

**LEOPOLDO VENCILAO, MAURO RENOBLAS, TELESFORO BALONDIA,
FELIX ABANDULA, FAUSTO GABAISEN, ISIDORO ELIVERA,
RAYMUNDO BONGATO, MARTIN ROLLON, EUSTAQUIO MEDANA,
OROTEO ELIVERA, FRANC...**

G.R. No. L-25660. February 23, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

On February 7, 1974, We resolved to allow the consolidation of these three cases, considering that they involve the same parties and parcels of land: (1) G.R. No. L-25660 — this is an appeal from the order of the Court of First Instance of Bohol (now Regional Trial Court)[1] dated May 12, 1964 dismissing the cases of some of the plaintiffs-appellants and its order dated August 25, 1965 denying the motion for reconsideration and the motion to declare the defendants-appellees in default; (2) G.R. No. L-32065 — this is a petition for certiorari of the order of the Court of First Instance of Bohol[2] dated May 14, 1970 directing the execution of its prior order dated May 6, 1969 finding petitioners guilty of contempt; (3) G.R. No. L-33677 — this is a petition for certiorari with mandamus and prohibition of the order of the Court of First Instance of Bohol dated June 2, 1971 directing the demolition of the houses of the petitioners.

On February 15, 1988, We resolved to require the parties to manifest whether or not they are still interested in prosecuting these cases, or supervening events have transpired which render these cases moot and academic or otherwise substantially affect the same. On March 25, 1988, the petitioners filed an ex-parte manifestation that they are still very much interested in the just prosecution of these cases.

The antecedent facts are as follows:

G.R. No. L-25660

On April 1, 1950, the heirs of the late Juan Reyes filed an application for registration of the parcels of land allegedly inherited by them from Juan Reyes, in Land Registration Case No. 76, L.R.C. Record No. N-4251. On July 26, 1951, administratrix Bernardina Vda. de Luspo filed an amended application for registration. After hearing, the land was registered under Original Certificate of Title No. 400 (pp. 84-85, Record on Appeal; p. 7, Rollo).

On October 9, 1962, a complaint for reconveyance of real properties with damages and preliminary injunction, Civil Case No. 1533, (pp. 2-19, Record on Appeal; p. 7, Rollo) was filed by plaintiffs-appellants before the Court of First Instance of Bohol. It was alleged that they are the lawful owners of their respective parcels of land including the improvements thereon either by purchase or inheritance and have been in possession publicly, continuously, peacefully and adversely under the concept of owners for more than thirty (30) years tacked with the possession of their predecessors-in-interest. However, those parcels of land were included in the parcels of land applied for registration by the heirs of Juan Reyes, either by mistake or fraud and with the intention of

depriving them of their rights of ownership and possession without their knowledge, not until the last part of 1960 when the defendants-appellees, through their agents, attempted to enter those parcels of land claiming that they now belong to the heirs of Juan Reyes. To the complaint, the defendants-appellees moved to dismiss on two grounds (pp. 19-22, Record on Appeal; p. 7, Rollo), namely: (1) for lack of cause of action and (2) the cause of action is barred by prior judgment.

On July 20, 1963, the court a quo issued an order denying defendants-appellees' motion to dismiss (pp. 29-30, Record on Appeal; p. 7, Rollo). However, acting on the motion to set aside such order (pp. 31-32, Record on Appeal; p. 7, Rollo), on May 12, 1964, the same court issued another order reversing itself partially (p. 56, Record on Appeal; p. 7, Rollo), the dispositive portion of which reads:

"WHEREFORE, the cases herein of the plaintiffs Alejandro Renoblas, Fausto Cabaisan, Fabian Villame, Gregorio Ita-oc, Faustino Ita-oc, Fortunato Ita-oc, Roberto Haganas, Felisa Haganas, Fermin Haganas, Victoriano Haganas, Julia Sevilla, Ramon Matela, Roberto Matela, Procopio Cabañas and Vicente Amosora are hereby dismissed on the ground of res-adjudicata with these plaintiffs paying proportionately eighteenth-forty-one (18/41) of the costs, but the petition to dismiss the case of the rest of the plaintiffs is hereby denied.

