

**ASIAN SURETY & INSURANCE COMPANY, INC.,
PETITIONER-APPELLANT, VS. RICARDO RELUCIO, ALIAS RICARDO
RELUCIO NGO THIM, RESPONDENT-APPELLEE.**

G.R. No. L-32442. October 23, 1972

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for review by certiorari of the decision, dated October 28, 1969, and of the resolution, dated July 31, 1970, of the Court of Appeals in case CA-G.R. No. 35863-R.[1]

On September 4, 1962 petitioner-appellant Asian Surety & Insurance Co., Inc., filed an action for the collection of sums of money against herein respondent-appellee Ricardo Relucio and Ong Ting, docketed as Civil Case No. 51483 of the Court of First Instance of Manila. Upon their failure to file their answer, Ricardo Relucio and Ong Ting were declared in default on October 13, 1962, and after the herein petitioner had presented its evidence, judgment by default was rendered on March 6, 1963, declaring Ricardo Relucio and Ong Ting, jointly and severally, liable to the petitioner and ordering them to pay to the latter the sum of P3,000.00 with interest at 12% per annum from November 29, 1962; the sum of P9,000.00 with interest at 12% per annum from November 15, 1961, and the sum of P300.00 for attorney's fees, and costs.

On July 17, 1963, respondent Ricardo Relucio filed a motion to lift the order of default and to set aside the judgment by default, with prayer for the issuance of a writ of preliminary injunction, to enjoin the sheriff of Caloocan City "from continuing with the sale of the levied properties on July 23, 1963 at 10:00 o'clock in the morning." This motion was denied for lack of merit by the order dated July 22, 1963 of the Court of First Instance of Manila. From this order of denial, only respondent Ricardo Relucio appealed to this Court and the case was docketed herein as G.R. No. L-22079.[2]

Prior to the perfection of respondent's appeal on October 9, 1963, the sheriff of Caloocan City, by virtue of the writ of execution issued on June 10, 1963 by the Court of First Instance of Manila, levied on execution upon the real estate property with an area of 720 square meters, located at Barrio Balintawak, Caloocan City, registered in the name of Ricardo Relucio Ngo Thim under Transfer Certificate of Title No. 34718 of the Register of Deeds of Caloocan City. On July 19, 1963, the said sheriff issued the Notice of Sheriff's Sale for the sale of said property at public auction on August 10, 1963, in which sale the herein petitioner was the highest and successful bidder for the sum of P12,587.19. Thereafter, the sheriff executed on the same date, August 10, 1963, in favor of the herein petitioner the corresponding certificate of sale, which was duly registered on August 15, 1963 in the Office of the Register of Deeds of Caloocan City and the proper memorandum thereof made in TCT No. 34718 in the files of said office. Respondent Ricardo Relucio having failed to redeem said property, in accordance with the provisions of Section 30 of Rule 39 of the new Rules of Court, the said sheriff of Caloocan City executed on August 24, 1964, the corresponding Officer's Deed of Absolute Sale of the aforesaid real property embraced in TCT No. 34718, in favor of petitioner Asian Surety & Insurance Co., Inc.

On August 26, 1964, petitioner Asian Surety & Insurance Co., Inc., filed in the Court of First Instance of Rizal, Caloocan City, Branch XII, a petition (Civil Case No. C-115)[3] for the cancellation of Transfer Certificate of Title No. 34718 in the name of Ricardo Relucio and to issue, in lieu thereof, another one in the name of Asian Surety & Insurance Co., Inc., by virtue of the final deed of sale issued in its favor by the sheriff pursuant to Section 78 of the Land Registration Act (Act No. 496, as amended). Despite the opposition, dated September 3, 1964, of respondent Ricardo Relucio on the ground that to allow the cancellation of his title would render ineffectual his appeal with this Court in case G.R. No. L-22079 the Court of First Instance of Rizal, on September 24, 1964, granted the petition of the Asian Surety & Insurance Co., Inc. The Court was of the view that in the absence of any writ of preliminary injunction from this Court in the aforesaid case No. L-22079 restraining the lower court from implementing the writ of execution issued in the appealed case, the "transfer of title may be ordered" by said Court. His motion for the reconsideration of this order of September 24, 1964 having been denied on January 27, 1965, respondent Ricardo Relucio appealed to the Court of Appeals, (CA-G.R. No. 35864-R).[4]

