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MARCELA SABULAO VDA. DE DECENA, PETITIONER, VS. HON. WALFREDO DE LOS ANGELES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH IV, PROVINCIAL SHERIFF OF RIZAL A...

G.R. No. L-29317. May 29, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This special civil action for certiorari, pro-hibition and injunction was instituted to restrain in the carrying out of the order of demolition issued on 24 June 1968 by the Court of First Instance of Quezon City, Branch IV, to enforce the judgment rendered in its Civil Case No. Q-5123.

Petitioner is the mother of the defendant in Civil Case No. Q-5123 of the Court of First Instance of Rizal, Quezon City, Branch IV, en-titled "People's Homesite & Housing Corporation vs. Joaquin Decena", for ejectment. The defendant therein admitted plaintiff's ownership of the subject lot (Lot 12, Block E-148, East Avenue Subdivision, Q.C.), but claimed that he had the right to priority in the purchase of the same from the government, being a bona fide occupant thereof. On 15 May 1961, the Court of First Instance rendered a decision against said de-fendant the dispositive portion of which reads:

> "Petition being well-taken, as prayed for, judgment is hereby rendered ordering the defen-dant and all persons claiming under him to vacate the premises in question and to remove his house and other constructions therefrom, restoring the possession thereof to the plaintiff; to pay the plaintiff the sum of P20.00 a month from the date of occupation until the possession of the lot in question is restored to plaintiff, and to pay the costs."[1]

The judgment having become final, plaintiff Philippine Homesite and Housing Corporation (PHHC for short) moved, on 31 March 1963, for the issuance of a writ of execution, which was granted on 13 March 1964.[2] The writ was served on defendant but was returned unsatisfied. In a motion dated 2 June 1967, plaintiff moved for the issuance of a demolition order which was granted on 15 June 1967. The court gave defendant 10 days from receipt of its said order within which to remove his house and vacate the land, otherwise the Quezon City Sheriff and/or his de-puties would demolish the same. Defendant failed to comply with the order.[3]

In a verified motion dated 15 June 1967,3a Marcela Sabulao Vda. de Decena, the petitioner herein, claiming to be in actual posses-sion of the lot in question and its improvements, moved to quash the said order of demolition on the ground, among others, that she had never been sued and/or impleaded in the complaint, nor does it appear that she was a privy to the defendant, Joaquin Decena, so that any judgment or order entered against her is void and of no effect whatsoever. In its Opposi-tion dated 30 June 1967, plaintiff PHHC objected to the said motion to quash, and the same was denied by the court's order of 13 July 1967.4

In an unverified motion dated 19 June 1968,5 plaintiff PHHC again asked for the issuance of a demolition order, alleging therein that de-fendant's house had already been demolished early in the day of 20 July 1967, and that possession had in fact been turned over to the plaintiff; but that in the latter part of the day petitioner Marcela S.

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Decena, “either pretending that her house had not been demolished, or having rebuilt it on the same lot", obtained several extensions within which to voluntarily vacate the premises, but which she failed to do. The court found the motion for demolition meritorious and well-taken, and granted the same on 24 June 1968.6 Petitioner then filed a Manifestation dated 11 July 19687 averring that the house of de-fendant, Joaquin Decena, had already been demolished by the Sheriff pursuant to the original order, but that the house remaining therein belonged to her, and asking the court to set aside its order of 24 June 1968, until the final determination of Civil Case No. Q-11316, filed by her as plaintiff-petitioner against the PHHC and one George Guerrero, awardee of the subject lot, for "Cancellation of Title with Preliminary Injunction". In an urgent ex parte motion dated 22 July 19688, petitioner prayed for the issuance of a status quo order, restraining the sheriff from executing the alias writ of execution until the resolution of the motion to set aside the same, and the motion for reconsideration of the order of the court dismissing her petition for injunction in Civil Case No. Q-11316 was decided. As a result, the court issued an order, dated 17 July 1968, directing the Sheriff to hold in abeyance the demolition up to 20 July 1968 only.8a However, the judge left for abroad before 20 July 1968. Hence, movant resorted to this Court, allegedly because the PHHC and the Sheriff were threatening to carry out the demolition order.

It is prayed by petitioner now that (a) respondents be ordered by this Court to desist from executing the judgment in Civil Case No. Q-5123 already adverted to for the reasons that (1) the said decision had become final on 14 July 1961, and more than 5 years had elapsed from said date when the demolition order was issued on 24 June 1968; and (2) petitioner was not impleaded as a party to the said case; and (b) that respondents, specifically the Quezon City Sheriff, be immediately enjoined from carrying out the order of demolition of 24 June 1968, upon petitioner's filing of a bond to be fixed by the court which shall answer for damages, if any; (c) that the proceedings had in the aforesaid Civil Case No. Q-5123 be declared null and void; and (d) that respondents be permanently enjoined from further proceeding therein against petitioner. We issued a restraining order on 8 August 1968.