"SO ORDERED."

On May 28, 1964, the plaintiffs-appellants whose cases were dismissed filed a motion for reconsideration (pp. 57-68, Record on Appeal; p. 7, Rollo). On July 24, 1964, the plaintiffs-appellants whose cases were not dismissed filed a motion to declare the defendants-appellees in default for failure to file their answer within the time prescribed by law (pp. 68-75, Record on Appeal; p. 7, Rollo). On the other hand, defendants-appellees filed their opposition to the motion for reconsideration praying that the complaint as regards the rest of the plaintiffs-appellants be likewise dismissed (pp. 75-80, Record on Appeal; p. 7, Rollo).

On August 25, 1965, the court a quo issued an order in connection therewith (pp. 82-98, Record on Appeal; p. 7, Rollo) denying all motions.

The case is now before Us with the following as assignment of errors (p. 3, Brief for the Plaintiffs-Appellants; p. 9, Rollo), to wit:

"I

"THE TRIAL COURT ERRED IN DISMISSING THE CASES OF THE PLAINTIFFS-APPELLANTS WHOSE NAMES ARE ALREADY MENTIONED ABOVE ON THE ALLEGED GROUND THAT THEIR CASES ARE BARRED BY A PRIOR JUDGMENT OF RES ADJUDICATA.

"II

"THE TRIAL COURT ERRED IN DENYING THE MOTION OF THE PLAINTIFFS-APPELLANTS WHOSE CASES ARE NOT DISMISSED TO DECLARE THE DEFENDANTS-APPELLEES IN DEFAULT FOR HAVING FAILED TO FILE THEIR ANSWER WITHIN THE TIME PRESCRIBED BY LAW."

On August 12, 1966, a resolution was issued by this Court dismissing the appeal as regards the second issue because the order appealed from was merely interlocutory, hence, not appealable (pp. 35-38, Rollo).

On August 17, 1988, petitioners Alex Abandula, Mauro Renoblas, Simeon Barbarona, Fabian Villame, Macario Gepalago, Eustaguio Medana, Julia Sevilla, Gregorio Itaoc, Francisco Asoy and Martin Rollon filed a motion to withdraw their appeal on the ground that they are now the absolute owners and possessors of their respective parcels of land subject of Civil Case No. 1533.

The appeal is not impressed with merit.

The plaintiffs-appellants claim that no evidence was presented by the defendants-appellees that they (plaintiffs-appellants) were notified of the date of the trial on the merits of the application for registration nor were they given copies of the decision of the trial court. Likewise, they contend that *res judicata* is not applicable in an action for reconveyance.

The allegations that no evidence was presented by the defendants-appellees that plaintiffs-appellants were notified of the date of the trial on the merits of the application for registration nor were they given copies of the decision of the trial court are new issues. It is a well-settled rule that, except questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings (*Cordero vs. Cabral*, G.R. No. 36789, July 25, 1983, 123 SCRA 532). The other contention that *res judicata* is not applicable in an action for reconveyance is not plausible. The principle of *res judicata* applies to all cases and proceedings, including land registration and cadastral proceedings (*Republic vs. Estenzo*, G.R. No. L-35376, September 11, 1980, 99 SCRA 65; *Paz vs. Inandan*, 75 Phil. 608; *Penaloza vs. Tuazon*, 22 Phil. 303).

It is a settled rule that a final judgment or order on the merits, rendered by a court having jurisdiction of the subject matter and of the parties, is conclusive in a subsequent case between the same parties and their successors in interest litigating upon the same thing and issue, regardless of how erroneous it may be. In order, therefore, that there may be *res judicata*, the following requisites must be present: (a) The former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject matter, and of cause of action (*San Diego vs. Cardona*, 70 Phil. 281; *Ramos vs. Pablo*, G.R. No. 53692, Nov. 26, 1986, 146 SCRA 24).

