

**VICTOR BALIONG, PETITIONER, VS. HON. ANTONIO M. MAR-TINEZ,  
JUDGE OF THE COURT OF FIRST INSTANCE, BRANCH VI, 16TH  
JUDICIAL DISTRICT, DAVAO CITY, DEPUTY PROVINCIAL SHERIFF,  
DAVAO ...**

*G.R. No. L-40530. October 20, 1978*

Ponente: CONCEPCION, JR., J.

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**CONCEPCION, JR., J.:**

Petition for certiorari and prohibition with preliminary injunction, to annul an order of execution pending appeal and to restrain the respondent Judge from enforcing the same.

It appears that on March 12, 1974, Atty. Rodolfo Pajo of Davao City drafted, prepared, and ratified a certain document, denominated "EXTRA-JUDICIAL AGREEMENT OF PARTITION" between the spouses Felix Cuyos and Andresa Cuyos,[1] whereby the said spouses agreed to divide their conjugal partnership properties extra-judicially, and waived their rights to file any criminal case arising from their estranged relationship as husband and wife, as well as their rights to file any action for damages against each other, for the benefit of all persons or parties concerned, and ceded unto Victor Baliong, 35% of their respective shares in the said properties, or 70% of the entire conjugal partnership properties, for the services Victor Baliong had rendered in mediating the differences between the spouses and in bringing about the immediate partition of the properties.[2] Pursuant to said agreement, Victor Baliong caused the actual partition of the conjugal partnership properties of the said spouses and took possession of his corresponding share.[3] Thereafter, when Felix Cuyos and his sons harvested coconuts from the land claimed by Victor Baliong, the latter filed a complaint for qualified theft against them.[4] The complaint, however, was dismissed upon the recommendation of the Fiscal on the ground that the extra-judicial partition is null and void and conveyed no right whatsoever to Victor Baliong.[5] Subsequently, on September 18, 1974, Felix Cuyos filed a complaint for damages against Victor Baliong before the Court of First Instance of Davao. After appropriate proceedings, the trial court, presided by the herein respondent Judge Antonio M. Martinez, entered judgment declaring the document captioned "EXTRA- JUDICIAL AGREEMENT OF PARTITION" to be void and illegal, and ordering the defendant Victor Baliong to pay the plaintiff Felix Cuyos the sum of P12,295.00, as damages.[6]

Within the reglementary period for perfecting appeals, the defendant Victor Baliong submitted a notice of appeal, appeal bond, and record on appeal. But, before the record on appeal could be acted upon, the plaintiff Felix Cuyos filed a motion for the immediate execution of the judgment pending appeal.[7] The respondent Judge required the defendant to submit an opposition thereto,[8] and on March 31, 1975, he issued an order, directing the execution of the judgment pending appeal.[9] On April 4, 1975, a writ of execution was issued pursuant thereto.[10] On April 12, 1975, Victor Baliong filed a motion to reconsider the order of March 31, 1975, and to lift the writ of execution already issued,[11] which motion was withdrawn when this Court issued a temporary restraining order, restraining the enforcement of the disputed order.[12]

Claiming that the respondent Judge abused his discretion in granting the order of execution pending appeal, and that there is no other plain, speedy and adequate remedy in the ordinary course of law, the defendant Victor Baliong filed the instant recourse. As prayed for, a temporary restraining order was issued by this Court on April 28, 1975.[13]

The petitioner contends that the order of execution pending appeal was issued without the existence of justifying circumstances and that the reasons are not mentioned in the said order.

The petition is without merit. Section 2, Rule 39 of the Revised Rules of Court provides, as follows:

"Sec. 2. Execution pending appeal.- On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

As will be seen, the court is given discretion to decree execution pending appeal where there are good reasons therefor, and appellate courts may not interfere with the exercise of this discretion unless it appears that there has been an abuse or excess of authority in doing so. The rule further requires that the "good reasons" be stated in the special order; however, it has been held that the statement of the reasons by reference is sufficient as when such reasons appear in a motion for execution, and reference thereto is made in the special order as ground therefor.[14] In the order of March 31, 1975,[15] the following were referred to as special reasons for the immediate execution of the judgment:

- (1) That the defendant has no valid and legal defense;
- (2) That the appeal undertaken by the defendant is manifestly intended to delay the execution; and
- (3) That the defendant is claiming ownership of his share by virtue of the extra-judicial partition agreement and seriously asserting said right to the great damage and prejudice of the herein plaintiff.

Whether or not the petitioner has a valid defense, or that his appeal is intended to delay the execution of judgment are controversial issues based upon findings of fact that should be left to the appellate court to determine,[16] and should not be the sole basis for the immediate execution of the judgment. These are matters over which men may honestly differ and a trial court should not assume that its judgment will always be upheld and any appeal therefrom would be dilatory and frivolous.

But, the fact that the petitioner is in possession of a bigger portion of the conjugal partnership property of the spouses Felix and Andresa Cuyos by virtue of the void and inexistent contract of partition,[17] and is seriously asserting ownership over said portion to the detriment of its lawful owners, is sufficient reason to grant execution pending appeal, if only to restore the possession thereof to its rightful owners.

WHEREFORE, the petition should be, as it is, hereby DISMISSED. The temporary restraining order heretofore issued is lifted and set aside. With costs against the petitioner.

**SO ORDERED.**

Fernando, Acting C.J., (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Aquino, J., concurs. But he doubts the propriety of the lower court's adjudication of moral and exemplary damages against Victor Baliong. He is of the opinion that the execution should be confined to the actual damages.

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[1] entered in his notarial register as Document No. 370, Page No. 75, Book VIII, Series of 1974 (See Rollo, p. 17).

[2] Id., p. 9 et seq.

[3] Id., p. 56.

[4] Id., p. 20.

[5] Id., p. 21.

[6] The judgment reads, as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Felix E. Cuyos and against defendant Victor Baliong, thus:

"1. Declaring the document captioned 'Extra-Judicial Agreement of Partition' dated March 21, 1974, to be void and illegal, it being contrary to public policy;

"2. Ordering defendant Victor Baliong to pay to plaintiff the amounts of P3,295.00 as actual damages; P5,000.00 as moral damages/ P1,000.00 as exemplary damages; and P3,000.00 as attorney's fees.

"The defendant Victor Baliong shall pay the costs of suit." (Rollo, p. 24)

[7] Rollo, p. 30.

[8] Id., p. 31.

[9] Id., p. 30.

[10] Id., p. 32.

[11] Id., p. 33.

[12] Id., p. 63.

[13] Id., p. 37.

[14] Joven vs. Boncan, 67 Phil. 252.

[15] Rollo, p. 30.

[16] Dasalla vs. Caluag, 118 Phil. 663.

[17] Art. 221, in relation to Art. 1409, Civil Code.

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