

SEVERINA EBERO AND BENEDICTA CALIZAR, ASSISTED BY HER HUSBAND HILARION RESURRECCION, PETITIONERS, VS. ANTONIO CAÑIZARES, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, JOSE ALA...

G.R. No. L-1397. August 30, 1947

Ponente: TUASON, J.

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TUASON, J.:

The petitioners apply for a writ of certiorari to determine the validity of two orders of the Honorable Antonio Cañizares, Judge of the Court of First Instance of Quezon.

It appears that in civil case No. 18 of that court, judgment of the following tenor was rendered under date of March 25, 1944:

"In view of the foregoing considerations, the court hereby renders judgment in favor of the plaintiffs and against the defendants, and orders that said defendants receive from the Clerk of this court the sum of P1,000 deposited with that official by the plaintiffs in full satisfaction of the loan obtained by said plaintiffs from the defendants on July 3, 1941, executing at the same time the necessary deed of conveyance providing for the return of the land and its possession to the plaintiffs. The defendants are further ordered to pay to the plaintiffs the sum of P6 as expenses of consignment which amount shall be deducted from the deposit of P1,000. With costs against the defendants."

This judgment was not appealed, and on August 29, 1944, counsel for plaintiffs filed a motion for its execution, after which the defendants surrendered to the plaintiffs the possession of the property in question, or as the defendants now allege, the plaintiffs entered upon that possession without their consent.

On January 24, 1947, Hilarion Resurreccion, one of the plaintiffs, for himself and in behalf of his co-plaintiffs, made another motion to require the defendants to deposit with the clerk of court, for delivery to the plaintiffs, the transfer certificate of title pertaining to the aforesaid land. Objection seems to have been made to the latter motion although no copy of it is in the record of this proceeding, and the reasons adduced in support of the objection do not appear. Acting on the last motion and on defendants' opposition thereto, Judge Cañizares denied the petition. His Honor went farther and "ordered (the execution) suspended until such time as the Government shall have determined its policy on the question of debt moratorium and on the value to be given the Japanese war currency circulated in the Philippines during its occupation by the Japanese." In addition the court directed the clerk "to furnish certified copies of this order and the decision of the Court in this case to the register of deeds of Quezon Province, with instructions to have them attached to certificate of title No. 10787." The grounds of the court's refusal to issue execution are thus stated:

"Since the action herein involved a monetary obligation payable within the Philippines and contracted prior to the liberation of this country from the Japanese, it seems clear that it is governed by the Executive Order No. 32, April, 1945, which amends Executive Order No. 25. Under the provisions of the said Executive Order and

the ruling of the Supreme Court in *Palacio vs. Daza*, 42 Off. Gaz. No. 1, p. 55, 'enforcement of payment of all debts and other monetary obligations payable within the Philippines, * * * is temporarily suspended pending action by the Commonwealth Government.' "

But on motion for reconsideration by the plaintiffs the court modified its previous order or made a new requirement. It would authorize the execution of the judgment if the plaintiffs should make a new deposit in the Republic of the Philippines currency. The dispositive part of the second order is couched in these terms:

"For the foregoing reasons, the Court arrives at the conclusion that no writ of execution can be issued in this case until and after plaintiffs have replaced the sum of P1,000 in Japanese war notes which they deposited with the Clerk of this Court during the Japanese occupation with an equal amount of P1,000 in the present legal tender, * * *."

Under the Rules of Court and as a matter of public policy, jurisdiction over the cause ceases with the expiration of the time to appeal, and thereafter the court has no power to correct or amend the judgment. This rule and the reasons behind it are too familiar to every practitioner to call for elaboration or citation of authorities.

It has been seen that the judgment had not only become final but its main object had been carried out: the possession of the land had been recovered by the plaintiffs. To complete the execution, the plaintiffs only wanted to have the defendants give back to them their certificate of title. In requiring the plaintiffs to make a deposit in current legal tender to replace the deposit in Japanese military notes of the same face value or denomination, which the plaintiffs made upon or before the institution of the action in 1943, the court would modify the judgment after it has passed beyond its authority to materially alter. It would impose upon the plaintiffs for the issuance of execution a new condition not contemplated in, if it does not run counter to, the judgment. It would compel the plaintiffs to pay the defendants another amount in substitution for a deposit which the judgment has declared valid and sufficient to discharge the plaintiffs' obligation.