The underlying philosophy of the doctrine of *res judicata* is that parties should not be permitted to litigate the same issue more than once and when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them in law or estate (*Sy Kao vs. Court of Appeals*, G.R. No. 61752, Sept. 28, 1984, 132 SCRA 302). The doctrine of *res judicata* is an old axiom of law, dictated by wisdom and sanctified by age, and is founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated. *Interest republicae ut sit finis litium* (*Carandang vs. Venturanza*, G.R. No. L-41940, Nov. 21, 1984, 133 SCRA 344). To ignore the principle of *res judicata* would be to open the door to endless litigations by continuous determination of issues without end (*Catholic Vicar Apostolic of the Mountain Province vs. Court of Appeals, et al.*, G.R. Nos. 80294-95, Sept. 21, 1988, 165 SCRA 515).

Thus, when a person is a party to a registration proceeding or when notified he does not want to participate and only after the property has been adjudicated to another and the corresponding title has been issued files an action for reconveyance, to give due course to the action is to nullify registration proceedings and defeat the purpose of the law.

In dismissing the cases of some of the petitioners, the court *a quo* meticulously discussed the presence of all the elements of *res judicata* (pp. 36-38; pp. 42-54, Record on Appeal; p. 7, Rollo):

"There is no question that in that Registration Proceedings, LRC Record No. N-4251, Land Registration Case No. N-76, the Court of First Instance of the province of Bohol had jurisdiction of the subject matter, that said court had rendered a judgment on the merit that was terminated in the Court of Appeals since December, 1958, and that decision is now final with a decree of registration over the parcels of land described in the application

issued to the applicants.

"The subject matter (the parcels of land) now claimed by the plaintiffs in this case at bar are the same, or at least part of the parcels already adjudicated registration in that registration case to the persons, some of them are made defendants in this case before us. The cause of action between the two cases are the same, ownership of these parcels of land, though the forms of action are different, one is an ordinary Land Registration and the other is reconveyance.

'It is settled that notwithstanding the difference in the form of two actions, the doctrine of res adjudicata will apply where it appears that the parties in effect were litigating for the same thing. A party can not, by varying the form of action, escape the effects of res adjudicata (Aguirre vs. Atienza, L-10665, Aug. 30, 1958; Geronimo vs. Nava., No. L-12111, Jan. 31, 1959; Labarro vs. Labateria, et al., 28 O.G. 4479).

'Well settled is the rule that a party can not by varying the form of action, or 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 between the same parties or their privies.' (Francisco vs. Blas, et al., No. L-5078; Cayco, et al., vs. Cruz, et al., No. L-12663, Aug. 21, 1959).

'Accordingly, a final judgment in an ordinary civil action, determining the ownership of certain lands is res adjudicata in a registration proceeding where the parties and property are the same as in the former case (Paz vs. Inandan, 75 Phil. 608; Peñaloza vs. Tuason, 22 Phil. 303).'

"xxx xxx xxx

"But are there identities of parties in this case before us and the former registration proceedings? Identity of parties means that the parties in the second case must be the same parties in the first case, or at least, must be successors in interest by title subsequent to the commencement of the former action or proceeding, or when the parties in the subsequent case are heirs (Chua Tan vs. Del Rosario, 57 Phil. 411; Martinez vs. Franco, 51 Phil 487; Romero vs. Franco, 54 Phil. 744; Valdez, et al. vs. Penida, No. L-3467, July 30, 1951).

"xxx xxx xxx

"Returning our attention to the case at bar, and with in mind the principles of res adjudicata above-quoted, we noticed that many of the plaintiffs were not oppositors in the former registration case, but many are children of the former oppositors. In such a case we have to determine the case of every plaintiff, if the former decision in the land registration case is conclusive and binding upon him.

