

ROSARIO GREY VDA. DE ALBAR AND JOSE M. GREY, PETITIONERS, VS. JOSEFA FABIE DE CARANDANG AND THE COURT OF APPEALS (SECOND DIVISION), RESPONDENTS.

G.R. No. L-18003. September 29, 1962

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Rosario Grey Vda. de Albar and Jose M. Grey from the decision of the Court of Appeals in CA-G.R. No. 28196-R—an original action for certiorari filed by respondent Josefa Fabie de Carandang.

In her will the deceased Doña Rosario Fabie y Grey bequeathed the naked ownership of a parcel of land situated at Ongpin St., Manila, and of the building and other improvements existing thereon, to petitioners, and the usufruct thereof to respondent for life. Because the improvements were destroyed during the battle for the liberation of the City of Manila, the Philippine War Damage Commission paid petitioners a certain sum of money as war damage. It was respondent, however, who paid the real estate taxes due on the land for the years 1945 to 1954.

On October 2, 1952, petitioners commenced Civil Case No. 17674 in the Court of First Instance of Manila to limit respondent's usufruct to the legal interest on the value of the land. After due trial the court rendered judgment as follows:

"En virtud de todo lo cual, el Juzgado promulga decision a favor de la demandada usufructuaria, declarando:

(a) Que su usufructo vitalicio continua sobre la finca en Ongpin con derecho exclusivo de percibir durante su vida la totalidad de sus rentas, sin que los demandantes tengan derecho de inmiscuirse en la administracion de dicha finca;

(b) Con derecho de percibir el 6% de la cantidad de P8,574.00 percibidos como indemnizacion de guerra desde Enero 11, 1950;

(c) Al reembolso de la suma de P1,989.27 pagados o abonados por la demandada como pagos de amillaramiento desde la fecha de la Contestacion, Octubre 22, 1953;

(d) Mas la suma de P2,000.00 como daños y perjuicios en forma de honorarios de abogado y gastos de litigio;

(e) Con las costas a cargo de los demandantes."

Deciding the appeal taken by petitioners, the Court of Appeals rendered judgment as follows:

"Wherefore, we hereby affirm the decision appealed from in so far as it holds that appellee's right of life usufruct subsist and is in full force and effect upon the Ongpin lot and the building now existing thereon, and that she is entitled to receive from appellants 6% of the amount the latter actually received from the Philippine War Damage Commission, and we hereby reverse said decision, declaring that reimbursement to appellee of the sum of P1,989.27 paid by her for real estate taxes is deferred until the termination of the usufruct, and that

she is not entitled to any amount for attorney's fees."

On appeal taken by petitioners We, in turn, rendered judgment affirming that of the Court of Appeals with the modification that petitioners should not be made to reimburse the real estate taxes paid by respondent for the years 1945 to 1954. Upon a motion for reconsideration filed by petitioners, We further modified the appealed judgment by eliminating therefrom the portion requiring them to give security for the payment of legal interest on the amount of the war damage.

The record of the case having been remanded to the court of origin for execution, respondent filed a motion praying that the court issue an order for the "payment of the sum of P1,963.20 as the legal interests from January 11, 1950 to January 11, 1960, which are already due to the defendant usufructuary from the plaintiffs, naked owners, as legal interest on the war damage payments received by the later covering said ten years period and that plaintiffs be ordered to pay defendant usufructuary the amount of P196.32 every year, representing the legal interest per annum payable on or before January 15, 1961, and every year thereafter during the existence of the usufruct."

Petitioners opposed the motion alleging that because respondent failed to pay the real estate taxes on the property for the years 1954 to 1959, the property was declared delinquent and sold at public auction to Mrs. Pilar T. Bautista; that respondent failed to repurchase the property despite the fact that she was under obligation to do so in order to maintain her usufruct thereon; that on June 8, 1959, petitioners repurchased the same for P715.05 and paid all the back taxes due thereon up to 1957, bringing the total amount of real estate taxes paid by them to P3,495.00; that, consequently, respondent's usufruct over the property was extinguished and they are entitled to reimbursement for the amount of real estate taxes paid by them. On these grounds they prayed for the denial of respondent's motion, or for the suspension of the issuance of the writ of execution until the question of the termination of respondent's usufruct has been finally settled.

On July 2, 1960, the Court of First Instance of Manila issued the following order:

"On motion of the defendant and it appearing that the decision of this Court dated August 10, 1953, as modified by the decisions of the Court of Appeals in CA-G. R. No. 11917-R and of the Supreme Court in G.R. No. L-13361, had already become final and executory, let a writ be issued for the execution of the said decision.

