

LUIS G. ABLAZA, PLAINTIFF AND APPELLEE VS. AMANCIO SYCIP AND CENTRAL SURETY & INSURANCE CO., INC., DEFENDANTS AND APPELLANTS.

G.R. No. L-12125. November 23, 1960

Ponente: PAREDES, J.

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PAREDES, J.:

An action for replevin initiated by plaintiff Luis G. Ablaza against defendants Amancio Sycip and the Central Surety and Insurance Co., Inc. in the Manila Municipal Court, for the recovery of an automobile in aid to a chattel mortgage foreclosure therein. Pending determination of the case in said court, the defendant retained possession of the automobile upon the filing by him, on September 22, 1953, of a redelivery bond which the insurance company executed with the following undertaking, to wit:

"Now, therefore, we Amancio Sycip as principal and the Central Surety Company of Manila, as surety, in consideration of the above and of the return of said property to said defendant, hereby bind ourselves, jointly and severally, in the sum of THREE THOUSAND PESOS ONLY (P3,000.00), Philippine Currency, which is double the value of the property stated in the affidavit of the plaintiffs, for the delivery thereof if such delivery is adjudged, and for the payment of such sum to him as may be recovered against the defendant and the costs of the action."

Judgment was rendered by the Municipal Court in favor of the plaintiff. On appeal, the trial court likewise rendered judgment in favor of the plaintiff, the dispositive portion of which reads as follows:

"In View whereof, judgment is rendered condemning defendant to surrender the automobile to plaintiff to enable the latter to have the same delivered to the Sheriff for foreclosure under the Chattel Mortgage Law; defendant is further condemned to pay P300.00 to the plaintiff for attorney's fees, and to pay the costs."

Further appeal was perfected by the defendant to the Court of Appeals, but on October 19, 1954, the appeal was dismissed and the records of the case were remanded to the trial court for entry of final judgment and execution thereof.

A writ of execution was issued by the trial court and the Sheriff of Manila seized the automobile which was sold at public auction on April 16, 1955, at the devalued price of P381.00. For the first time on June 18, 1955, long after the entry of final judgment and issuance in fact of execution, the plaintiff-appellee applied with the trial court for the recovery of damages against the defendants Sycip and the surety company on their bond in the liquidated sum of P500.00. Over the objections of defendants on the ground of lack of jurisdiction, the trial court in an order dated July 18, 1955, directed the defendants-

"Jointly and severally to pay plaintiff the sum of P500.00 for the deterioration of the automobile in question besides the sum of P300.00 for attorney's fees and the costs; the latter two sums to be collected by execution at once; the first to be collected by execution if the bondsman or defendant does not appeal from this order in time."

As defendant's motions for reconsideration dated July 26, 1955, and August 4, 1955, were resolved adversely, the defendants appealed but defendant Sycip's appeal was dismissed, due to his failure to file the required appeal bond on time. Appellant surety company claims, under a lone assignment of error, that the trial court erred in issuing the order of July 18, 1955 awarding the plaintiff with damages for deterioration of the automobile, after entry of final judgment in the principal case.

At the threshold of this opinion, it should be recalled that the judgment of the trial court in the main action had become definitive, final judgment had been entered, a writ of execution of said judgment was issued and such judgment was in fact executed long before the incident involved in the case at bar had arisen.

In support of its theme, the appellant argues: (1) that the trial court had no longer jurisdiction in law to entertain and grant the application for damages against the redelivery bond; (2) that the award of damages made by the trial court was a modification of the original judgment and not a necessary corollary thereto, and consequently not permissible for the court to do, and (3) that granting appellee was entitled to damages because damages due to the deterioration of the automobile is a condition which may be implied in a redelivery bond in replevin cases (*Bachrach Motor Co., Inc. vs. Bona, et al.*, 44 Phil., 378, cited by the appellee), still he should not be awarded any, in view of his failure to comply with the procedural requisites of Section 10, Rule 62, in connection with Sec. 20 of Rule 59. (*C. Cajefe, etc. vs. Hon. F. Fernandez*, 109 Phil., 745; 61 Off. Gaz., [9] 1183; *Alliance Insurance Co. vs. Piccio*, 105 Phil., 1196).

A final judgment or order can no longer be altered or amended, and the court loses its jurisdiction thereover save to order its execution (*Rili, et al. vs. Chunaco, et al.*, 98 Phil., 505; 52 Off. Gaz., [5] 1428), and to correct clerical errors (*Veluz vs. Justice of the Peace of Sariaya*, 42 Phil., 557). The trial court, however, and with it, the appellee, relied strongly on section 5(g), Rule 124, which states that it is the inherent power of a court "to amend and control its processes or orders so as to make them conformable to law and justice". But as declared in the *Veluz* case, (*supra*), such amendment or correction may be made while the judgment or order is still under the control of the court and that after such judgment or order becomes final "it can not be altered, amended or modified in the slightest degree."

The appellee contends that the award of damages for the deterioration of the automobile in the sum of P500.00 did not modify the original judgment. We do not share this view. The change was not merely a clerical error. It is material and substantial, because it affects the merits of the judgment. In the original judgment, it was defendant Sycip alone who was condemned to surrender the automobile, and to pay the sum of P200.00 for attorney's fees. The appealed order joined the appellant surety company as a solidary obligor, in the payment of P500.00, which was not adjudged in the original judgment. The relief so granted was entirely new one, and substantially affected the parties of the case; on the part of the plaintiff, it sought to increase his claim; on the part of the defendant Sycip, it "added another obligation and on the part of the surety company, it created a liability. The original judgment directs the return of the automobile, which was done. And it was not just an atonement of a clerical mistake that, aside from the surrender of the vehicle, the trial court should now condemn defendant Sycip and the appellant surety company to pay damages which were not claimed pspexjous to the rendition of such judgment. Verily, the order in question was a wide departure from the original judgment and a material amplification of the same.

It should be noted that by the explicit terms of the order, the trial court expressly admitted a substantial change in the original judgment in stating that "the latter two sums to be collected by execution at once; the first to be collected by execution if the bondsmen or defendant does not appeal from the order in time". (Italics supplied). If the appellee's contention that the order did not modify or change the original judgment were true, it was not explained why the order itself opened the avenues to an appeal therefrom, when the original judgment had long

been admittedly become final and executory, such that the relief granted could be executed at once. When the order reopened the judgment to make it the proper subject of an appeal anew, the trial judge was convinced that the award of the P500.00 damages or fees for the deterioration of the automobile, was a substantial change or amplification of the original judgment, notwithstanding his honor's statement to the contrary.

Having reached the conclusion that the lower court had already lost its jurisdiction over the case when it issued its order of July 18, 1955, it is deemed unnecessary to pass upon the other issues raised herein.

The order of July 18, 1955, appealed from is reversed and set aside, and another entered, declaring said order null and void. Without special pronouncement as to costs.

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

Order reversed and set aside.

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