"xxx xxx xxx

"The defendants had proven that the adjoining owners and claimants of the parcels of land object of registration proceeding had been notified when the land was surveyed. These persons notified according to the surveyor's certificate, Exhibit "B" were as follows: Cipriano Samoya, Fausto Baguisin, Silveria Pahado, Enojario Laroda, Alejandro Renoblas, Heirs of Gregorio Lofranco, Julian Villame, Pedro Itaoc, Adriano Toloy, Bartolome, Omosura, Marcelina Asilon, Gregorio Baguinang, et al., Nicolas Omosura, Simon Lagrimas, et al., Martin Quinalayo, Gorgonio Baguinang, Demetrio Asolan, Catalino Orellena, Heirs of Catalina Palves, Manuel Mondano, Angel Mondano, Victoriano Balolo, Eugenio del Rosario, Verinici Bayson, Felomino Ruiz, Apolonio Horbeda, and Mun. of Calape.

"The following persons were notified by the Chief of the Land Registration Office of the initial hearing (Exhibit "J") of the registration proceedings enjoining them to appear on June 16, 1952, at 8:30 a.m., before the Court of First Instance of Bohol to show cause why the prayer of said application should not be granted: the Solicitor General, the Director of Lands, the Director of Public Works and the Director of Forestry, Manila; the Provincial Governor, the Provincial Fiscal and the District Engineer, Tagbilaran, Bohol; the Municipal Mayor, Gorgonio Baguinang, Demetrio Azocan, Catalino Orellena, Manuel Mondano, Angel Mondano, Victoriano

Bolalo, Eugenio del Rosario, Verinici Bayson, Filomeno Ruiz, Apolonio Horboda, the Heirs of Gregorio Lofranco, Julian Villame, Pedro Itaoc, Adriano Toloy, Bartolome Omosora, Marcelina Asilom, Gregorio Baguinang, Nicolas Omosora, Simon Lagrimas and Martin Quinalayo, Calape, Bohol; the heirs of Catalino Polvos, Fausto Buguisin, Cipriano Samoya, Silveria Pohado, Enojario Laroda, Alejandro Renoblas and Leoncio Barbarona, Antequera, Bohol.

"And after the application had been filed and published in accordance with law the following persons represented by Atty. Conrado D. Marapao filed opposition to that registration proceeding: Felipe Cubillo, Simon Lagrimas, Simeon Villame, Felix Lacorte, Victor Omosura, Germana Gahil, Anastacio Orillosa, Enerio Omosura, Valeriano Tuloy, Cipriano Sanoya, Pablo Dumadag, Andres Reimbuncia, Roman Reimbuncia, Cledonio Cabanas, Moises Cabanas, Calixto Gohiting, Gervasio Sevilla, Pedro Omosura, Daniel Itaoc, Luis Omosura, Bartolome Omosura, Nicasio Omosora, Calixto Sevilla, Teodora Omosora, Jose Sabari, Silverio Lacorte, Silverio Tuloy, Gertrudes Sevilla, Teodora Sevilla, Magno Orillosa, Gervacia Sevilla, Marcos Hagonos, Eleuterio Pandas, Pablo Omosora, Fabian Villame, Teodoro Omosora, Magdalena Asilom, Mauricio Matela, Marciano Ordada, Eusebio Omosora, and Gregorio Repelle (Exhibit "E"), Atty. Juan V. Balmaseda in representation of the Bureau of Lands, and Asst. Fiscal Norberto M. Gallardo in representation of the Municipality of Calape.

"Plaintiffs Mauro Renoblas and Gregorio Renoblas are children of plaintiff Alejandro Renoblas, Plaintiff Telesforo Balanda is son-in-law of Alejandro, being the husband of Juliana Renoblas, daughter of Alejandro. Plaintiff Alejandro Renoblas was not one of the oppositors in the registration proceedings, but he was notified of the initial hearing of that registration case and by the surveyor that surveyed the land object of registration (Exhibit J-Movant). Therefore, the decision of the land registration proceeding is binding upon him and his case is dismissed on the ground of res adjudicata with costs.

"xxx xxx xxx

"Plaintiff Fausto Cabaisan was notified by the surveyor and that notice of the initial hearing. And though he was not an oppositor, the former land registration proceeding is binding on him. Therefore, this case is dismissed in so far as Fausto Cabaisan is concerned with costs.

