

AMADO BUENAVENTURA, PETITIONER, VS. EULALIO GARCIA, JUDGE OF FIRST INSTANCE OF RIZAL, AND BASILIO GARCIA, RESPONDENTS.

G.R. No. L-1235. July 29, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

Petitioner asks that the respondent judge of first instance of Rizal be commanded to issue an order for the execution of the judgment of that court in civil case No. R-7848, entitled "Basilio Garcia vs. Amado Buenaventura."

It appears that on January 7, 1946, the herein petitioner filed, in the Rizal court, a motion for the reconstitution of the record of the said litigation alleging, among other things, that the papers had been destroyed during the war, that decision of the case had been rendered by the Rizal court on November 21, 1941; that the appeal therefrom had been dismissed by the Court of Appeals; that such dismissal had been affirmed by the Supreme Court sometime in July, 1944, and that subsequently the expediente had been returned to the court of origin. Copy of the motion was sent to the adverse party, and after hearing, the following "Auto" dated January 28, 1946 was issued by Judge Emilio Peña:

"No habiendo comparecido la representacion del demandante el dia señalado para la vista de la reconstitucion del presente expediente, no obstante haber sido debidamente notificado, dese por reconstituido el mismo, con las copias de los escritos presentados y la declaracion prestada por la representacion del demandado."

The record now contains a copy of the decision of the court of first instance of November 21, 1941, and of the resolution of the Court of Appeals dismissing the appeal therefrom. Attorney Tansinsin testified at the reconstitution hearing, that an appeal to the Supreme Court had been made from the resolution of the Court of Appeals, but that said resolution had been affirmed by this highest court.

More than one month after the above-quoted order had been promulgated, herein petitioner asked for a writ of execution of the decision.

Counsel for respondent objected to the petition on the ground that there was "nothing in the record to show that the Supreme Court has acted on the appeal by certiorari" from the Court of Appeals. He argued that the mere verbal allegation of counsel for herein petitioner was insufficient, unless supported by documentary evidence to show that the Supreme Court had said the last word. The respondent, Judge Garcia, was convinced, and refused to issue the order of execution.

Hence, this petition.

His Honor, the trial judge, undoubtedly fell into error. The "auto" declaring the record reconstituted "con las copias de los escritos presentados y la declaracion prestada por la representacion del demandado" was already final. Respondent Basilio Garcia never attempted to have that order modified or revoked, in spite of the fact that

he knew the reconstitution proceedings were going on according to the rules, his attorney having actually gone to the court hearing, although he arrived late that day. Supposing *arguendo*, that Judge Peña erred in accepting, for purposes of reconstitution, the testimony of Atty. Tansinsin to the effect that the Supreme Court had refused the appeal from the Court of Appeals, his error, if any, was not jurisdictional. So that another judge of the same court has no authority to modify or revoke the order after it had become final. It may be stated, in this connection, that we perceive no unsurmountable objection to the admission of oral testimony concerning such resolution where circumstances are shown permitting secondary proof of documentary evidence, specially when the resolution was limited to the single point regarding admission or rejection of the appeal. As a matter of fact, section 45 of Act No. 3110 specifically directs that nothing contained in that law shall affect section 321 of Act No. 190 which permits the introduction of secondary evidence to prove the contents of a document.

We notice that counsel for respondents is careful not to deny under oath that the Supreme Court had already acted on the case. He merely affirms that there is (now) no record of such action "before the outbreak of the war on December, 1941" or "after the last war"; assertions which obviously do not meet the attorney's testimony that said Supreme Court had finally acted on the matter sometime in July, 1944, i. e. "during the war or occupation". Should respondents wish to insinuate that the action of the Supreme Court "during the war" is null and void, they are reminded that that contention has been found unmeritorious in the *Co Kim Cham vs. Valdez Tan Keh and Dizon* decision.[1]

Therefore, inasmuch as the court's order of January 28, 1946, amounted to a declaration that its judgment of November 21, 1941, had become final and executory, and since that order is now unappealable, the conclusion follows that it is the court's ministerial duty to carry out the decision and must issue the writ of execution.[2]

Let the prayer be granted, with costs against the respondent Basilio Garcia.

Moran, C.J., Paras, Feria, Pablo, Hontiveros, Padilla, and Tuason, JJ., concur.

[1] 75 Phil., 113.

[2] *Philippine Trust Company vs. Santamaria* (53 Phil., 463).

CONCURRING

HILADO, J.:

I concur in the result. Although under my consistent stand from *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), through subsequent cases down to the present, I accord no validity to the proceedings had in the occupation Court of Appeals and Supreme Court in the case, the fact is that since the recreation of the Court of Appeals of this Republic (in my opinion a different tribunal from the occupation Court of Appeals as shown in my dissent in *G. R. No. 48911, Facundo vs. Laurente*), respondent Basilio Garcia has done nothing to perfect an appeal to said Republic Court of Appeals, supposing that the judgment of the Court of First Instance had not acquired finality before the war. This fact in my opinion gave way to the judgment of the Court of First Instance becoming final and executory before the petition herein was filed.

DISSENTING

PERFECTO, J.:

The petition must be denied.

Petitioner seeks to compel the respondent judge to issue immediately an order for execution of the judgment in civil case No. R-7848 of the Court of First Instance of Rizal, rendered on November 21, 1941.

There is no question that the case was appealed. Petitioner alleged that the Court of Appeals dismissed the appeal and said dismissal was affirmed by the Supreme Court in July, 1944.

Respondent Basilio Garcia alleges that there is nothing in the record to show that the Supreme Court has acted on the appeal by certiorari, arguing that the allegation of counsel for petitioner is insufficient, not being supported by documentary evidence.

Judge Eulalio Garcia stated in his order of March 29, 1946, denying the petition for execution of judgment, that in the reconstituted case neither the alleged resolution of the Court of Appeals dismissing the appeal, nor the alleged decision of the Supreme Court denying or dismissing the petition for certiorari, appear.

The case having been appealed and there being no documentary evidence to show that the appeal has been dismissed, the petition to execute the appealed judgment is unmeritorious. Besides, if it is true that the dismissal of the petition for certiorari was ordered in July, 1944, the dismissal must have been ordered by the Supreme Court of the puppet republic established by the Japanese occupants. We recognize no validity in the actions of said Supreme Court, for the reasons already stated in our opinions in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113).

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