One other well-known rule is that upon the expiration of the time to appeal when no appeal has been perfected the party in whose favor the judgment has been rendered is entitled to have execution issue as a matter of right without any string attached to it (sec. 1, Rule 31), provided only that the execution does not deviate materially from the judgment. The motion for the return to the plaintiffs of their certificate of title, which is in the nature of a motion for execution, conforms substantially to the judgment. Although the judgment is silent as to the delivery of the certificate of title to the plaintiffs, it is a necessary corollary of the judgment that the defendants restore the land and execute a deed of reconveyance to their opponents. It is not essential to the validity of an execution that the utmost possible strictness should be observed in reciting the judgment. (23 C. J., 403.)

If the defendants believe that by reason of the Japanese war notes having become worthless they are entitled to be paid now in Philippine legitimate money, they will have to institute a separate action. The subsequent outlawing of the Japanese military notes is not a good ground for a stay of execution. "A stay cannot be substituted for a proper legal remedy, such as an appeal, *audita querella*, action at law, or bill in equity." (23 C.J., 521.) In saying that the defendants may bring an independent suit to recover the equivalent of the deposit that has been rendered valueless, we are not to be understood as insinuating that the defendants have a good cause. We are not expressing any opinion pro and con on the merits of the suggested step. We are merely pointing out the course open to the defendants if they persist in their contention, and that the present case is definitely closed to any more designed to amend the judgment in a matter of substance.

The second order does not state whether it overrules or abandons the underlying reason of the first order. It seems that it does. Lest this be not the case, we want to say that the moratorium order has absolutely no bearing on the execution of the judgment in favor of the plaintiffs. The moratorium order refers to the suspension of payment of

debts and other monetary obligations. The execution applied for by the plaintiffs does not involve any payment of money. It is to the defendants that money, if any, is due, the parties against and not for whom execution is sought.

The two orders complained of are beyond the jurisdiction of the court below to make and the writ will be granted, with the costs of this proceeding charged to the respondents excluding the respondent Judge. So ordered.

Moran, C.J., Paras, Bengzon, Briones, and Padilla, JJ., concur.

FERIA, J.:

I concur in the result.

DISIDENTE

PABLO, M.:

Disiento. Me parece injusta la opinion de la mayoria.

El 25 de Marzo de 1944 el Juzgado de Primera Instancia de Quezon condeno a los demandados a recibir de la escribania de dicho Juzgado la cantidad de P1,000 depositados por los demandantes en completa satisfaccion de la deuda contraida por ellos en 3 de Julio de 1941, otorgando a favor de los mismos la necesaria escritura para la devolucion del terreno.

Los demandantes al iniciar la demanda consignaron la cantidad de P1,000 en papel moneda japonesa en la escribania porque los demandados rehusaron recibirla. El articulo 1176 delCodigo Civil es del tenor siguiente:

"Si el acreedor a quien se hiciere el ofrecimiento de pago se negare sin razon a admitirlo, el deudor quedara libre de responsabilidad mediante la consignacion de la cosa debida.

"La consignacion por si sola producira el mismo efecto cuando se haga estando el acreedor ausente o cuando este incapacitado para recibir el pago en el momento en que deba hacerse, y cuando varias personas pretendan tener derecho a cobrar, o se haya extraviado el titulo de la obligacion."

En este caso particular los demandados estuvieron justificados al negarse a recibir el pago porque la moneda con la cual los demandantes querian saldar su obligacion no era la moneda convenida. La deuda ha sido contraida en 3 de Julio de 1941 y es de suponer que las partes convinieron en que el pago se ha de hacer en igual moneda, no en papel-moneda militar japonesa porque, ni por imaginacion, creyeron que habia de sobrevenir la guerra. Segun proclama del General-en-Jefe del ejercito invasor japones de fecha 6 de Febrero de 1942, el aprobo la circulacion de la moneda filipina legitima con la moneda militar japonesa. (1 Off. Journal of the Japanese Military Administration, 3d Ed., 38.) No estaba prohibida la moneda filipina legitima; por tanto, no estaban entonces obligados los demandados a recibir el pago de su credito en moneda militar japonesa: tenian derecho a exigir el pago en moneda filipina legal. La consignacion hecha entonces en este caso en la escribania del Juzgado no es equivalente al pago: tenian razon los demandados a no admitirla. Ahora que el dinero consignado no tiene ningun valor, ¿debemos obligar a los demandados a recibirlo? ¿Es de ticia obligarles a devolver el terreno que era garantia de la deuda, sin derecho a exigir en cambio el pago de la deuda en moneda legal filipina? Si la cantidad consignada hubiera sido en moneda filipina, la consignacion equivaldria al pago.

