

CELSO VALERA, PLAINTIFF-APPELLANT, VS. DOMINGO BAÑEZ, IN HIS CAPACITY AS DEPUTY SHERIFF OF ABRA; AND GELACIO BOLANTE, AS PROVINCIAL SHERIFF, DEFENDANTS-APPELLEES.

G.R. No. L-27886. September 21, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an appeal to annul the writ of execution issued in Civil Case No. 64, R-1, dated February 13, 1967, by the Court of First Instance of Abra, plaintiff-appellant assailing the validity of the "order or orders under which the writ was issued," and for issuance of a writ of preliminary injunction.

The facts are as follows:

On March 17, 1967, herein plaintiff-appellant filed in the Court of First Instance of Abra Civil Case No. 481, alleging as follows:

"COMPLAINT

"NOW COMES the plaintiff, by and thru his undersigned attorney, and unto this Honorable Court respectfully alleges:

"1 . That the plaintiff is of legal age and resident of Bangued, Abra; that the defendants in their official capacities have their offices in the Provincial Capitol where they may be served with summons;

"2. That by virtue of Writ of Execution dated February 13, 1967, issued in Civil Case No. 64, R-1, of the Court of First Instance of Abra, the defendant Domingo V. Bañez, as Deputy Provincial Sheriff of Abra, advertised for auction sale certain properties for the payment of the sum of Forty Thousand Three Hundred Twenty Pesos (P40,320.00) for rent due the estate together with interest thereon from April, 1945 (P25,200.00) for the principal at P1,200.00, per annum from April, 1945 to March 1966, and P15,200.00 for interest at six (6) per centum per annum, plus P100.00 a month from April, 1966, with interest at six (6) per centum until date of payment and delivery of interest of the estate in the property to the administratrix; said sale to be made on March 22, 1967, in Bangued, Abra;

"3 . That the Writ of Execution aforementioned is null and void and therefore without legal effect in that:

"(1) The Order or Orders under which the writ was issued are without legal basis and contrary to law;

"(2) The Order or Orders under which the Writ was issued cannot be implemented by execution, the Court issued the Writ in a non-contentious proceedings of settlement of estate not having acquired jurisdiction over the parties and the subject-matter;

"(3) The Order or Orders which the Writ is issued are incidents that are not final and executory until the proceedings is finally terminated;

"(4) That the Order or Orders under which the Writ is issued do not specify the fixed amounts;

"(5) The Writ is now being directed upon persons who are not original parties;

"(6) The Writ directs the collection of amounts not contained in the basic Order or Orders;

"(7) The Writ is null and void in toto.

"4. That the defendant Domingo V. Bañez as Deputy Provincial Sheriff lack the legal authority to advertise the sale in not having complied with all the requisites required by law under the circumstances;

"5. That the plaintiff has requested the defendants to desist from further giving course to the sale but the defendants have manifested their intention to continue with the sale unless appropriate action is filed against them;

"6 . That the plaintiff is entitled to the relief which consist in the discontinuance of the sale in view of the questions herein raised;

"7. That the defendants' action in continuing with the sale on March 22, 1967, would work an injustice to the plaintiff, unless a writ of preliminary injunction is issued by this Court restraining them from proceeding with the sale on March 22, 1967, and during the pendency of this action;

"8 . That the plaintiff is willing and ready to put up bond in the amount to be fixed by the Court;

"9 . That the plaintiff has no plain and adequate remedy for the protection of his rights in the ordinary course except this action.

"WHEREFORE, it is respectfully prayed that pending this action a writ of preliminary injunction issue restraining the defendants from continuing with the contemplated auction sale on March 22, 1967, and that the Clerk be ordered to set this phase for hearing immediately; that after proper hearing on the merits, the Writ of Execution dated February 13, 1967, be declared null and void and without legal effect, and that a permanent Writ of Injunction be issued." (Pp. 2-5, ROA; p. 8, rec.).

On March 22, 1967, the defendants, thru counsel, filed a motion to dismiss, alleging four grounds, to wit: lack of jurisdiction, res adjudicata, lack of cause of action, and non-inclusion of indispensable parties.

On April 3, 1967, the following order was issued by the court a quo:

"ORDER

"This case is now before the Court for the hearing on the petition for the issuance of a writ of preliminary injunction. It was set on March 22, 1967 when the Presiding Judge of this Court was in Manila attending the convention of judges. Upon motion duly made, Hon. Francisco T. Valera, Municipal Judge of Bangued, disqualified himself from taking cognizance of this case.

