

“CLAUDIO S. PRIMO, PETITIONER, VS. THE HON. FIDEL FERNANDEZ IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR, BRANCH I, FRANCISCO ASTILLA, JR., AND THE SHERIFF O...

G .R. No. L-18738. June 29, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for certiorari to annul and set aside a writ of execution issued by the Court of First Instance of Samar, the Hon. Fidel Fernandez, presiding, with preliminary injunction to restrain the provincial sheriff of Samar from carrying out the mandate of the said writ of execution.

On May 17, 1955, in Civil Case No. 4403 of the Court of First Instance of Samar, entitled Francisco Astilla, Jr., plaintiff vs. Claudio A. Primo, defendant, the parties therein entered into a compromise agreement whereby the defendant bound himself to pay various amounts mentioned in the agreement to plaintiff, plus attorney's fees to Lope C. Quimbo. This compromise agreement bears date of May 17, 1955. Upon the submission of said compromise agreement, the court entered a decision on the same day, in accordance therewith. On May 9, 1961, plaintiff in the said case moved for the issuance of an execution against the defendant for the balance of the amount remaining unpaid, with interest at the legal rate. In accordance with said motion, the court entered an order on May 13, 1961, ordering the issuance of a writ of execution against defendant for the payment of the sum of P1,500 plus P100 for attorney's fees.

Defendant moved to reconsider the said order, alleging that more than five years having elapsed from the time that the judgment was rendered, the execution, may not issue, in accordance with section 6 of Rule 39 of the Rules of Court, but the court, after hearing the parties on June 16, 1961, denied the said motion for reconsideration. On July 25, 1961, the clerk of court issued a writ of execution commanding the sheriff of Tacloban City to collect from the defendant Claudio A. Primo, the sums of P1,500 and P100, the latter as attorney's fees. A motion for reconsideration was denied, whereupon the present petition for certiorari was filed before Us on the 21st day of August, 1961. Upon the filing of the petition, we issued a writ of preliminary injunction prohibiting the respondents from proceeding with the enforcement of the writ of execution issued by the court.

Respondent has presented an answer to the petition alleging that as the sum of P1,500 remaining unpaid is due and demandable within a period of two years from the date of the decision, that is, May 17, 1955, payment of this amount may not be enforced by execution until two years had elapsed from the date when it became due and demandable, that is, two years from May, 1955, or May, 1957. But as in May, 1961, barely four years had elapsed from May, 1957, the payment of said sum could still be enforced by motion.

We find no merit in the defense submitted by the respondent. Section 6 of Rule 39 is positive that the judgment can only be enforced by motion within five years from the entry of judgment, not from the date when payment is

enforceable. The fact that the claim of the plaintiff is not yet barred on May, 1961, when the motion for execution was presented, does not mean that the claim of the plaintiff may yet be enforced by motion. Before the expiration of the five-year period from the date of the judgment on May 17, 1955, the judgment may be enforced upon motion in the case; thereafter, before the period for the payment expires, the judgment may be enforced only by an ordinary action as required by the above-mentioned rule. (Section 6 of Rule 39.)

Wherefore, the petition is hereby granted and the preliminary injunction issued by Us on the filing of the petition is hereby made permanent. So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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