La perdida del valor de la moneda consignada debe correr a cuenta de los consignantes deudores, y no de los demandados.

La mayoria opina que despues de quedar firme la sentencia ya no tiene jurisdiccion el Juzgado a ordenar a los

demandantes a sustituir la moneda militar japonesa consignada con moneda filipina legal. No estamos conformes con esta teoria. El Hon. Juez recurrido cuando dicto su auto diciendo que no puede ordenar la ejecucion de la sentencia a menos que los demandantes depositen en la escribania la cantidad de P1,000 en moneda filipina, en sustitucion de los mil pesos moneda militar japonesa consignados anteriormente, no ha hecho mas que dictar una orden suplementaria para que se pueda cumplir debidamente la sentencia. Lo que ordeno la decision fue que los demandados debian recibir de la escribania del Juzgado la cantidad consignada, y puesto que esta cantidad ya no existe o que no vale nada, es justo que los demandados reclamen que se les pague la cantidad de P1,000 en moneda legitima filipina. La orden del Juzgado disponiendo la sustitucion de una clase de moneda por otra no es mas que una actuacion. suplementaria, como corolario necesario. Una orden del Juzgado disponiendo la entrega del duplicado del certificado de transferencia de titulo no es mas que una simple actuacion suplementaria. Ambas ordenes no son enmiendas a la sentencia sino dos incidentes necesarios para la ejecucion definitiva de la sentencia. Cuando el Juzgado dispuso que no expedira ejecucion a menos que los demandantes sustituyan los mil pesos consignados con mil pesos filipinos legitimos, no se excedio de su jurisdiccion ni abuso de su discrecion. Si tenia jurisdiccion para ordenar la entrega del duplicado, ¿por que no habia de tener la misma jurisdiccion para ordenar la sustitucion de una moneda inutil con otra valida?

La sentencia dictada en esta causa contiene obligaciones reciprocas: el pago por los demandantes a los demandados de la suma de P1,000 y la obligacion de estos a devolver a aquellos el terreno con la escritura de traspaso correspondiente. Mientras los demandantes no paguen a los demandados la cantidad de P1,000 en moneda filipina no tienen derecho a pedir que se les entregue el duplicado del certificado de transferencia de titulo y el otorgamiento de la escritura.

La equidad aconseja que en las actuaciones suplementarias despues de la promulgacion de la sentencia, como por ejemplo, en la vista de la mocion en la que se pide la entrega del duplicado del certificado de transferencia, se de oportunidad a las partes para discutir si los demandantes estan obligados o no a entregar la cantidad de P1,000 en moneda legal filipina en lugar de la cantidad consignada. Obligar a los demandados a plantear la cuestion en otro asunto es condenarles a gastar por una cantidad tan pequena, tiempo, salud y fortuna. Los pleitos cuestan demasiado. "Es practica bien establecida el evitar multiplicidad de acciones que es odiosa ante la ley y no se permite ni en equidad ni en justicia." (Moya contra Barton, pag. 14, ante.)

Debe denegarse la solicitud.

DISSENTING

HILADO, J.:

I am constrained to dissent from the majority opinion, not only because I do not consider valid the judgment of the occupation Court of First Instance of Tayabas dated March 25, 1944, for reasons already expressed in my former dissents and concurring opinions from *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113) down to *Etorma vs. Ravelo and Director of Lands* (78 Phil., 145), but also because the contract between the parties executed in July, 1941, specifies P1,000 in genuine Philippine currency as the sum loaned and for constitutional, statutory, and equitable reasons such a loan must be repaid in the same currency instead of a different one, excepting only when the creditor voluntarily accepts payment in any other money, especially if the latter should prove less valuable or entirely worthless.

