

**IGNACIO PASCUA, AND URSULA DUGAY, IN REPRESENTATION OF
HER DECEASED HUSBAND, CATALINO DUGAY, PETITIONERS, VS.
HEIRS OF SEGUNDO SIMEON, HON. JUDGE ANACLETO ALZATE,
TARLAC COURT O...**

G.R. No. L-47717. May 02, 1988

Ponente: CORTES, J.

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CORTES, J.:

Judgment was rendered in a civil case in 1969. Real properties belonging to the judgment debtors were levied upon and sold on execution to satisfy the judgment debt. To this day, however, the highest bidders at the public auction have yet to enjoy the properties sold to them.

Petitioners were among the defendants in Civil Case No. 3606 before the Court of First Instance of Tarlac Branch II, Judge Anacleto B. Alzate, presiding, while private respondents are the heirs of the plaintiff in said civil case. On June 28, 1969, judgment was rendered in favor of respondents and against the defendants therein ordering the latter to pay P19,720.00. The defendants appealed to the Court of Appeals but for failure of their counsel to submit the brief within the reglementary period, the appeal was dismissed and the case was remanded to the trial court for execution of judgment.

To satisfy the judgment, twenty (20) parcels of land were levied upon and then sold at public auction in which the highest bidders were the respondents. As the judgment debtors failed to redeem the properties within the twelve-month period, the Provincial Sheriff of Tarlac issued a Certificate of Absolute Sale on February 20, 1972. On motion, Judge Alzate ordered on January 21, 1973 the issuance of a writ of possession. However, the defendants/judgment debtors would not vacate the premises. So, on May 23, 1973, respondents filed a motion before the trial court to declare the defendants in contempt of court. Resolving the motion, Judge Alzate issued an order dated January, 13, 1978, which reads:

Resolving, therefore, the aforementioned motion to declare defendants in contempt of court, this Court rules that for refusing to obey the writ of possession issued by this court on January 21, 1973, defendants Bruno Dugay, Pacifico Dugay, Maximo Dugay, Ignacio Pascua, and Ursula Dugay are liable for contempt of court as defined and penalized under Section 3(b) and 7, Rule 71, New Rules of Court. However, tempering justice with compassion and mercy, this Court is disposed to give said defendants another chance to deliver to the plaintiffs the possession of that portion of the properties embodied in the Certificate of Absolute Sale dated February 20, 1972 over which said defendants had rights and interests when the same was sold to the plaintiffs at public auction, and for this, purpose let an alias writ of possession issue immediately to be served by the Provincial Sheriff of Tarlac or his deputy to said defendants within fifteen (15) days from today and make a return to the Court upon service thereof. And if said defendants refuse to obey said alias writ of possession, this Court will be constrained, much to its regret, to declare them in contempt of court and order them to be committed to the provincial jail of Tarlac and to remain therein until they obey said alias writ of possession. Send a copy of this order to each of the aforementioned defendants as well as their counsel by

registered-special delivery mail for their information and guidance.

SO ORDERED.

From the aforequoted order, petitioners come to this Court praying that:

- Respondent Judge Anacleto Alzate and the Provincial Sheriff of Tarlac be ordered to desist from executing the order of January 13, 1978;
- Setting aside technicality, to order respondents heirs of Segundo Simeon to accept the amount of P19,720.00 instead of their preference of being given possession and ownership over the said 20 parcels of land;
- To order the Register of Deeds of Tarlac to cancel the annotation of the auction sale in favor of respondent heirs of Segundo Simeon upon payment of the assessed value and bid price of P19,720.00 corresponding to the pro rata shares of herein petitioners annotated at the back of their titles;

* * *

(Petition, pp. 3-4.)

On February 1, 1978, this Tribunal issued a temporary restraining order enjoining the enforcement of the questioned order of respondent judge.

- Petitioners first ask this Court to enjoin Respondent Judge Alzate and the Provincial Sheriff of Tarlac from enforcing the order of January 13, 1978.
- scrutiny of the dispositive portion of the order quoted above shows that it consists essentially three parts, to wit:
- Declaring Bruno Dugay, Pacifico Dugay, Ignacio Pascua and Ursula Dugay in contempt of court.
- Ordering the issuance of an alias writ of possession directed to the Provincial Sheriff.
- If said defendants refuse to obey said alias writ of possession, the CFI would be constrained to declare them in contempt of court and order them committed in jail.