"In collecting and satisfying the sums adjudged in the judgment in favor of the plaintiffs, [defendant] the Sheriff of Manila is hereby ordered to withhold the sum of P3,495.90 which the plaintiffs claim to be reimbursable to them for real estate taxes paid on the property for the years 1954, 1955, 1957 and 1959, as well as the sum spent in repurchasing the property from the buyer at public auction, Mrs. Pilar T. Bautista, The disposition of the said sum should be threshed out by the parties in a separate incident either in this action or in an independent litigation".

On July 23, 1960 respondent filed a motion for the reconsideration of the above order upon the ground that it imposes a condition on the execution of the judgment rendered in the case—which, as modified by the appellate courts, had already become executory. The court, however, denied the motion in its order of August 25 of the same year, which, in part, said:

"The Court recognizes the fact that the decision had already become final and executory and has ordered the issuance of the proper writ for the enforcement of the said decision, in the first paragraph of the questioned order. The second paragraph of the same order was deemed necessary in view of the apparent conflict between the parties as to how to execute the decision, particularly with regard to the liability for real estate taxes on the property in question. The difference of their views on this matter is very evident in the pleadings they have filed in connection with the issuance of the writ of execution. In view of this divergence of opinion between

the parties, the Court considered it wise to withhold the disputed sum, the same to be disposed of in such manner that the parties may thresh out between themselves in a separate incident or in an independent action. There is no intention to modify or impose any condition on the enforcement of the judgment; rather the Court merely desires that the said judgment be enforced and executed in the correct and proper manner."

A petition for certiorari was thereafter filed by respondent Josefa Fabie de Carandang with the Court of Appeals to annul the orders of July 2, 1960 and August 25, 1960, on the ground that the same were not in conformity with our decision in G.R. No. L-13361, as modified by our resolution of February 10, 1960.

Respondents' answer, after admitting some of the averments made in the petition for certiorari and denying the others, alleged as affirmative defenses, inter alia, that appeal in due time was the proper remedy against the orders complained of; that the Court of Appeals had no jurisdiction over the petition because the writ sought was not in aid of its appellate jurisdiction, and lastly, that the respondent judge, in issuing the aforesaid orders, did not commit any grave abuse of discretion.

Upon the issues thus submitted, the Court of Appeals rendered the appealed decision annulling the orders of July 2 and August 25, 1960 mentioned heretofore, and ordering the respondent judge to issue a writ of execution in accordance with our decision of December 29, 1959, as modified by our resolution of February 10, 1960. Hence the present appeal.

Petitioners reiterate now their contention that the Court of Appeals had no jurisdiction over the petition for certiorari filed by herein respondent, Josefa Fabie Vda. de Carandang (CA-G.R. No. 28196), because the writ sought therein was not in aid of its appellate jurisdiction. We find this contention to be meritorious.

It is not disputed that the Court of Appeals has original jurisdiction to issue writs of certiorari, prohibition, mandamus, and all other auxiliary writs in aid of its appellate jurisdiction (Section 30, Republic Act 296, commonly known as Judiciary Act of 1948). Settled likewise is the view that anyone of the writs aforesaid is in aid of the appellate jurisdiction of the Court of Appeals, within the meaning of the law, if said court has jurisdiction to review, by appeal or writ of error, the final decision that might be rendered in the principal case by the court against which the writ is sought.

In *Breslin vs. Luzon Stevedoring Co. et al.*, 84 Phil., 618; 47 Off. Gaz. 1170, the main question raised by certiorari, was whether or not the Court of First Instance of Manila erred in denying admission of an amended complaint filed by the plaintiffs in Civil Case No. 4609 and, accordingly, in dismissing the case. The Court of Appeals forwarded the case to us in the belief that the writ sought by petitioners therein was not in aid of its appellate jurisdiction. The reason given in support of this view was that if petitioners in the case had sought a review of the orders complained of, by appeal or writ of error, the review would have fallen under our exclusive appellate a question of law. In deciding whether or not the case was correctly forwarded to Us, however, we said that the reason relied upon had no bearing on the question of whether or not the writ of certiorari sought by the therein petitioners was in aid of the appellate jurisdiction of the Court of Appeals, because the determining factor for the solution of that question was whether said court had appellate jurisdiction to review the final decision of the Court of First Instance on the merits of petitioners' action. In the present case, it is undisputed that the review of the final decision rendered by the Court of First Instance of Manila in Civil Case No. 17674 instituted by herein petitioners against respondent Josefa Fabie de Carandang was within the appellate jurisdiction of the Court of Appeals. In fact, it was actually appealed to said court (CA-G.R. No. 11917-R) and its decision was subsequently appealed to us (G.R. No. L-13361).

