioners. On July 12, 1957, the trial court rendered judgment, the pertinent portions of which recite—

"It appears on record that under date of October 24, 1951, the Justice of the Peace of Buluan, Cotabato, under whose court was then pending: Civil Case No. 7, issued a directive ordering the stay of the decision of the Court of July 17, 1951; it appears further that under date of November 27, 1951, the court in its order affirmed its decision of July 17, 1951.

In the light of the above stated facts, and in the light of the facts stated in the pleadings of the parties, the Court has formed the opinion and so holds that for the present there exist no reasons why the writ of execution issued by the Justice of the Peace Court of Tacurong, one of the respondents in this petition, of November 26, 1956, should be disturbed. Plainly expressed, the writ of execution issued by the respondent Justice of the Peace of Tacurong petitioned on November 26, 1956 remain in full force and should be implemented by the respondent Provincial Sheriff of Cotabato, without delay."

Petitioners therein presented a Motion for Reconsideration of the above Order, alleging that (1) the same is not in accordance with the law and the evidence of record; and that (2) they have been denied their day in court. This motion having been denied, the respondents therein interposed the present appeal direct to Us.

The appeal presents the singular issue as to "whether or not the alias writ of execution given on March 21, 1957, pursuant to a Motion presented on November 26, 1956, was issued within the five (5) year prescriptive period for execution of judgment by mere motion."

It is the theory of the petitioners-appellants that since judgment arose from a forcible entry case, execution thereof shall issue immediately (Sec. 8, Rule 72), and that the failure of respondents-appellees to have an immediate execution thereon constituted a waiver, which did not suspend the period for the finality of the said judgment. Petitioners also claim that having been declared in default the said judgment of July 17, 1951, became final immediately, so that the motion for a writ of execution presented on November 26, 1956, was outside the period provided for the execution of judgment by mere motion.

The contention of petitioners is not sustained by the facts duly established and is contrary to the well entrenched rulings and doctrines on the finality and execution of judgments. The records of the case clearly show that while the judgment in the Forcible Entry case was promulgated on July 17, 1951, and could have been, executed at the instance of the plaintiffs therein (now respondents), the effects of the same were delayed due to the motion for reconsideration presented by herein petitioners. As a matter of fact said motion was set for hearing and it was only on November 27, 1951, that an

Order reviving the judgment of July 17, 1951 was promulgated, after the petitioners had failed to appear on the hearing of the Motion to Dismiss presented by them and which was denied by the JP Court. It can not be successfully disputed, therefore, that it was only on November 27, 1951, that the judgment in the forcible entry case became final. The records reveal that the execution of the judgment had been asked several times after the rendition of the decision and before the filing of the motion for a writ of execution in question, but the provincial sheriff invariably failed to carry out or enforce the orders of the JP Court.

The trial court in its order of November 25, 1958, said:

"It appears also from the said order (page 12 of the record) that the said alias writ of execution was issued because the previous orders for execution issued by the Justice of the Peace have not been properly executed because the provincial Sheriff has repeatedly failed to eject the defendants from the litigated premises. The existence of a previous writ of execution was also confirmed by the Provincial Sheriff's return, copy of which appears on pages 101, 102 and 103 of the record herein. It is stated therein, among other things, that the defendants were furnished, copies of the alias order of execution on June 1, 1956 by Deputy Sheriff Silvestre L. Roda."

If the method of computation is, as it should be, to start from November 27, 1951, the date of the finality of the judgment to November 26, 1956, the filing of the motion for an alias writ of execution, 4 years, 11 months and 29 days had elapsed. The motion, under consideration, therefore, is well within the prescribed period. If the computation should commence from July 17, 1951, the date of the original decision in the justice of the peace court, the alias order of execution on June 1, 1956 (of the several already issued) the corresponding motion of which must have been filed on or before said date, such filing was likewise within the prescribed period. Moreover, these orders of execution which could not be enforced because of the contumacy or failure of the obligor to comply, had deferred or suspended the running of the period. It is to be noted that as late as April 20, 1957, the defendants had presented in the JP Court a petition asking extension of time within which to vacate the premises (Annex 3, Answer).

"Where judgments are for money only and are wholly unpaid, and execution has been previously withheld in the interest of the judgment debtor, which is in financial difficulties, the court has no discretion to deny motions for leave to issue execution more than five years after the judgments are entered." (Application of Molnar, Belinsky, et al. vs. Long Is. Amusement Corp., 1 N.Y.S. 2d 866).

"In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal, or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without scire facias." (23 C. J. 378).

There has been no indication that respondents herein had ever slept on their rights to have the judgment executed by mere motions, within the reglementary period. The statute of limitations has not been devised against those who wish to act but cannot do so, for causes beyond their control.

In view hereof, the appeal is hereby dismissed, and the orders subject thereof, being in conformity with the evidence and the law on the matter, are affirmed. Costs taxed against herein petitioners.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Barrera, JJ., concur.

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