Even as the court found petitioners guilty of contempt of court, no penalty was imposed for reasons of "compassion and mercy." Obviously, petitioners do not question such order.

It may be stated, however, that the more refusal or unwillingness on the part of petitioners to relinquish the properties would not constitute contempt. The contumacious act punishable under Rule 71, Section 3(b) is:

(b) Disobedience of or resistance to a lawful writ, process, order, judgment or command of a court, or injunction granted by a court or judge, including the act of a person who after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

Note that the writ of possession was directed not to petitioners, but to the sheriff for him to deliver the properties to respondents. As the writ did not command the petitioners to do anything, they cannot be held guilty of "disobedience of or resistance to a lawful writ, process, order, judgment or command of a court."

The proper procedure if the petitioners refuse to deliver possession of the lands is not for the court to cite them for contempt but for the sheriff to dispossess them of the premises and deliver the possession thereof to the respondents. However, if subsequent to such dispossession, petitioners enter into or upon the properties for the

purpose of executing acts of ownership or possession or in any manner disturb the possession of respondents, then and only then may they be charged with and punished for contempt. [See *Moslem v. Soriano*, G.R. No. L-36837, August 17, 1983, 124 SCRA 190; *Rom v. Cobadora*, G.R. No. L-24764, July 17, 1969, 28 SCRA 758; *Chinese Commercial Co. v. Martinez*, G.R. No. L-18565, November 30, 1962, 6 SCRA 848.)

The second part of the order directing the issuance of an alias writ of possession, is proper. Under the Rules of Court, if no redemption is made within twelve months after the sale, the purchaser is entitled not only to conveyance but possession of the property [Rule 39, Sec. 35.]. Petitioners admit that they failed to redeem the properties sold on execution within the twelve-month redemption period. Hence, respondents are entitled, as a matter of right, to possession of the lands. The Court thus ruled that the trial judge no error in ordering the issuance of an alias writ of possession.

The third part of the order partakes of the nature of a "conditional judgment", the citation for contempt being dependent upon the happening of a future event, namely, "petitioners' refusal to obey (the) alias writ of possession." Being a conditional judgment, it is null and void. [*Cu Unjiong e Hijos v. Mabalacat Sugar Co.*, 70 Phil. 381 (1940).]

Moreover, as stated above, refusal to relinquish possession does not constitute contempt, as the alias writ is directed to the sheriff and not to petitioners.

2. Anent the second and third reliefs prayed for, it is certainly outside the power of this Court to order private respondents to accept P19,720.00, instead of recognizing their right to possess the lands they bought at public auction. The Rules of Court are clear that "(i)f no redemption is made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to conveyance and possession of the property" [Rule 39, Sec. 35.].

By asking that respondents be ordered to accept payment of P19,720.00, the original judgment debt, petitioners are in effect asking that the execution sale, which is the source of respondents' right to possess the properties, be set aside, at least insofar as it may affect the properties pertaining to petitioners. Petitioners buttress their position by alleging that the properties sold for only P19,720.00 were actually worth P100,000.00 in 1978, the time when the case was called for hearing before this Court. (The amount was later raised to P200,000.00.) [Rollo, p. 40.]

It has been held that a "judicial sale of real estate will not be set aside for gross inadequacy of price unless the inadequacy be so great as to shock the conscience or unless there be additional circumstances against its fairness. [*Warner, Barnes and Co. v. Santos*, 14 Phil. 446 (1909); *Pingol, et al. v. Tigno, et al.*, 108 Phil. 623 (1960). See also Art. 1470, Civil Code.]

Granting that the actual market value of the properties in 1978, or several years after the execution sale, is the amount quoted by petitioners, the bid price was not so grossly inadequate as to shock the minds of impartial men, especially considering the inflation rate during the intervening period. Besides this, the petitioners have continued to enjoy the properties their fruits to this date.

One last bid was made to encourage the parties to reach an amicable settlement when the Court called the parties to a hearing on April 17, 1978. Unfortunately, no compromise was reached. [Manifestation of petitioners dated May 16, 1978, Manifestation of respondents dated May 19, 1978.]

WHEREFORE, the questioned Order of January 13, 1978 is AFFIRMED only insofar as it directed the issuance of an alias writ of possession. The Temporary Restraining Order issued on February 1, 1978 is hereby LIFTED. Let the court of origin forthwith issue an alias writ of possession. No costs.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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