

**VALERIO P. TRIA, IN SUBSTITUTION OF MARIANO B. DELGADO,
PLAINTIFF AND APPELLANT, VS. WENCESLAO A. LIRAG, DEFENDANT
AND APPELLEE.**

G.R. No. L-13994. April 29, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Camarines Sur denying a motion to set aside an alias writ of execution.

On June 19, 1946, Mariano B. Delgado, acting through his wife, and defendant Wenceslao A. Lirag executed a deed whereby Delgado sold to Lirag a parcel of land situated in the municipality of Tinambac, Camarines Sur, for a specified price, payable in the manner therein stipulated. Alleging that Lirag had violated the terms of the agreement, on July 12, 1954, Delgado instituted this action, in said court, for the recovery of P8,000, plus attorney's fees and costs.

After the filing of Lirag's answer, or on December 20, 1954, the parties submitted to the court the following compromise agreement:

"COME NOW the plaintiff and the defendant in the above-entitled case, assisted by their respective counsel, and to this Honorable Court respectfully submit the following agreement:

- That the parties hereby agree to rescind the deed of sale marked Annex 'A' to the complaint, dated June 19, 1946, subject to the conditions stated below;
- That the plaintiff will pay to the defendant the sum of P13,500.00 on or before December 31, 1955, in full payment and satisfaction of all sums of money received by the plaintiff from the defendant as well as expenses incurred by the latter. Upon full payment of this amount, the defendant will deliver to the plaintiff the land which is the subject-matter of the said deed of sale of June 19, 1946;
- That the parties mutually relinquish their claims for damages and attorney's fees against one another;
- That the plaintiff may sell, mortgage, or otherwise dispose of the land subject-matter of the sale dated June 19, 1946, or any part thereof in order to raise such sum as may be necessary to pay the aforementioned amount of P13,500.00 to the defendant, provided however, that no sale, mortgage or disposition made by the plaintiff shall be valid unless made with the consent of the defendant; and that in case of disagreement the matter shall be settled by the Court.

Wherefore, the parties respectfully request that the foregoing agreement be approved and judgment be rendered in accordance therewith, without pronouncement as to costs." (Italics supplied.)

On December 23, 1954, the Court of First Instance of Camarines Sur rendered a decision transcribing and incorporating as part thereof said compromise agreement, the dispositive part of which decision reads:

"In view thereof, the foregoing agreement is approved and judgment is rendered in conformity therewith, without pronouncement as to costs."

On May 2, 1955, Delgado conveyed all his rights in and to the aforementioned property to one Valeric P. Tria, who, with Lirag's conformity, subsequently, substituted Delgado as plaintiff in this case. On February 29, 1956, Lirag filed a "motion for execution", upon the ground that Tria had not paid the sum of P13,500.00 on or before December 31, 1955, in violation of the compromise agreement and the decision. Over Tria's objection, the motion was granted by an order dated June 5, 1956. No appeal having been taken therefrom, the corresponding writ of execution was issued on October 25, 1956. For reasons not stated in the record, said writ was not enforced. Hence, on motion of Lirag, an alias writ of execution was issued on January 29, 1958. Soon thereafter, or on February 18, 1958, Tria tiled a "motion to lift alias writ of execution", which was denied by an order dated March 1, 1958. Hence, this appeal by Tria.

Tria maintains that his failure to pay the sum of P13,500.00—which, according to the compromise agreement, incorporated into the decision was due on or before December 31, 1955—was imputable to Lirag, because the latter had, in violation of said agreement, refused to lend him (Tria) the original certificate of title to the property in question, as well as to sign papers and pleadings necessary to enable him (Tria) to raise funds which to pay said amount. This pretense was rejected by the lower court in the following language:

"The motion is opposed on the ground that the movant, Wenceslao A. Lirag, violated the decision by refusing to lend to Valerio P. Tria Original Certificate of Title No. 181 and other papers necessary to enable him to contract a loan. The falsity of his excuse is patent. Under the terms of the decision, should any controversy arise between the parties over the stipulation allowing Delgado, Tria's predecessor in interest, to mortgage the land in question, it should be submitted to this Court for decision. Tria failed to call the attention of this Court to the alleged refusal of Delgado so that the controversy could be resolved conformably to the decision. Again, on January 14, 1956, Counsel for Tria, Atty. Ruperto, sent Atty. Luntok, Lirag's counsel, a letter in answer to the latter's demand that Tria pay the amount of the judgment within 15 days. In that letter, Atty. Ruperto made no mention whatsoever of Lirag's alleged refusal to lend the title and other papers necessary to enable Tria to secure a loan. On the contrary, he requested that Tria be given an additional period within which to pay."

We are fully in agreement with this view, which is borne out by the record. Besides, notice of Lirag's motion for execution of the decision was duly served upon Tria, who filed a written opposition thereto. Yet, when the lower court issued its order of June 5, 1956, overruling this opposition and granting said motion, Tria did not appeal from said order and thus allowed it to become final and executory. He did not question its propriety until after the issuance of an alias writ of execution on January 29, 1958, or more than a year and a half later. It is now too late, therefore, to invoke the alleged breach of the compromise agreement by Lirag as a ground to bar the execution of the decision in this case. He could have, and should have, taken it up on appeal from the order of June 5, 1956.

Tria insists that the compromise agreement was merely a contract, which may be enforced by ordinary action for specific performance, not by writ of execution. Said compromise agreement is, however, more than a contract. It had been submitted to the court for approval with the request that judgment be rendered in accordance therewith, and was accordingly approved by the court and incorporated into its decision, which was "rendered in conformity therewith". In other words, it was part and parcel of the judgment and may, therefore, be enforced, as such, by writ of execution. (Art. 2037, Civil Code of the Philippines.)

Wherefore, the order appealed from is hereby affirmed, with costs against plaintiff-appellant, Valerio P. Tria. It is so ordered.

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

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