On October 28, 1969, the Court of Appeals rendered its decision setting aside the order of September 24, 1964 of the Court of First Instance of Rizal, with costs against the herein petitioner. The Court of Appeals predicated its resolution on the following grounds:

"The challenged order of September 24, 1964 in effect grants the final phase of the execution of the default judgment during the pendency of the appeal of Relucio from the order denying his petition for relief from the order and judgment by default entered against him. Under section 2, Rule 38, the order denying a petition for relief from the order and judgment by default filed by Ricardo Relucio is appealable and, in fact, Relucio had appealed from the order of July 22, 1963 denying his said petition for relief from judgment. Under section 9, Rule 41 of the Rules of Court, after the appeal had been perfected, the trial court loses jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involved any matter litigated by the appeal. In this case, the order of the trial court of September 24, 1964 directing for the cancellation of the certificate of title in the name of Ricardo Relucio and the issuance in lieu thereof of a new certificate of title in the name of the Asian Surety & Insurance Co., Inc. is not one for the protection and preservation of the rights of the parties but it involves the final phase of the execution of the appealed judgment and therefore it involves the very matter in litigation. Hence, the trial court had no power to issue the challenged order of September 24, 1964.

"The motion of Asian Surety & Insurance Co., Inc. of August 25, 1964 asking for the cancellation of transfer certificate of title No. 34718 and the issuance in lieu thereof of a new certificate of title in its name could not be considered as a motion for execution pending appeal for the reason that it was filed when the appeal from the judgment by default was already perfected and in fact said appeal was already pending in the Supreme Court. Motions for execution pending appeal must be filed before the perfection of the appeal (sec. 2, Rule 39). At any rate, motions for execution pending appeal must be supported by good reasons and the motion of Asian Surety & Insurance Co., Inc. for cancellation of title does not state any such good reason and neither does the challenged order of September 24, 1964 likewise state any good reason in support thereof if it is to be considered as a motion for execution pending appeal."

On December 6, 1969, the petitioner filed a motion for reconsideration of said decision alleging, inter alia, that the Hon. Supreme Court had already rendered its decision on May 27, 1966, in Civil Case SC-G.R. No. L-22079, affirming the appealed order of July 22, 1963 of the Court of First Instance of Manila in Civil Case No. 51483, and, therefore, the ground relied upon by respondent Ricardo Relucio for his appeal in the Court of Appeals (CA-G.R. No. 35864-R) is now academic. The Court of Appeals, on July 31, 1970 denied petitioner's motion for reconsideration thus:

"We cannot sustain this contention of the plaintiff-appellee for the reason that when the writ of execution in the

above-mentioned civil case No. 51482 of the Court of First Instance of Manila, as a result of which, the land of defendant-appellant Ricardo Relucio was levied upon on execution and sold by the sheriff and the challenged order of September 24, 1964 was issued, the appeal of said defendant-appellant from the order denying his petition for relief from the order and judgment by default was already pending in the Supreme Court and the lower court has no jurisdiction to issue the said writ of execution and the said challenged order of September 24, 1964 as the perfection of the appeal removed the case from the jurisdiction of the lower court. The order of execution and the challenged order of September 24, 1964 were therefore null and void for having been issued without jurisdiction. The circumstance that sub-sequently thereafter, that is, on May 27, 1966, the Supreme Court rendered judgment upholding the validity of the appealed order and judgment by default issued and rendered by the lower court in civil case No. 51482 could not have the effect of validating the order of execution and the challenged order of September 24, 1964 as these orders were null and void abinitio for having been issued without jurisdiction and 'it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever, and whenever it exhibits its head.'

"The writ of execution and all the proceedings subsequently arising out of the said writ of execution, including the sheriff's sale, the confirmation of the sheriff's deed of sale issued as a consequence of said sale and the issuance of the new certificate of title issued in favor of the plaintiff-appellee as the purchaser of the property levied upon by the sheriff were all premature proceedings done without any lawful basis, such basis being the execution pending appeal by the trial court at a time when said court had no longer any jurisdiction over the case as it was already pending appeal in the Supreme Court. The challenged order should therefore be set aside and a new writ of execution issued for the execution of the judgment of the Supreme Court and any property levied upon by virtue of said writ would undergo the proceedings of the sheriff's sale. This new sheriff's sale would probably result in a purchase price of the land levied upon on execution in an amount entirely different than the amount for which the same land was sold by the sheriff in the previous premature unlawful execution which resulted in the issuance of the challenged order of September 24, 1964. This is one of the reasons why the decision of the Supreme Court does not have the effect of curing the illegality of the contested order of September 24, 1964."

