

AMALIA VDA. DE SUAN, JACOBO SUAN, CAMILA SUAN, ROSALINDA SUAN, BENJAMIN PARILLA, FE SUAN AND ULPIANO ALVARICO, PETITIONERS, VS. ERIBERTO A. UNSON, IN HIS CAPACITY AS SHERIFF EX-...

G.R. No. L-30716. May 18, 1990

Ponente: PARAS, J.

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PARAS, J.:

This special civil action for prohibition with application for a writ of preliminary injunction, assails the decision of respondent Judge Vicente M. Cusi in Civil Case No. 5654 of the Court of First Instance of Davao, 16th Judicial District, Branch I.

Civil Case No. 5654 was an action for “Cancellation of Document, Recovery of Possession and Damages” instituted by herein petitioners against herein private respondents. On November 27, 1967, a decision was rendered in the said case with the following dispositive portion:

“WHEREFORE, judgment is hereby rendered:

“1. Dismissing the complaint;

“2. Finding the plaintiffs jointly and severally liable to defendant Segundo Empasis in the amount of Five Thousand Pesos (P5,000.00) as moral damages and another Five Thousand Pesos (P5,000.00) as exemplary damages;

“3. Finding the plaintiffs jointly and severally liable to defendant Lorenzo L. Evicta in the amount of Five Thousand Pesos (P5,000.00) as moral damages and another Five Thousand Pesos (P5,000.00) as exemplary damages; and

“4. Finding the plaintiffs jointly and severally liable to defendants Segundo Empasis and Lorenzo L. Evicta for Three Thousand Pesos (P3,000.00) as attorney’s fee, with costs.

“SO ORDERED.” (p. 68, Rollo)

From the aforesaid decision, petitioners appealed to the Court of Appeals. The appeal was, however, dismissed in the Resolution, of the Third Division promulgated on February 11, 1969 “for failure to pay the docket fee and to file the required printed Record on Appeal.” (p. 49, Rollo)

The decision having become final and executory private respondents before the trial court a Motion for Execution dated April 7, 1969. Petitioners, thru counsel, were served with a copy of said motion but they did not file any opposition thereto. Pursuant to the writ of execution, respondent sheriff issued the corresponding Notice of Levy on May 26, 1969.

Alleging that they were served with a copy of the Notice of Levy on May 28, 1969, petitioners filed the instant

petition for “Prohibition with Preliminary Injunction” on July 17, 1969. They further alleged that the decision issued by respondent Judge in Civil Case No. 5654 which ordered the payment of moral and exemplary damages to private respondents (then defendants in the lower court) “is absolutely null and void and of no legal effect whatsoever for the reason that the same was rendered without any legal basis, without jurisdiction or in excess of jurisdiction and/or in grave abuse of discretion amounting to lack of jurisdiction, therefore unenforceable; that the decision being null and void, the notice of levy predicated upon said decision must also be null and void and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.” (pp. 8-9, Rollo)

The Court resolved to dismiss the petition in its Resolution dated July 22, 1969 “for being filed late and for lack of merit.” (p. 20, Rollo)

On July 31, 1969, the properties subject of the Notice of Levy were sold at public auction after the required publications in the newspaper of general circulation and the corresponding Certificate of Sale was issued to the highest bidder. The sale was duly registered with the Register of Deeds of Davao under Act 3344.

On August 26, 1969, petitioners moved to reconsider the July 22, 1969 resolution dismissing their petition.

On August 18, 1970 the Court adopted a Resolution (a) granting petitioners’ motion for reconsideration, thereby setting aside the July 22, 1969 resolution; (b) requiring respondents to answer the petition within ten (10) days from notice; and (c) issuing the writ of preliminary injunction upon petitioners’ filing an injunction bond in the amount of Five Hundred (P500.00) Pesos. (p. 34, Rollo)

There is no merit at all to this petition.

To begin with, the instant petition is one for prohibition, to prohibit the execution of the decision of the lower court in Civil Case No. 5664. Petitioners alleged that the lower court acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction when it ordered the payment of moral and exemplary damages to private respondent. Invoking the case of *Malonzo v. Galang, et al.*, G.R. No. L-13851, July 27, 1960 petitioners contend that there should be no penalty on the right to litigate. (p. 9, Rollo)

It is basic, that a petition for prohibition must be based on jurisdictional grounds against the trial court’s judgment because, as long as the trial court acted with jurisdiction, any error committed by it in the exercise thereof will amount to nothing more than an error of judgment which is reviewable only by a timely appeal.

The allegation in the instant petition of lack of jurisdiction, notwithstanding, We find that the question raised therein, which is the propriety of awarding moral and exemplary damages, is merely an error in judgment. The proper remedy of petitioners should have been an appeal to the Court of Appeals.

Petitioners took the proper move when they appealed the decision of the lower court to the Court of Appeals. Unfortunately, however, for them their appeal was not perfected because of their failure to pay the docket fee and to file the required printed Record on Appeal. Hence their appeal was dismissed and the trial court’s decision lapsed into finality. They are now precluded from questioning the validity of this final and executory decision. As this Court held in *Agricultural and Industrial Marketing Corporation*, 118 SCRA 49, re-echoed in *Santos Jr. v. Court of Appeals*, 152 SCRA 378, “it is beyond question that the perfection of an appeal within the statutory or reglementary period is mandatory and jurisdictional and that failure to so perfect an appeal renders final and executory the questioned decision. The lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment and the prevailing party becomes entitled as a matter of rights to its execution and for the court, it becomes its ministerial duty to order the execution of judgment.” The doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error the judgments of the courts must become final at some definite date fixed by law. (*Philippine Rabbit Bus Lines, Inc.*

v. Arciaga, 148 SCRA 433) Even an erroneous imposition of penalty cannot be modified anymore after the judgment has become final. (Castillo v. Donato, 137 SCRA 210)

The instant petition for prohibition was filed long after the trial court's decision had become final and executory. Time and again We have dismissed petitions for certiorari and prohibition to annul decisions or orders which could have, but have not been appealed. Where the court has jurisdiction over the subject matter as respondent Judge has in this case, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari and prohibition. These special civil actions do not lie where the remedy by appeal has been lost because said special civil actions cannot take the place of an appeal. (Dela Cruz v. IAC, 134 SCRA 417; Santos, Jr. v. Court of Appeals, supra). Evidently, petitioners had no valid excuse to resort to the extraordinary writs of certiorari and prohibition when appeal had been available to them and which they, in fact, already initiated but did not pursue. (Sarmiento v. Intermediate Appellate Court, 153 SCRA 104).

Finally, as may be seen from the petition itself, the only prayer of petitioners is for this Court "to issue an order enjoining the respondent Sheriff Ex-Officio, Eriberto A. Unson, or his deputies to desist from executing the decision in Civil Case No. 5654 referred to above and desist from levying the properties of the petitioners." (p. 11, Rollo) As already earlier pointed out, however, the properties subject of the Notice of Levy issued pursuant to the writ of execution were in fact sold at public auction on July 31, 1969 which sale was duly registered with the Register of Deeds of Davao on September 1, 1969. Under the foregoing circumstances, the instant petition is now moot and academic.

ACCORDINGLY, this petition is DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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