

FELICISIMA B. SALOMON, PETITIONER, VS. HON. JOSE M. MENDOZA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND JUAN ENTIONG YU, RESPONDENTS.*G.R. No. L-23628. July 31, 1965*

Ponente: MAKALINTAL, J.

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In the instant petition for certiorari Felicisima B. Salomon seeks the annulment of an order issued by respondent Judge on July 14, 1964 in Civil Case No. 6641 of the Court of First Instance of Cebu. That case was for unlawful detainer wherein Juan Engtiong Yu, now respondent, was the plaintiff, and petitioner Salomon was the defendant. The judgment of said court, rendered on February 21, 1961 and affirmed by the Court of Appeals on November 18, 1963, was as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court is of the opinion and so holds that the complaint for unlawful detainer is not meritorious and the same should be, as it is hereby dismissed, with costs against the plaintiff. The defendant can continue occupying the land as long as she pays monthly rental to the plaintiff of the same amount of P80.66 which the latter would pay to the Provincial Government of Cebu in accordance with his contract Exhibit "B".

For a just resolution of the questions raised in the petition a restatement of the material facts as found by the Court of Appeals is necessary. The land in dispute consists of portions of two commercial lots—some 242 square meters in area—in Cebu City, owned by the Provincial Government of Cebu and formerly leased by it to one Higinio L. Sun. Sun had a building of strong materials on the property. In 1954 he sold a half-share in the building to petitioner Salomon, with an undertaking to have the latter subrogated in his place as lessee of the land. From then on one half of the lease rental was paid by Salomon to Sun, who in turn paid it, together with his share, to the provincial government.

On July 28, 1953 Sun assigned his leasehold right to respondent Yu, and three days later sold to the same party a half-share in the building, with an undertaking similar to that made in favor of Salomon concerning subrogation as lessee under the lease contract with the owner of the land. The assignment of the leasehold right to Yu was submitted to the Province of Cebu Burnt Area Committee (which was administering the property) and on October 1, 1958 the said Committee awarded a new contract of lease to him over the whole area for a period of 10 years, renewable for a like period. In 1959 Yu notified Salomon of the new set up and demanded from her payment of the monthly rent in an increased amount for the portion of the land occupied by her half-share in the building. Salomon ignored the demand and Yu forthwith filed an action for unlawful detainer, which the municipal court decided in his favor but on appeal to the Court of First Instance was decided in favor of the defendant as shown in the judgment quoted earlier herein, which judgment was appealed to and subsequently affirmed by the Court of Appeals.

On June 13, 1964 upon motion of the plaintiff respondent Judge issued an order of execution against the

defendant for the sum of P4,154.14, the amount of rentals unpaid by her from October 1958 to June 1964 inclusive. The corresponding writ was issued on June 17, 1964, but the sheriff found no property which could be levied upon; and it was only on August 17, 1964 that the defendant paid the amount.

On June 22, 1964 the plaintiff filed a motion for clarification of judgment, particularly that part thereof that "the defendant can continue occupying the land as long as she pays monthly rental to the plaintiff," inviting attention to her failure to make such payments and to the fact that a few days theretofore (on June 16) the building of which the defendant was part owner had been destroyed by fire, and stating that he, the plaintiff, was intending to construct a new building on the entire area covered by his contract of lease with the Cebu Burnt Area Committee.

On July 14, 1964, after notice to the defendant and hearing her written opposition to the motion, the Court issued the order now complained of, which reads as follows:

"In view of all the foregoing considerations, the Court hereby declares that, according to the tenor of the judgment;

(a) The payment of monthly rentals by the defendant to the plaintiff was a condition for the continued occupancy of the land in Question by the defendant;

(b) The defendant forfeited and lost her right to occupy the land even before her building, was destroyed by fire, because of her failure to pay monthly rentals to the plaintiff as required in the judgment;

(c) The plaintiff is entitled to possess and occupy the entire land covered by his lease contract with the government, for his own exclusive use and benefit during the period of his lease."

Copy of the foregoing order was received by the defendant on July 16, 1964, but she neither asked for its reconsideration nor appealed therefrom. On August 25, 1964, after the order had become final, she filed a petition for relief on the principal ground that the order constituted an amendment in substance of the judgment of February 21, 1961, as affirmed by the Court of Appeals on November 18, 1963, and that consequently in issuing the said order respondent Court acted in excess of its jurisdiction.

In the meantime, by virtue of the order of July 14 the plaintiff had notified the defendant in writing that he was going to construct a new building on the disputed land. She offered no objection—not until August 25, 1964, when she filed her petition for relief. By then the building was already half-finished, and construction was halted at that stage upon injunction issued ex-parte by respondent Court at the instance of the defendant.

On September 10, 1964 the petition for relief was denied and the injunction was dissolved. Upon the filing of the instant petition for certiorari we likewise issued, on October 17, 1964, a writ of preliminary injunction for the same purpose. The annexes to respondent's answer to the petition show that the construction then was already far advanced.

The question as posed in the petition as well as in the answer thereto is whether or not respondent Court exceeded its jurisdiction in issuing the order complained of. It is of course settled that once a judgment has become final it may no longer be corrected or amended in substance. On the other hand, while the terms of a judgment may be explicit as to what a party is ordered to do, it may not be equally explicit as to the effect of his non-compliance; and yet implicit in the judgment is one specific effect as the unavoidable consequence. For as this Court said on another occasion, a judgment is not confined to what appears on the face of the decision, but comprehends what is necessarily included therein or necessary thereto in order to make it effective. *Perez vs. Evite*, 111 Phil. 564. See also *Unson vs. Lacson, et al.*, 112 Phil. 752.

The judgment here in question states that "the defendant can continue occupying the land as long as she pays

monthly rental to the plaintiff. . ." The clear and necessary inference that can be derived from this disposition is that if the defendant should fail to pay the rents she could not continue occupying the land. This much the said defendant, now petitioner, does not deny. But she contends that the recourse of respondent Yu is not by order of the Court in the same case in which the judgment was rendered but by an entirely new action for ejectment. Such a contention would render meaningless the express condition imposed by the court for petitioner's continued occupancy of the land and allow her to refuse to pay the rents with impunity. We do not see, therefore, that the order complained of changed or modified the judgment substantially. What is more, the said order became final, as did also the order denying the petition for relief, from which no appeal was taken by petitioner.

On the other point, apart from the procedural aspects of this case and bearing strongly on the question of equity, may be considered. In allowing petitioner to continue occupying the land as long as she paid the rents, respondent Court explained, it took into account the fact that she was part owner of the building standing on said land and, hence it would be unjust to order her ejectment and even possibly the demolition of that portion. Such reason ceased to exist after the building was burned on June 16, 1964. When that happened, there was no longer any basis for her to remain: not under the terms of the judgment since she had failed to pay the rents; not as part owner of the building, for it had been destroyed; and not as lessee of the land, because the land had been leased by the Cebu Burnt Area Committee to respondent Yu since October 1, 1958 and because petitioner herself had applied for a lease thereof on June 25, 1964 and her application was disapproved on the following July 28. And after respondent Yu, having obtained an order from the court to the effect that petitioner had no more right to occupy the land, started construction of a new building thereon without any protest on her part in spite of previous notice to her, equity demands that said order be maintained over objections that are purely technical.

The writ prayed for is denied and the injunction issued by this Court is dissolved, with costs against petitioner.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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