"A motion to dismiss was filed by counsel for the defendants, alleging four reasons -- lack of jurisdiction, res judicata, lack of cause of action, and non-inclusion of indispensable parties.

"The defendants Provincial Sheriff and Deputy Sheriff of the province of Abra are sued to stop them in carrying out the writ of execution in Civil Case No. 64, R-1, Intestate Estate of Francisco Valera y Verzosa. The Court in 1964 ordered the payment of rents accruing to the estate belonging to the estate of the deceased F. Valera which order had already become final. In fact the petitioner has appealed from the said order which was denied by the Court of Appeals and later by the Supreme Court.

"The respondents are perform-ing a ministerial function and they cannot be enjoined with including the administratrix of the intestate estate of the deceased Francisco Valera at whose instance the writ of execution was sued.

"The Court ordered its issuance, and this same Court cannot now issue the writ prayed for after it had ordered the issuance of the writ of execution.

"Considering the grounds alleged by counsel for respondents in his motion to dismiss the complaint filed by Celso Valera well-taken, the Court grants the same, and, therefore, orders the dismissal of the complaint.

"SO ORDERED" (pp. 11-12, ROA).

Hence the present appeal.

As an incident to the instant appeal, herein plaintiff-appellant filed on September 10, 1969 a petition for preliminary injunction (pp. 53-55, rec.) before this Court.

On September 25, 1969, herein defendants- appellees filed their comments (pp. 59-63, rec.) on the petition for preliminary injunction in compliance with the resolution of this Court dated September 12, 1969 (p. 57, rec.).

On September 30, 1969, this Court, after considering petitioner's motion for issuance of a writ of preliminary injunction and defendants- appellees' opposition thereto, resolved to deny the petition (p. 65, rec.).

Plaintiff-appellant filed a motion for reconsideration (pp. 67-73, rec.) of the resolution denying his petition for preliminary injunction, but the same was denied by this Court in a resolution (p. 76, rec.) dated November 3, 1969.

In his brief (p. 17, rec.), plaintiff-appellant assigns the following as

"ARGUMENTS

"First Assignment of Error

"The Court of First Instance of Abra erred in holding the grounds alleged by the defendants- appellees in their motion to dismiss 'well-taken.'

"Second Assignment of Error

"The Court of First Instance of Abra erred in granting the motion to dismiss and in dismissing the complaint.

"Third Assignment of Error

"The Court of First Instance of Abra erred in not issuing a writ of preliminary injunction enjoining the defendants- appellees to desist from giving course to the auction sale of the properties of the plaintiff-appellant."

In sum, the only issue raised for Our resolution is whether or not the Court of First Instance of Abra was justified in dismissing the complaint for annulment of the writ of execution filed by herein plaintiff-appellant.

I

The factual setting of this case as well as the issue raised herein are not of first impression to Us. The appeal, unmeritorious as it is frivolous, should be dismissed.

Thus, this Court takes notice of the fact that the instant case is factually related to another case bearing on the same issue and subject matter and adversely decided against herein plaintiff-appellant Celso Valera.

It may be recalled that in the case of Celso Valera vs. Hon. Macario Ofilada, Adoracion V. Bringas, and Court of Appeals, G.R. No. L-26560, November 29, 1966, plaintiff-appellant Celso Valera then filed a notice of appeal, appeal bond and proposed record on appeal dated April 25, 1966, April 28, 1966, and May 17, 1966, respectively,

from the order dated July 10, 1964 of Judge Macario Ofilada of the Court of First Instance of Abra in Civil Case No. 64, R-1. In an order dated June 10, 1966, the CFI of Abra said:

"The petitioner, Celso Valera, is appealing from the order of the Court dated July 10, 1964, directing him and the heirs of Virgilio Valera to pay rentals of the properties belonging to the estate of the deceased Francisco Valera. This Order has already become final and any appeal interposed against said order cannot now be entertained.

"The same petition also interposed an appeal from the Order of the Court dated April 15, 1966. The Order referred to being interlocutory, the same is not subject to appeal.

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the appeal interposed by the petitioner Celso Valera dated April 25, 1966, is hereby denied. xxx x" (p. 17, rec. of G.R. No. L-26560).