"xxx xxx xxx

"Plaintiffs Gregorio Ita-oc, Teresita Ita-oc, Faustino Ita-oc and Fortunato Ita-oc are children of Daniel Ita-oc, one of the oppositors in the registration proceedings. They claim parcel No. 10 described in paragraph 2 of the complaint. Gregorio Ita-oc testified that this land was inherited by said plaintiffs' mother from her father, Pio Sevilla. The evidence on record (Exhibits J-3, J-4, J-5). However (sic), shows that the land is declared in the name of Daniel Ita-oc, a former oppositor in the registration case. Hence, these plaintiffs are successors-in-interest of Daniel Ita-oc, and, therefore, are bound by the decision in that registration case. Their case, therefore, is dismissed, with costs.

"Plaintiffs Roberto Haganas, Felisa Haganas, Fermin Haganas and Victoriano Haganas are children of Marcos Haganas, a former oppositor in the registration case. Marcos testified that his claim before was only two hectares, while the claim of his children is seven hectares, which come from his wife, not from him. These plaintiffs claim two parcels, one under Tax Declaration No. R-4452, and Tax Declaration No. R-8456. It appears that Tax Declaration No. R-4452 (Exhibit M) is in the name of Marcos Haganas, and the land described under Tax Declaration No. R-8456 was bought by the spouses Marcos Haganas and Tomasa Sevilla from Gertrudis Sevilla in 1956 (Exhibit M-3), who was an oppositor in the registration proceeding. Therefore, plaintiffs Roberto Haganas, Felisa Haganas, Fermin Haganas and Victoriano Haganas are successors-in-interest to properties in which the decision in the registration case is conclusive and binding to their predecessors-in-interest. Hence, their case here is dismissed with costs.

"Plaintiff Julia Sevilla is the wife of Marcelo Matela, who was an oppositor in the registration proceedings.

Plaintiffs Roman Matela, Marcela Matela, Delfin Matela and Roberta Matela are their children. She has no son by the name Pelagio. Julia testified that the land now claimed by her children came from her father Pio Sevilla. The land that was claimed by Mauricio Matela as oppositor was in his name under Tax Declaration No. 5099. This is the same land now claimed by plaintiffs Julia Sevilla, Ramon Matela, Marcela Matela, Delfin Matela and Roberta Matela (Exhibit 0-4). These plaintiffs are successors-in-interest of Mauricio Matela, who is bound by the decision in that land proceeding wherein he was the oppositor. Therefore, the case of these plaintiffs are dismissed with costs.

"Plaintiff Procopia Cabañas was the wife of Andres Reambonancia, oppositor in the land registration proceedings. She claims parcel No. 20 described in paragraph 2 of the complaint bearing Tax Declaration No. R-8121. It appears that this land is declared in the name of Andres Reambonancia (Exhibit N-3) who, as oppositor in the land registration case, is bound by the decision of that case. Therefore, the case of plaintiff Procopia Cabañas, as successors-in-interest to Andres Reambonancia, is hereby dismissed, with costs.

"Plaintiff Vicente Amosora is the son of Enerio Amosora and Florencia Gahil, both oppositors in the former registration case. The land claimed by plaintiff Vicente Amosora is described as parcel No. 24 of paragraph 2 of the complaint under Tax Declaration no. R-6107, under the name of his father Enerio Amosora. Since Enerio Amosora was an oppositor in the former land registration of which this land was a part, the decision of that land registration case is conclusive and binding not only to Enerio Amosora, but also to his successor-in-interest, plaintiff Vicente Amosora, whose case therefore, is dismissed, with costs."

G.R. No. L-32065

Upon the death of administratrix Bernardina Vda. de Luspo, Transfer Certificate of Title No. 3561 was issued in the name of Pedro R. Luspo and Transfer Certificate of Title No. 3562 was issued in the name of several persons (p. 36, Rollo).