From such decision and resolution, the herein petitioner interposed the present petition for review by certiorari, alleging substantially that the Court of Appeals erred:

1. In holding in its decision of October 28, 1969 that the order of the Court of First Instance of Rizal of September 24, 1964, which granted the petition for cancellation of title and issuance of a new certificate, was in effect an order of execution, issued after the perfection of the appeal and therefore beyond the jurisdiction of said Court.
2. In holding in its resolution dated July 31, 1970 that the writ of execution and all other proceedings subsequently had in Civil Case No. 51483, during the pendency of the appeal before the Supreme Court, were premature, unlawful and without any basis.
3. In not holding that its decision on October 28, 1968 had already become academic upon the promulgation of the decision on May 27, 1966 of the Supreme Court which became final on July 8, 1966, affirming the order dated October 13, 1962 of the Court of First Instance of Manila in Civil Case No. 51483 which declared respondent Ricardo Relucio in default.

The Court of Appeals in setting aside the order of the Court of First instance of Rizal of September 24, 1964, authorizing the issuance of a new certificate of title to petitioner in Civil Case No. C-115 was of the view that the Court of First Instance of Manila which issued the writ of execution in Civil Case No. 51483 lost its jurisdiction over the case, after the perfection of the appeal, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, relying thus upon the provisions of Section 9 of Rule 41 of the Rules of Court and concluded that the order of September 24, 1964 of the Rizal Court,

based on the writ of execution of the Manila Court is "null and void for having been issued without jurisdiction."

I

We find that the Court of Appeals erred in its view of the factual setting, and consequently of the applicable rule. At the time the writ of execution in Civil Case No. 51483 was issued by the Court of First Instance of Manila, on June 10, 1963 to enforce the judgment of default dated March 6, 1963 against respondent Relucio, there was no appeal as yet taken by said party. As a matter of fact although said party was declared in default on October 13, 1962, and the judgment against him promulgated on March 6, 1963, no motion to lift the order of default was filed by said party, until July 17, 1963, or thirty-seven days after the issuance of the writ of execution, when he had already acquiesced in or ratified the judgment, by voluntary payments in partial satisfaction of said judgment. It should be noted that Respondent Relucio perfected his appeal in Civil Case No. 51483 to this Court only on October 9, 1963, and not on August 26, 1963 as erroneously stated by herein petitioner in its rejoinder to opposition of respondent Relucio dated September 1, 1964,[5] after the Sheriff of Caloocan City had (a) levied upon and advertised for sale on July 19, 1963, respondent's real property, (b) sold the said property to petitioner at the auction sale of August 10, 1963, and (c) the corresponding certificate of sale registered on August 15, 1963, with the Register of Deeds of Caloocan City.

Under the rule then prevailing (Sec. 9, Rule 27, old Rules of Court) the defaulting defendant loses his standing in court and is not entitled even to notice of a motion to declare him in default[6] or to service of notices in the cause, or to appear in the suit in any way, or to appeal from the judgment.[7] To regain his standing in the case he should file a verified petition to set aside the order of default on any of the grounds enumerated in Rule 38, such as fraud, accident, error or mistake or excusable negligence[8] in the manner and within the period prescribed in Section 3 thereof. He may file in the same proceeding a motion for suspension of the execution of the judgment pending the proceeding, and the court may grant such suspension by the issuance of a writ of preliminary injunction to stay the execution of the judgment rendered on the merits, for the preservation of the rights of the parties, "upon the filing by the petitioner of a bond to the adverse party conditioned that if the petition is dismissed upon its merits he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction * * *" and if the motion for a stay of execution be denied, such party may renew his motion on appeal.[9]

The necessity of securing a writ of preliminary injunction to suspend or stay the execution of the judgment sought to be set aside under Rule 38, stems from the fact that such judgment had already become final and executory[10] otherwise the remedy would be a motion for new trial under Rule 37 of the Rules. There is no question then, that unless restrained such judgment could be executed as it would then be the ministerial duty of the court to issue the writ of execution.[11] In connection with civil case No. 51483, the judgment of the court of first instance of Manila, dated March 6, 1963 was not only final and executory, but the judgment itself was completely satisfied by the sheriff's execution sale of respondent's real property on August 10, 1963, before the perfection of respondent's appeal on October 9, 1963.