While from the above circumstances it might appear that—conformably with our decision in the *Breslin* case—the Court of Appeals had jurisdiction over the petition for certiorari filed by respondent Josefa Fabie de Carandang

against herein petitioners and the Court of First Instance of Manila, because the writ sought was in aid of its appellate jurisdiction, we find it to be otherwise in view of one important fact that makes the aforesaid decision inapplicable to the present case.

Before Breslin and others filed their petition for certiorari with the Court of Appeals, there had been no trial and decision on the merits in the principal case—which was for the recovery of a sum of money—because the trial court not only refused to admit their amended complaint but also dismissed the case on the ground that the plaintiffs had no cause of action against the defendant. Consequently, it was still reasonable and logical to say that the writ of certiorari sought in their petition was in aid of the appellate jurisdiction of the Court of Appeals because, upon trial on the merits, the final decision that would have been rendered by the Court of First Instance of Manila would have been appealable to the Court of Appeals considering the amount involved.

In the present case such situation does not obtain. The main case (Civil Case No. 17674 of the Court of First Instance of Manila) had already been finally decided, first by the Court of First Instance of Manila, then by the Court of Appeals and lastly, by Us; our decision had become executory, for which reason the record of the case was remanded below for purposes of execution; there was absolutely nothing left of the substance of the action to be resolved. Such being the case, there can be no reason to say that the Court of Appeals still had jurisdiction to review the final orders and decision of the Court of First Instance in said case, by appeal or writ of error. That jurisdiction had already been exercised and exhausted with the rendition of the decision of the Court of Appeals in C.A.-G.R. No. 11917. Upon the other hand, assuming that the orders complained of are appealable, they could only be appealed to Us because the appeal would have necessarily involved nothing more than a question of law, namely, whether or not the Court of First Instance of Manila had jurisdiction to issue the orders complained of.

In view of the foregoing, we hold that the Court of Appeals had no jurisdiction to entertain Carandang's petition for certiorari, and, as a result, the appealed decision is set aside. But, in view of the fact that we have the original jurisdiction to entertain said petition, we shall proceed to decide it on the merits as if it had been originally filed with Us, in order to save time and avoid unnecessary expenses for the parties—following the practice adopted in the Breslin case.

The question to be resolved is whether the orders of July 2 and August 25, 1960 issued by the Court of First Instance of Manila modify our decision in G.R. No. L-13361 (106 Phil. 855) as modified by our resolution of February 10, 1960. The answer must be in the negative.

It is, of course, the law in this jurisdiction that a decision, once executory, is beyond amendment, the prevailing party being entitled to its execution as a matter of right; that the writ of execution to be issued must conform with the decision (*Buenaventura vs. Garcia*, 78 Phil. p. 759); but it is likewise settled that a stay of execution of a final judgment may be authorized if necessary to accomplish the aims of justice, as for instance, where there has been a change in the situation of the parties which makes such execution inequitable (*Chua Lee vs. Mapa*, 51 Phil. 624; *Li Kim Tho vs. Sanchez*, 82 Phil. 776).

As stated heretofore, when petitioners opposed respondent Carandang's motion for execution, they alleged that because the latter did not pay the real estate taxes on the property over which she had usufructuary rights, for the years 1954 to 1959, the property was declared delinquent and sold at public auction; that because Carandang failed to repurchase it, petitioners made the purchase for the sum of P715.05, and paid all the back taxes up to 1957 as well as those for the year 1959, having paid the total sum of P3,495.00 as real estate taxes; for which amount they claimed reimbursement from respondent Carandang.

Upon the above facts—if proven—it would seem that petitioners had at least a *prima facie* case against the aforesaid respondent. It was in this connection precisely that the order of July 2, 1960 provided that "the Sheriff of Manila

is hereby ordered to withhold the sum of P3,495.98 * * *, as well as the sum spent in repurchasing the property * * *, providing further that "the disposition of said sum should be threshed out by the parties in a separate incident either in this action or in an independent litigation". This order, in our opinion, does not amount to a modification of our final decision in the principal case, nor to the imposition of a condition upon its enforcement. It amounts to a mere stay of execution and is authorized by our decisions in the Chua Lee and Li Kim Tho cases (*supra*).

In view of the foregoing, the writ prayed for in the petition for certiorari filed by Josefa Fabie de Carandang against Rosario Grey Vda. de Albar, Jose M. Grey, and the Hon. Conrado M. Vasquez (CA-G.R. No. 28196-R) is denied. With costs.

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

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