A writ of possession dated November 6, 1959, a first alias writ of possession dated January 6, 1961, and a second alias writ of possession dated July 2, 1966 were issued by the trial court against the petitioners. A sample of the guerilla-like, hide and seek tactics employed by the petitioners was proved by the official report of the deputy sheriff dated January 21, 1960. Another evidence of petitioners' refusal to sign and to vacate was a certification dated July 22, 1966 and the Sheriff's return dated October 25, 1966.

On March 29, 1967, a petition for contempt was filed by Mariano Ogilve, who is one of the registered owners of the parcel of land covered by Transfer Certificate of Title No. 3562, against the petitioners for refusing to vacate the land occupied by them and for refusing to sign the Sheriff's return.

On May 6, 1969, the court a quo issued a resolution, the dispositive portion of which reads (p. 47, Rollo):

"FOR ALL THE FOREGOING CONSIDERATION, make it of record that Procopia Reambonansa voluntarily left the land and dropped out from the case; the charge of contempt against Alejandro Renoblas (who died) is dismissed and each of the remaining 22 respondents are hereby found guilty of contempt under Sec. 3-b of Rule 71 and are hereby sentenced each to pay a fine of One Hundred Pesos, authorizing the Constabulary Detachment at or near Candungao, Calape, Bohol to collect the same and to transmit the money to the Clerk of this Court, with subsidiary imprisonment in case of insolvency at the rate of one day for every P2.50 or fraction of a day, the said Constabulary Detachment to effect the commitment if any of them is unable to pay the fine. The fingerprints of each of these 22 respondents shall also be taken by the constabulary and filed with the record of this case.

"It is so ordered."

On June 4, 1969, the petitioners filed a motion for reconsideration of the aforesaid resolution whereas Ogilve filed an opposition thereto.

On February 14, 1970, the motion for reconsideration was denied. On March 18, 1970, another motion for reconsideration was filed by petitioners on the ground of pendency of the action for reconveyance in Civil Case No. 1533 and their appeal in G.R. No. L-25660. On May 14, 1970, the court a quo ordered the proper officers to actually execute the resolution dated May 6, 1969.

Hence, the present petition.

Petitioners raise the following issues:

I

THAT THE SAID RESPONDENT JUDGE ERRED IN ISSUING A WRIT OF POSSESSION WITHOUT ANY COMPLAINT FILED IN COURT FOR FORCIBLE ENTRY AND DETAINER, NOR FOR RECOVERY OF OWNERSHIP AND POSSESSION OF THE PARCELS OF LAND IN QUESTION AGAINST THE HEREIN PETITIONERS.

II

THAT THE HONORABLE RESPONDENT JUDGE ERRED IN ISSUING A WRIT OF POSSESSION AGAINST THE PETITIONERS HEREIN, WHO WERE NOT PARTIES TO THE REGISTRATION PROCEEDING AND WHO WERE NOT DEFEATED OPPOSITORS OF THE SAID APPLICATION FOR REGISTRATION.

The petition is impressed with merit.

Petitioners contend that they were not claimants-oppositors nor defeated oppositors in the said land registration case, as their names do not appear in the amended application for registration; that they have occupied the subject parcels of land for more than thirty (30) years which began long before the filing of the application for registration; and that after the hearing of the registration case, they continued in possession of the said land.

In a registration case, the judgment confirming the title of the applicant and ordering its registration in his name necessarily carried with it the delivery of possession which is an inherent element of the right of ownership. The issuance of the writ of possession is, therefore, sanctioned by existing laws in this jurisdiction and by the generally accepted principle upon which the administration of justice rests (*Romasanta, et. al. vs. Platon*, 34 O.G. No. 76; *Abulocion, et. al. vs. CFI of Iloilo, et. al.*, 100 Phil. 554 [1956]). A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree (*Demorar vs. Ibanez, et al.*, 97 Phil 72 [1955]).

The petitioners' contention that they have been in possession of the said land for more than thirty (30) years which began long before the filing of the application for registration and continued in possession after the hearing of the registration case, worked against them. It was a virtual admission of their lack of defense. Thus, the writs of possession were properly issued against them.