While it is true that in ordinary cases, by the perfection of an appeal, under section 9 of Rule 41 of the Rules, the trial court loses jurisdiction over its judgment, and cannot order its execution, the judgment adverted to refers to one which has not attained finality because of the timely appeal therefrom. Such is not applicable to an appeal from an order dismissing or denying a petition for relief from judgment, under Rule 38, because the judgment from which relief is sought is already final and executory. And the only way by which the execution of said judgment could be suspended, is that prescribed in section 5 of Rule 38.[12] Obviously section 9 of Rule 41 of the Rules, invoked by the appellate court was clearly in opposite, and therefore its holding that the "order of execution and the challenged order of September 24, 1964 were * * * null and void for having been issued

without jurisdiction" a patently reversible error.

II

It also appears from the record, that prior to the filing by respondent Relucio of his petition for relief from judgment in civil case No. 51483, on July 17, 1963, he had previously and voluntarily made payments to petitioner in partial satisfaction of the judgment. [13] Thus the following facts appear:

1. On June 13, 1963, the sheriff of Caloocan City after furnishing Relucio copy of the writ of execution levied upon the latter's five (5) lathe machines located at 103, 5th Avenue, Grace Park, Caloocan City, and scheduled for public auction sale said properties on June 22, 1963;
2. On June 22, 1963, respondent Relucio personally requested in writing the sheriff of Caloocan City to postpone the auction sale to June 28, 1963 to which request petitioner gave its conformity. On this same date, June 22, 1963, Relucio issued his personal check, (Philippine Bank of Communications Check No. L-678764,) dated June 22, 1963, using his alias name "Ngo Thim", for P1,000.00, as partial payment of the aforesaid judgment, but said check bounced for lack of funds;
3. On June 27, 1963, Relucio exchanged the aforesaid check of P1,000.00 with cash, which he paid "on account of the judgment of the Court of First Instance of Manila, in Civil Case No. 51483, entitled, "Asian Surety & Insurance Co., Inc. vs. Ong Ting and Ricardo Relucio";
4. On June 28, 1963, Relucio again personally requested in writing the sheriff of Caloocan City to postpone the aforesaid public auction sale scheduled on June 28, 1963, at 10:00 o'clock in the morning of July 1, 1963, "in order that the undersigned defendant, Ricardo Relucio, may be able to raise the necessary amount to pay the judgment (in said Civil Case No. 51483) without the necessity of having the aforesaid properties sold at public auction sale," to which request the petitioner again gave its conformity. On the same date, June 28, 1963, Relucio paid to petitioner the sum of P3,520.00, in cash, on account of the judgment;
5. On July 1, 1963, Relucio again requested in writing (for the third time) the sheriff of Caloocan City to postpone from July 1, 1963 to July 8, 1963 the scheduled auction sale of his aforesaid properties "in order that the undersigned defendant, Ricardo Relucio, may be able to raise the necessary amount to pay judgment (in said Civil Case No. 51483) without the necessity of having the aforesaid properties sold at public auction," to which request herein petitioner gave its conformity. On the same date, July 1, 1963, Relucio paid to herein petitioner the sum of P1,000.00 in cash, on account of the judgment.
6. On July 6, 1963, Relucio paid to petitioner the sum of P140.00 in cash, on account of the judgment.
7. On July 8, 1963 Relucio personally requested in writing (for the fourth time) the sheriff of Caloocan City to postpone the scheduled auction sale of his aforesaid properties from July 8, 1963 to July 15, 1963 "in order that the undersigned defendant, Ricardo Relucio, may be able to raise the necessary amount to pay the judgment (in said Civil Case No. 51483) without the necessity of having the aforesaid properties sold at public auction," to which request the herein petitioner again gave its conformity;
8. On July 15, 1963, before the scheduled hour of said public auction sale, Relucio's wife, Avelina Manapat, filed with the sheriff of Caloocan City her Third-Party Claim dated July 15, 1963, claiming to be the owner of the aforesaid five (5) lathe machines which, according to her, were valued at P48,000.00; and in view of this Third-Party Claim, the public auction sale scheduled on July 15, 1963 was not carried out by the sheriff. Thereafter, as the herein petitioner, Asian Surety, did not put up the Indemnity Bond of P48,000.00 required by the sheriff of Caloocan City, the aforesaid levy on execution over the five (5) lathe machines was released by said sheriff.

