

JUAN DELIVA, PETITIONER, VS. HON. JOSE T. SURTIDA, JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, AND LEODEGARIO RONQUILLO, RESPONDENTS.

G.R. No. L-4614. October 24, 1952

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition to compel the respondent court to direct the execution of a judgment rendered in favor of the petitioner and against the respondent in civil case No. 99-R of the Court of First Instance of Camarines Sur entitled Juan Deliva vs. Leodegario Ronquillo et al.

The facts alleged in the petition are as follows: On 19 July 1944 the respondent court rendered judgment ordering Leodegario Ronquillo, one of the respondents, to deliver to the petitioner one-half of three parcels of land described under Group A of the complaint, the subject of partition proceedings, and to pay him the sum of P1,425 by way of damages. The record of the case was destroyed during the battle for liberation, so the petitioner began reconstitution proceedings and the respondent court declared it reconstituted on 13 February 1947. The respondent Leodegario Ronquillo moved for reconsideration of the order declaring it reconstituted. The parties presented their respective evidence in support of their contentions as to whether judgment had been rendered therein and a copy of the judgment had been served upon the respondent Leodegario Ronquillo. The respondent court denied the motion for reconsideration. Front the orders declaring the record reconstituted and denying the motion for reconsideration Leodegario Ronquillo appealed to the Court of Appeals. One of the issues joined and one of the questions raised, argued and submitted by the parties to the Court of Appeals was whether in 1944 after judgment had been rendered in the case, Leodegario Ronquillo or his attorney was served with a copy thereof. On 8 April 1949 the Court of Appeals rendered judgment declaring that Leodegario Ronquillo's attorney had been served with a copy of the judgment. On 2 February and 1 December 1950 motions for execution of the judgment and for the appointment of commissioners to partition the three parcels of land were presented but the respondent court, upon objection of the respondent, denied the motions in its orders of 20 February and 20 December 1950, respectively, and refused to issue a writ of execution on the ground that the judgment was not yet final. It is claimed that such refusal constitutes an unlawful neglect to perform an act specifically enjoined by law and that there is no other plain, speedy and adequate remedy in the ordinary course of law to have said orders denying the execution prayed for annulled and set aside. These facts are uncontroverted.

In their answer Leodegario Ronquillo and the respondent court allege that whether a copy of the judgment had been received by him or his attorney was raised incidentally in the motion for reconsideration to support the main claim that Leodegario Ronquillo or his counsel had not been notified of the date of trial of civil case No. 7110 of the respondent court and that the parcels ox land litigated therein could not be located and identified for lack of description of the same.

In the two orders of 20 February and 20 December 1950 denying the motions for execution, the respondent court

states that the respondent had not been notified of the judgment. In the memorandum for the respondents they invoke the rule laid down in the cases of *San Jose vs. De Venecia*[1] (45 Off. Gaz., 2073, 2074) and *Velasquez vs. Ysip*,[2] (45 Off. Gaz., 2079, 2080), wherein this Court among other things said:

"Here, the last and only proceeding reconstituted is the rendition of the judgment. The next step would have been notice thereof upon the parties, but notice upon petitioner has not been reconstituted. Such notice therefore should be served anew, and from the date of the new service the period of appeal should be computed."

The rule invoked by the respondents as laid down in the two cases cited is correct and sound. However, in the case of *San Jose vs. De Venecia, et al.*, supra, we said: "the last and only proceeding reconstituted is the rendition of the judgment" (p. 2074); and in the case of *Velasquez vs. Ysip et al.*, supra, we said; "No notice of the decisions upon the petitioner prior to the destruction appeared to have been reconstituted." (p. 2080.) The next step in those cases was to serve notice upon the parties or their attorneys of such reconstituted judgment. As it was not done the judgment could not become final. Here, however, the situation is different. Not only the judgment was reconstituted but also the fact that notice thereof had been served upon the attorney of the adverse party, the respondent Leodegario Ronquillo, was found by the respondent court and the Court of Appeals on appeal. Does reconstitution mean a physical or verbatim reproduction of the pleadings, evidence, decision or judgment rendered and subsequent judicial acts or orders and motions of the parties prompting them? Section 4, Act No. 3110, gives the answer by providing that "In case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the interested parties, which shall be reduced to writing and attached to the proper record." If it is not a physical or verbatim reproduction of the documents which made up the record to be reconstituted and there is a finding of fact by the trial court affirmed by a reviewing court on appeal that a notice of the judgment rendered in the case had been served upon the attorney for the defeated party and the judgments of both courts where such finding appears are attached to the reconstituted record, would not that be a sufficient compliance with the law?

The fact that the finding of both courts as to the service of judgment upon the attorney for the respondent was not on the main issue, for it is contended that it was just raised to strengthen the main claim and issue that no notice of the date of trial had been served upon the respondent or his counsel, such finding of fact does not lose its value and effectiveness, taking into consideration that lack of notice of judgment might influence and lead the trial court to believe and conclude that there was also no notice of hearing as claimed by the respondent. Be it the main or just an incidental issue, the fact remains that the question of service of judgment was raised, the issue joined, evidence in support of both claims presented, and the respondent court and the Court of Appeals passed upon it finding that a notice of judgment had been served upon the attorney for the respondent. And, as already stated, both judgments are part of the reconstituted record. To copy or type the dispositive part of the decision in order to have copies thereof served upon the parties or their attorneys and to make the date of receipt of such notice of judgment the beginning of the period within which appeal may be taken would have the effect of reversing the final finding already made by two courts that a notice of the judgment rendered in the case had already been served upon the attorney for the respondent.

The claim that the parcels of land cannot be identified for lack of description, granting it to be true, is no legal reason for refusing to issue the writ of execution upon a final and executory judgment, Let the sheriff make the return thereon. If he cannot carry out the execution of that part of the judgment for the reason pointed out, further proceedings may be had looking toward the execution of the judgment. But the judgment not only holds that the petitioner is entitled to one-half of the three parcels of land which his brother Anastacio had sold to the respondent but also awards him damages in the sum of P1,425. The execution of this part of the judgment does not need the

description of the three parcels of land involved in the case.

Petition for a writ of mandamus is granted, with costs against the respondent Leodegario Ronquillo.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] 79 Phil., 636.

[2] 79 Phil., 645.

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