On January 3, 1942, the Japanese Commander in Chief issued a proclamation decreeing:

"The Imperial Japanese Army, in the occupied areas, will use the war-notes (Military pass-money) endorsed

and issued by the Imperial Japanese Government. All the peoples residing within the concerned areas should be aware of the following:

"1. The war-notes (military pass-money) have been issued by the Imperial Japanese Government, and said Government takes full responsibility for their usage having the correct amount to back them up.

"Circulate the war-notes (military pass-money) on their face value with no fear of any sort.

"2. Those who hold the war-notes will be able to use them in making payments of all kinds.

"3. If any one attempts to interfere with the circulation of the war-notes (such deeds as rejection of payment, forgery or spreading the untrue nature of news concerning the war-notes of any kind) his act will be considered as hostile and will be punished severely.

* * * * *

On January 10, 1942, the same Commander in Chief issued a proclamation containing the following declaration:

"The currencies which shall be sanctioned by the authorities of the Japanese Army to circulate in the Philippine Islands shall be the Peso military notes which are issued by the Imperial Japanese Government, and the Philippine Peso currency, which is already in circulation." (Italics supplied; Vol. I, 2d ed., Official Journal of the Japanese Military Administration, p. 38.)

On February 6, 1942, said Commander in Chief issued another proclamation concerning the suspension and prohibition in the occupied areas of the circulation of currency of the United States, but in the explanation of the same proclamation which follows (ibid., pp. 43-44), we read the following:

"Currencies approved by the Commander-in-Chief of the Imperial Japanese Forces at present are:

"I. Peso military notes issued by the Imperial Japanese Government.

"II. Philippine Peso currency.

* * * * *

"In short, no currency is allowed to circulate except Peso military notes issued by the Imperial Japanese Government and Philippine Peso currency."

If the debtors in this case wish to rely upon the above proclamations, to be consistent they must likewise abide at least by the provisions of section 8 of Article XI of the occupation constitution to the effect that "All property rights and privileges acquired by any person, entity or corporation, since the outbreak of the Greater East Asia War, shall be subject to adjustment and settlement upon the termination of the said war." They must also abide by the decree contained in paragraph 4 of the proclamation of the same Commander in Chief of January 3, 1942 (I Off. Journal of the Japanese Military Administration, 3d ed., pp. 1-2) to the effect that "So far as the Military Administration permits, all the laws now in force in the Commonwealth * * * shall continue to be effective for the time being as in the past". Among those laws is article 1170 of the Civil Code providing:

"ART. 1170. Payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such specie, in silver or gold coin legally current in the Philippine Islands.

"The delivery of promissory notes payable to order, or drafts or other commercial paper, shall produce the effects of payment only when realized or when, by the fault of the creditor, the privileges inherent in their negotiable character have been lost.

"In the meantime, the action arising from the original obligation shall be suspended."

Said debtors must also abide by that provision of the occupation constitution (Article VII, section 4) ordaining:

"No law impairing the obligation of contracts shall be passed";

the provision of which constitution must be deemed to have been accepted and respected by the Japanese Government when said Government approved it. Hence, the Japanese Government and Army, which imposed upon the Filipino people the so-called Japanese military notes, must also be held to have accepted and respected the principle of the inviolability of contracts enshrined not only in the Constitution of the Philippines which they found in force when they invaded the Islands, but also later in the occupation constitution which was adopted with their approval.

When the contract involved herein was made, article 1170 of the Civil Code was in force, and therefore the following doctrines are of authoritative application.

"Unless a contract otherwise provides, the law applicable thereto at the time of its making, including the law of the place where it is entered into, and the law of the place where it is to be performed, as the case may be, is as much a part of the contract as though it were expressed or referred to therein, for it is presumed that the parties had such a law in contemplation when the contract was made. So, when a statute prescribes a duty and a contract is made involving performance of that duty, such statute becomes a part of the contract; or, where the law authorizes the regulation of service rendered the public, such law becomes a part of and controls contracts providing for the public service. Likewise, where a contract is made in contemplation of state law, or of a particular statute, such law forms a part of the contract, whether or not incorporated therein, and the contract will be construed in the light thereof. Similarly, the parties to a contract made with reference to the laws of a jurisdiction other than that of the place of contracting are deemed to have incorporated into the contract the law of such jurisdiction. However, it has been held that a contract cannot be construed with reference to a foreign law, unless the intent of the parties to be governed by such law is evident from the instrument itself without the aid of extrinsic evidence." (17 C. J. S., Contracts, sec. 330, pp. 782-784.)