As early as the case of *Verches vs. Rios*[14] we applied the principle "that the party who voluntarily executes,

either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies either partially or in toto, the execution of such judgment is not permitted to appeal from it". We reaffirmed our adherence to that principle in *Desbarats vs. De Vera*[15] where We held:

"The decisive principle is not new and has already been embodied in the case of *Verches vs. Rios*, 48 Phil. 16, in which this Court, quoting from *De Egana's Succession*, 18 La. Ann., 59, pointed out 'that the party who voluntarily executes, either partially or in toto, the execution of that judgment, is not permitted to appeal from it,' with the observation, furthermore, that 'owing to the similarity of the jurisprudence of that State with the law in the Philippine Islands, the Louisiana decisions are important and should have great weight in this Court.'

"It should be noted that the defendant had delivered the greater portion of the property expressly 'in accordance with the decision of the Court of First Instance of Manila, dated July 12, 1948,' thereby plainly acquiescing in said decision at least in so far as it Orders him to surrender the possession of the building to the plaintiffs. The judgment for possession is certainly indivisible and it cannot be correct or wrong as to a part and correct or wrong as to the other part. It stands to reason that the delivery by the defendant of the greater portion of the 'Burke Building' has estopped him from assailing the propriety of the appealed judgment as regards the matter of possession."

Applying the aforecited principle to the case, Respondent Relucio was therefore precluded on the ground of estoppel from challenging on appeal the order of the Court of First Instance of Rizal, dated September 24, 1964, which was issued to implement the final judgment in Civil Case No. 51483.

III

Finally it should be noted that the order of September 24, 1964 appealed to the Court of Appeals was the one issued by the Court of First Instance of Rizal in case No. C-115, where petitioner sought from said Court the cancellation of Transfer Certificate of Title No. 37415 in the name of Ricardo Relucio alias Ricardo Relucio Ngo Thim, and the issuance of a new Transfer Certificate of Title in the name of petitioner. This petition was filed pursuant to Section 78 of the Land Registration Act (Act No. 496), as amended,[16] when respondent Relucio failed to redeem his real property within the period of twelve (12) months from the date of the execution sale and after the sheriff of Caloocan City had already executed and issued on August 24, 1964 the corresponding Deed of Absolute Sale of said property in favor of petitioner.

On the basis of the allegations contained in the pleadings of both parties the main issue raised before said court was whether or not during the pendency of respondent's appeal before this Court from the order denying his petition for relief from judgment in the main case (G.R. No. L-22079) and in the absence of any restraining order from Us, the Court of First Instance of Rizal could order the cancellation of the transfer certificate of title in the name of respondent, and the issuance of a new certificate in favor of petitioner. This issue, the said court resolved in the affirmative in favor of petitioner, in its order of September 24, 1964. It was therefore the correctness of the court a quo's resolution of that issue that was elevated to the appellate court for review.

Instead of confining itself to this issue the Court of Appeals made the following findings of fact in its decision of October 28, 1969 thus:

"In the meantime and during the pendency of the appeal in the Supreme Court from the order of the lower court of July 22, 1963 denying Relucio's petition for relief from the order and judgment by default, the Asian Surety and Insurance Co., Inc. was able to secure a writ of execution of the judgment in said civil case No. 51483 and levy on execution was effected on the parcel of land registered in the name of Ricardo Relucio under transfer certificate of title No. 34718 of the land records of Caloocan City. The land was sold on execution by the sheriff with the Asian Surety and Insurance Co., Inc. as the highest bidder and to which a certificate of sheriff's sale was issued * * *."

On the basis of such findings, the Appellate Court, in setting aside the order of the Court of First Instance of Rizal in Case No. C-115, dated September 24, 1964, consequently ruled that the "Writ of execution and all the proceedings subsequently arising out of said writ of execution" in Civil Case No. 51483 "were all premature proceedings done without lawful basis * * * " because they were all allegedly done during the pendency of the appeal before this Court.[17]

These findings are of course contrary to the facts in Civil Case No. 51483, as the writ of execution was issued on June 10, 1963, the property levied upon on July 10, 1963, and sold to Petitioner as the highest bidder at the auction sale of August 10, 1963, and the corresponding certificate of sale registered with the Register of Deeds of Caloocan City, on August 15, 1963 or long prior to the perfection of the appeal of respondent to this Court in civil case No. 51483 on October 9, 1963,[18] and therefore were not done during the pendency of the appeal.