Respondent PHHC answered averring that petitioner herein, Marcela Sabulao Vda. de Decena, together with her son Joaquin Decena, occupied the lot in question without the knowledge and consent of the PHHC; that after the claim of her son had been disapproved and he had been ordered to vacate, petitioner signified to the PHHC her intention to apply for the same lot; that petitioner has no valid and lawful claim over the lot in question and that the land had already been sold by the PHHC to one George Guerrero, on 24 September 1965, and it is now registered in the name of the buyer, under TCT No. 97565. PHHC further averred that not being a party to Civil Case No. Q-5123, PHHC vs. Joaquin Decena, petitioner had no personality to question the vali-dity of the order of demolition, and that she had other remedies in the ordinary course of law.

We do not deem it appropriate to discuss here the rights of peti-tioner Marcela Sabulao Vda. de Decena over Lot 12, Block E-148, in question, it appearing without contradiction that there is a pending action instituted by her against PHHC and its vendee, George Guerrero, questioning the latter's rights and seeking cancellation of the title issued in his name (Annex "L", Petition), and wherein the rights of herein peti-tioner can and should be adjudicated. It is well to note in this connec-tion that under the Presidential directive of 20 February 1964, the Homesite Corporation (PHHC) was directed to cancel conditional awards of PHHC lots in the East Avenue Subdivision (Piñahan Area) "made in favor of outsiders who are not occupants of the area in question".

What clearly appears from the record and is not disputed is that the decision of the respondent Court of First Instance in Civil Case No. Q-5123 became final on 14 July 1961. More than 5 years (6 years, 11 months and 10 days to be exact) having lapsed since then on the date that the second demolition order was issued, on 24 June 1968, the order was void, as the court a quo had ceased to have jurisdiction to execute the dormant judgment upon mere motion.9 Under the Rules of Court, plaintiff must insti-tute a new action, not for the purpose of

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re-examining and retrying issues already decided but for reviving the judgment.10 Under Article 1144 (3) of the New Civil Code, the action to revive prescribes in ten years counted from the date said judgment became final,11 which in this case was on 14 July 1961, or from the date of entry of the same.12 However, the ten-year limitation period was interrupted on 2 August 1968 when the herein petition was filed, praying, among other things, that this Court restrain respondents from executing the judgment in Civil Case No. Q-512313, and in consequence thereof, a temporary restraining order was issued by this Court on 8 August 1968.

Respondent PHHC's contention that the questioned order of 24 June 1968 is valid and legal because defendant Joaquin Decena, as well as petitioner herein, waived Section 6, Rule 39, of the New Rules of Court, is erroneous. It has been held that failure to interpose any objection to a writ of execution issued after 5 years from final judgment does not validate the same, for the reason that the jurisdiction of the courts is solely conferred by law and not by the express or implied will of the parties.14

FOR THE FOREGOING REASONS, the writ prayed for is granted and the demolition order of 24 June 1968 is hereby set aside; and the respondents Court of First Instance and Sheriffs are enjoined from taking further steps toward executing the judgment rendered in its Civil Case No. Q-5123 until and unless said judgment is revived in accordance with law. Costs against private respondent People's Homesite and Housing Corporation.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Ruiz Castro, J., took no part.
Teehankee, J., in the result.

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[1] Annex "C" to Petition, page 19, Rollo.

[2] Annex "E" to Petition, page 21, Rollo.

[3] See Annex "G" to Petition, page 32, Rollo.

3a Petition, Annex "H".

4 See Paragraph 5, Annex "J" of Petition, page 28, Rollo.

5 Annex "J" to Petition, supra.

6 Annex "K" to Petition, supra.

7 Annex "L" to Petition, page 33, Rollo.

8 Annex "M" to Petition, page 35, Rollo.

8a Annex "N", Petition

9 Section 6, Rule 39, New Rules of Court.

10 Azotes vs. Blanco, No. L-2593, 7 December 1949, 85 Phil. 90.

11 Philippine National Bank vs. Bondoc, G. R. No. L-20236, 30 July 1965.

12 Gutierrez Hermanos vs. De la Riva, No. 19827, 6 April 1923, 46 Phil. 837.

13 David vs. Garlitos, No. L-7142, 30 June 1954, 95 Phil. 387; See also Lancita, et al. vs. Magbanua, et al., No. L-15467, 31 January 1963.

14 Organo vs. Florendo, 61 Phil. 1028, L-41483, 30 March 1935.

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