

## **MATIAS NAREDO, VALENTIN NAREDO, JUANA DE LEON AND THE DIRECTOR OF LANDS, PETITIONERS, VS. NICASIO YATCO, JUDGE OF FIRST INSTANCE OF LAGUNA, RICARDO RIZAL, POTENCIANA RIZAL, ELEN...**

*G.R.No. L-1788. February 09, 1948*

Ponente: BENGZON, J.

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### **BENGZON, J.:**

A joint petition for certiorari to annul the order of Hon. Nicasio Yatco, Judge of First Instance of Laguna, directing execution of his decision that the accretion of two hectares to lot 454 belonged to the registered owners of said lot (Ricardo Rizal and other Rizals, respondents herein) and that the defendants (petitioners herein except the Director of Lands), "having no interest at all" in said accretion must vacate it, paying damages of P500 a year.

Basis of this petition is the allegation that, when the order of execution was promulgated, the court had already lost jurisdiction over the case, which had been duly appealed before such promulgation.

The decision was rendered on May 22, 1947; thereafter the defendants (petitioners herein) filed their respective motions for new trial, which were both denied on July 15, 1947; within the reglementary period they filed a joint record on appeal; on August 25, 1947, plaintiffs respondents herein) submitted a motion for execution of the judgment pending appeal; and on August 27, 1947, the court granted plaintiffs' motion, explaining as follows:

"Under date of August 25, 1947, the plaintiff filed a motion for execution invoking the discretion of this Court and for special reasons allowed by the Sales of Court pending; the appeal. To this motion for execution the defendants registered their opposition for the reasons stated therein and according to them the status quo of the case should be maintained.

"The rights of the defendants in this present case solely lie in the claim of the intervenor, the Bureau of Lands. If the claims of the said intervenor are to be upheld, probably the defendants may remain in the possession of the land. However, the Court having arrived to the conclusion that the property in question was caused by accumulation through, accretion and that the plaintiffs being the riparian owners of said portion, the claims of the defendants are entirely untenable, and considering that said defendants without right to the land occupied it since 1943 and that the Court having adjudged damages in the amount of P500 from said year to the date of surrender of said property, and the seeming insolvency of the defendants, it is but reasonable for this Court to require them to file a bond of P2,000 to suspend the execution of the judgment of the Court. For this purpose the defendants are given ten (10) days within which to submit to the Court for approval said bond and in their failure to do so after said time, the corresponding writ of execution will be issued."

It appears that on September 6, 1947, the plaintiffs moved that the above order be inserted in the record on appeal; that on September 19, 1947, the court approved the joint record on appeal; that on September 19, 1947, when the expediente was still in the office of the clerk of court of Laguna, plaintiffs called attention to the failure of defendants to submit a bond for P2,000.00 as required by the order of August 27; that in view thereof, on

September 30, 1947, the respondent judge authorized the clerk to write the mandate of execution, which was consequently issued and was subsequently carried out by the sheriff of Laguna.

There is no question that a Court of First Instance may permit the execution of its appealed judgment if and when certain circumstances concur. The Rules provide:

"Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part." (Rule 39, section 2, Rules of Court, Vol. I, p. 642.)

Interpreting and applying the above provision, which was taken, with some changes, from section 144 of Act 190, this Court has held that, "The power to grant or deny a motion for execution is discretionary with the court. Accordingly, the appellate court will not interfere to modify, control or inquire into the exercise of this discretion, unless it be shown that there has been an abuse thereof, or that, since the issuance of the order, conditions have so far changed as to necessitate the intervention of the appellate court to protect the interests of the parties against contingencies which were not, or could not have been, contemplated by the trial judge at the time of the issuance of the order."

In the herein mentioned litigation there were some apparently good reasons for executing the judgment despite the appeal: the defendants without color of title had been occupying the lot since 1943, had paid no charges, had been sentenced to pay damages, and were seemingly insolvent. It cannot be said that there was abuse of judicial discretion.

However, the petitioners believe, and contend before us, that considering the approval of the joint record on appeal on September 19, 1947, the order for issuance of the writ on September 30, 1947, was legally beyond the jurisdiction of the trial court. The trouble lies in the assumption that execution was ordered only on September 30, 1947. Therein lies the error. On August 27, 1947, many days before the approval of the joint record on appeal, the court had already allowed the issuance of execution, unless defendants submitted a bond within ten days. The directive of September 30 was merely a formality to carry out the court's order of August 27, which, as stated, was promulgated in due time. It was practically a ministerial onto of which defendants (petitioners herein) had no reason to complain, since they failed as they must fail to prove the invalidity of the pre-existing order of August 27. Viewed from another angle, it may be stated that the approval of the record by the judge was subordinated to his previous conditional order of execution on August 27, 1947. '

It may soothe petitioners' apprehension to state at this juncture that, where the executed judgment is reversed on appeal, the trial court shall issue such orders of restitution as equity and justice may warrant (section 5, Rule 39); the appellees being bound to restore the status quo ante or respond in damages for their failure to do so. (Molina vs. Somes, 24 Phil., 49, 55; Moran op. cit. Vol. I, p. 648.)

Wherefore, seeing no reason to interfere with the trial court's discretion, we must decline to entertain this joint petition which, consequently, is dismissed. No costs.

Moran, C.J., Feria, Pablo, and Padilla, JJ., concur.

Petition dismissed.

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