The United States Supreme Court held in *Northern Pacific Railway Company vs. Wall* (241 U. S., 87; 60 Law. ed., 905, 907):

"As this court often has held, the laws in force at the time and place of the making of a contract, and which affect its validity, performance, and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. (*Von Hoffman vs. Quincy*, 4 Wall., 535, 550; 18 L. ed., 408, 409; *Walker vs. Whitehead*, 16 Wall., 314, 317; 21 L. ed., 357, 358; *Edwards vs. Kearzy*, 96 U. S., 595, 601; 24 L. ed., 793, 796.)"

It will be observed that the said proclamations of the Japanese Commander in Chief expressly permitted the use and circulation of genuine Philippine currency even during the occupation. What was prohibited was the use of American and other specified currencies. Moreover, as already above intimated, any rights respecting the property in question which the plaintiffs herein (the debtors) may pretend to have acquired by virtue of the consignment made by them of the P1,000 in Japanese military notes, are "property rights" within the meaning of section 8 of Article XI of the occupation constitution above quoted. Hence, even from their viewpoint, that is, even if we were for a moment to consider their said rights pursuant to the decrees and edicts of the Japanese military authorities and government in the occupied parts of the Philippines during the late war, those rights are "subject to adjustment and settlement upon the termination of the said war". And if upon such adjustment and settlement it should be seen that to give validity to said consignment would entail an impairment of the obligation of the contract between the parties, and a violation of the statutory law which was continued here even by the Japanese Commander in Chief himself, no other conclusion can follow than that said consignment was null and void.

I should add that a judgment violative of the stern constitutional inhibition against the impairment of the

obligation of contracts cannot be valid any more than a law of the legislature suffering from the same defect, because it is a fundamental principle that constitutional provisions, particularly those prohibitory in nature, are mandatory (16 C. J. S., p. 120, section 61, p. 122, section 62) and that "mandatory constitutional provisions are binding on all departments of the government" (ibid., p. 121, and cases supporting the text).

Even within the doctrine of res judicata there is such a thing as a void judgment for want of jurisdiction, whether of the subject matter or of the person of the defendant (34 C. J., p. 899, section 1310). Within the same doctrine there is such a thing as a void or voidable judgment on the ground of fraud depending upon the jurisdiction where the point has been raised. Some authorities hold that a judgment obtained by fraud is so far invalid that it is of no conclusive force (ibid., p. 900), although others consider it as only voidable. (Ibid., p. 901.) And in the case at bar, the least that could be said is that the judgment of the Court of First Instance was voidable, and I think it can soundly be considered that the creditors in the instant case have sought its avoidance. At the very least, I submit that the right of the creditors to avoid said judgment in a direct proceeding should be recognized. Most assuredly, lack of jurisdiction or fraud should not have a more nullifying effect upon the judgment than a violation of a stern mandate of the sovereign people expressed in the supreme law of the land.

"SEC. 310 (10). Validity of judgment. (a) Void judgments.—No conclusive effect can be given to a judgment which is absolutely void, whether its invalidity results from a want of jurisdiction over the parties, or over the subject matter of the controversy, or from a want of authority in the court to go beyond the pleadings and evidence and render a judgment on a matter not in issue or not submitted to it.

"Fraud or collusion.—There are some authorities holding that a judgment obtained by fraud is so far invalid that it is not of conclusive force as an estoppel. Further it is essential that the judgment should be entered in a genuine and honest litigation, and not merely collusive or simulated. But other authorities have held that a judgment obtained by fraud or collusion is not void as between the parties to the action and their privies, but merely voidable, and becomes res judicata unless annulled or set aside in a direct proceeding. (34 C. J., pp. 899-901, section 1310.)

I vote for the denial of the writ with costs against petitioners.

PERFECTO, J.:

We concur in this dissenting opinion of Mr. Justice Hilado.

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