Undaunted, plaintiff-appellant Celso Valera filed on July 26, 1966 a petition for mandamus in the Court of Appeals (C.A.-G.R. No. 37751-R, entitled Celso Valera vs. Hon. Macario Ofilada, et al.) seeking, among others, to compel the respondent Judge to approve and certify the proposed record on appeal and appeal bond.

In a resolution dated July 28, 1966, the Court of Appeals dismissed the petition for mandamus filed by plaintiff-appellant Celso Valera on the ground that the record on appeal was defective, citing the ruling of this Court in *Government of the Philippines vs. Antonio* (G.R. No. L-23736, Oct. 19, 1965), wherein it is stated that where the record on appeal does not include all pertinent dates and data necessary to determine whether the appeal was perfected on time, the appeal should be dismissed.

A motion for reconsideration was filed by herein plaintiff-appellant (then petitioner) from the resolution of the Court of Appeals dated July 28, 1966, but the same was denied by the Court of Appeals in a resolution dated August 23, 1966 (p. 28, rec. of L-26560).

Still unfazed by the foregoing adverse rulings, herein plaintiff-appellant came to this Court in a petition for certiorari assailing the resolution of the Court of Appeals dismissing his petition for mandamus.

In a resolution dated November 7, 1966, this Court dismissed the petition for review on certiorari filed by herein plaintiff-appellant Celso Valera for being late and for lack of merit (p. 49, rec. of L-26560).

II

The same Celso Valera is now before this Court in the instant case seeking to stop the Sheriff and Deputy Sheriff of Abra from carrying out the writ of execution issued pursuant to an order of the intestate court in Civil Case No. 65, R-1, *Intestate Estate of Francisco Valera*, dated July 10, 1964, ordering herein plaintiff-appellant to pay rentals due the estate of the late Francisco Valera.

As noted earlier, the appeal, being unmeritorious and frivolous, must fall.

It is indubitably clear that the issue raised herein had already been resolved when this Court dismissed the petition for certiorari filed by herein plaintiff-appellant in *Celso Valera vs. Hon. Macario Ofilada, Adoracion V. Bringas*, and Court of Appeals, *supra*, for lack of merit, thus in effect upholding the legality and validity of the order or orders upon which the assailed writ of execution was issued.

Likewise, We uphold defendants- appellees' contention that:

"The causes of action in both cases are definitely substantially the same. The orders upon which the writ of execution was issued were pleaded in the petition for Certiorari and in the instant case and the object in both is to render them ineffective. A party cannot, by varying the form of action of adopting a different method of

presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated. (*Peñalosa vs. Tuazon* , supra; *Tejedor vs. Palet* , 61 Phil. 503; *Francisco vs. Blas* , et al., G.R. No. L-5078, May 24, 1953; *Ran vs. Dela Cruz*, et al., G.R. No. L-10877, Feb. 29, 1958; *Cayco* , et al. vs. *Cruz*, G.R. No. L-12663, Aug. 21, 1959; *Ipekdjian Merchandising vs. Court*, et al., G.R. No. L-15430, September 30, 1963; *Raymundo* , et al. vs. *Afable* , et al., G.R. No. L-10548, April 25, 1958 cited in pp. 162, 163, *Martin*, *Ibid.*)." [Pp. 10-11, Brief for Defendants- Appellees, p. 47, rec.].

Finally, We find no reversible error in the order dated April 3, 1967 of the CFI of Abra dismissing the complaint in Civil Case No. 481 filed by herein plaintiff-appellant, when it ruled that:

"The defendants Provincial Sheriff and Deputy Sheriff of the province of Abra are sued to stop them in carrying out the writ of execution in Civil Case No. 64, R-1, Intestate Estate of Francisco Valera y Verzosa. The Court in 1964 ordered the payment of rents accruing to the estate belonging to the estate of the deceased F. Valera which order had already become final. In fact the petitioner has appealed from the said order which was denied by the Court of Appeals and later by the Supreme Court.

"The respondents are performing a ministerial function and they cannot be enjoined with including the administratrix of the intestate estate of the deceased Francisco Valera at whose instance the writ of execution was sued.

"The Court ordered its issuance, and this same Court cannot now issue the writ prayed for after it had ordered the issuance of the writ of execution."

WHEREFORE, FINDING THE APPEAL UNMERITORIOUS, THE SAME IS HEREBY DISMISSED, WITH COSTS AGAINST PLAINTIFF-APPELLANT.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ.,concur.

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