However, We do not subscribe to the ruling of the court a quo that petitioners are guilty of contempt. Under Section 8 (d) of Rule 39, Rules of Court, if the judgment be for the delivery of the possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejectment the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may the loser be charged with and punished for contempt

(Quizon vs. Philippine National Bank, et. al., 85 Phil. 459). According to this section, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and in fact, it was he himself, and he alone, who was ordered by the trial judge who rendered that judgment, to place the respondents in possession of the land. The petitioners in this case had nothing to do with that delivery of possession, and consequently, their refusal to effectuate the writ of possession, is entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the disobedience of the petitioners, that the judgment was not duly executed. For that purpose, the sheriff could even have availed himself of the public force, had it been necessary to resort thereto (see *United States v. Ramayrat*, 22 Phil. 183).

G.R. No. L-33677

On March 22, 1971, Mariano Ogilve filed a Motion for a Writ of Demolition which was granted by the trial court on April 5, 1971 (pp. 42-43, Rollo) against those who were adjudged guilty of contempt. On April 29, 1971, the petitioners filed an urgent motion for reconsideration of said order. On June 2, 1971, the trial court issued another order, the dispositive portion of which reads (p. 48, Rollo):

"WHEREFORE, in the absence of writ of preliminary injunction Deputy Provincial Sheriff Pedro Aparece must not only take P.C. soldiers with him but also carpenters to effect the demolition, the carpenters being at the expense of the Luspo.

"IT IS SO ORDERED."

Hence, the present petition.

The issue here is whether or not the respondent judge acted without or in excess of his jurisdiction, or with grave abuse of discretion and thus excluded the herein petitioners from the use and enjoyment of their right to which they are entitled when he (respondent judge) issued the order of demolition on April 5, 1971 and again on June 2, 1971 (p. 107, Rollo).

On July 14, 1971, this Court issued a temporary restraining order (p. 51, Rollo).

The petition is not impressed with merit.

The petitioners allege that the respondent judge cannot issue a writ of demolition pending the resolution of G.R. No. L-32065.

We rule that the petition in G.R. No. L-32065 was not a bar to the issuance of the writ of demolition. It is significant to note that the subject matter of the petition in G.R. No. L-32065 is the order dated May 14, 1970 directing the execution of the prior order dated May 6, 1969 finding petitioners guilty of contempt and not the writs of possession themselves. Thus, the respondent Judge correctly issued the writs of demolition. In *Marcelo vs. Mencias*, 107 Phil. 1071, We held:

"[I]f the writ of possession issued in a land registration proceeding implies the delivery of possession of the land to the successful litigant therein (*Demorar vs. Ibañez*, 97 Phil. 72; *Pasay Estate Company vs. Del Rosario*, et al., 11 Phil. 391; *Manlapas vs. Llorente*, 48 Phil. 298), a writ of demolition must, likewise, issue, especially considering that the latter writ is but a complement of the former which, without said writ of demolition, would be ineffective.

"xxx xxx xxx

"[The issuance of the writ of demolition] is reasonably necessary to do justice to petitioner who is being deprived of the possession of the lots in question, by reason of the continued refusal of respondent x x x to

remove his house thereon and restore possession of the premises to petitioner.

ACCORDINGLY, judgment is hereby rendered as follows:

- 1) In G.R. No. L-25660, the appeal is DENIED and the orders of the Court of First Instance dated May 12, 1964 and August 25, 1965 are AFFIRMED; the motion to withdraw the appeal of some of the plaintiffs-appellants is GRANTED;
- 2) In G.R. No. L-32065, the petition is GRANTED and the resolution of the Court of First Instance dated May 14, 1970 is SET ASIDE; and
- 3) In G.R. No. L-33677, the petition is DISMISSED and the order of the Court of First Instance dated June 2, 1971 is AFFIRMED. The temporary restraining order is LIFTED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Presided over by Judge Antonio J. Beldia

[2] Presided over by Judge Paulino S. Marquez.

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