Such error could have been avoided had the Appellate Court adhered to settled principles. For the determination of the validity of the writ of execution and all the proceedings subsequently had pursuant to said writ, cannot properly be made separately from the main case, for it would depend in a great part on the circumstances containing the background of the principal relief pending consideration by this Court on appeal.

The main case, having been appealed to this Court, it is evident that this Court's jurisdiction over the action extended to all matters incident thereto or connected therewith, which are necessary for the preservation of the subject matter of the suit or the protection of the rights of the parties.[19] In ruling thus on the validity of the writ of execution and all proceedings subsequently arising from said writ, the Appellate Court exceeded its authority.

The foregoing considerations render it unnecessary for Us to resolve petitioner's last assignment of error.

WHEREFORE, the appealed decision dated October 28, 1969 and resolution dated July 31, 1970 of the Court of Appeals, should be, as they are hereby reversed, with costs against Respondent-appellee Ricardo Relucio. Decision reversed.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Esguerra, J., took no part.

Makalintal, J., on official leave.

[1] Entitled "Asian Surety & Insurance Co., Inc., Petitioner-Appellee vs. Ricardo Relucio Alias Ricardo Relucio Ngo Thim, Respondent-Appellant."

[2] Entitled "Asian Surety & Insurance Company, Inc., Plaintiff-Appellee, vs. Ong Ting, Et al., Defendants, Ricardo Relucio, Defendant-Appellant."

[3] Entitled "Asian Surety & Insurance Co., Petitioner vs. Ricardo Relucio, alias Ricardo Relucio Ngo Thim, Respondent."

[4] Entitled "Asian Surety & Insurance Co., Inc., Petitioner-Appellee vs. Ricardo Relucio Alias Ricardo Relucio Ngo Thim, Respondent-Appellant."

[5] Annex B to Petition, Rec. on Appeal, CA-G. R. No. 35864-R, p. 33.

[6] Pialago vs. Generosa, 73 Phil. 654.

[7] Lim Toco vs. Go Fay, 80 Phil. 166, Rodrigo vs. Cabrera, 95 Phil. 790; Isaac vs. Mendoza, 89 Phil. 279.

[8] Isaac vs. Mendoza, 89 Phil. 279.

[9] Tecson vs. Melendres, 88 Phil. 703.

[10] Veluz vs. Justice of the Peace, 42 Phil. 557; Anuran vs. Aquino, 38 Phil. 29.

[11] Buenaventura vs. Garcia, 78 Phil. 759; Federal Films, Inc. vs. Ocampo, 78 Phil. 479.

[12] Sanchez vs. Serrano and Rodas, 83 Phil. 838.

[13] Record on Appeal in CA-G.R. No. 35864-R, pp. 29-32, Annex B of the instant Petition for Review.

[14] 48 Phil. 16.

[15] 83 Phil. 382; See also 34 C.J., pp. 362-363, where it stated that:

"A person who would ordinarily be entitled to apply for the vacation of a judgment may waive the right to such relief, or be estopped by his conduct to ask for it. The right to have a judgment opened on the ground of fraud may be waived by the party injured, or he may be estopped by his subsequent conduct to apply for such relief. Waiver or estoppel generally results where the party injured acquiesces in the rendition of the judgment, or in the judgment as rendered, or acknowledges its binding force, or receives and retains benefits accruing to him under it, or voluntarily pays the amount of it, or suffers his property to be sold on execution without objection, or where the party against whom a default or other interlocutory judgment is taken submits to and ratifies it by participating in the further proceedings in the action * * *."

[16] "Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: Provided, however, That every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based: Provided, further, That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description."

[17] Resolution of Court of Appeals, July 31, 1970.

[18] The appeal bond in Civil Case No. 51483 was approved by the Court of First Instance of Manila, on October 9, 1963; Record on Appeal, G.R. No. L-22079, p. 5.

[19] Philippine Products Co. vs. Court of Appeals, 21 SCRA 870, 874-875; Manila Herald Publishing Co. vs. Ramos, 88 Phil. 94, 102.

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