

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLANT, VS. JUAN DELOSO, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-28301. March 30, 1970

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Appeal on questions of law from the order of the Court of First Instance of Camarines Sur in its Civil Case No. 6276 dismissing the plaintiff's appeal on the ground that the action for revival of judgment has already been barred by prescription.

On January 25, 1951, judgment was rendered by the above-mentioned court in Civil Case No. 1044 ordering the defendants-appellees Juan Deloso, Francisco Imperial and Magno Jamito to pay jointly and severally the plaintiff Philippine National Bank, hereinafter referred to as the PNB, the sum of P600.00 plus interest, attorney's fees and costs. For one reason or another the said judgment was not executed within five (5) years from the date of its finality. On June 28, 1960, the PNB filed with the same court an action (Civil Case No. 4953) against the same defendants for revival of the judgment in Civil Case No. 1044. On September 30, 1964, the case was dismissed by the court for lack of jurisdiction over the subject-matter, the same being within the original jurisdiction of the City Court of Naga in accordance with Republic Act No. 2613 (which took effect on August 1, 1959), in view of the amount involved.

Accordingly, on January 11, 1965, the PNB filed with the City Court of Naga a similar action for revival of the judgment in Civil Case No. 1044. The same was, however, on motion of the defendants, dismissed by the said court on August 18, 1966, on the ground that the action was already barred by prescription, more than ten (10) years having elapsed from the date the judgment in Civil Case No. 1044 became final. The PNB filed a motion for reconsideration, but the same was denied.

The PNB appealed the order of dismissal to the Court of First Instance of Camarines Sur; but that court, finding that the judgment sought to be revived became final and executory on February 26, 1951, or thirteen (13) years, ten (10) months and fifteen (15) days before the filing of the case with the City Court of Naga, dismissed the appeal on the ground of prescription, pursuant to Articles 1144 and 1152 of the Civil Code which respectively provide:

"ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

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"(3) Upon a judgment."

"ART. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final."

A motion for reconsideration was filed by the PNB, but the same was denied.

Plaintiff-appellant has come directly to this Court urging the reversal of the dismissal order on the following legal grounds: (1) The complaint in Civil Case No. 4953 - which was dismissed for want of jurisdiction - should at least be considered an extrajudicial demand under Article 1155 of the Civil Code, which interrupted the running of the ten-year prescriptive period; consequently, deducting from the period arrived at by the court below the period of four (4) years, three (3) months and two (2) days from the filing of the complaint in Civil Case No. 4953 on June 28, 1960, to its dismissal on September 30, 1964, it would result that the present action had been instituted within the ten-year period provided in Article 1144. (2) Assuming *arguendo* that the filing of the complaint did not interrupt prescription, still the present action should be considered as seasonably instituted because the ten-year prescriptive period provided for in Article 1144 of the Civil Code commences to run only from the expiration of the five (5) years within which a judgment may be executed by mere motion under Section 6, Rule 39 of the Revised Rules of Court, which reads:

"SEC. 6. Execution by motion or by independent action. - A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action,"

inasmuch as Article 1150 of the Civil Code provides that the prescriptive period for all kinds of actions shall be counted from the day they may be brought, and an action for revival of a judgment can only be brought after the lapse of five (5) years from finality thereof.

Plaintiff-appellant's contention that the complaint in Civil Case No. 4953 which, as stated above, was dismissed by the court *a quo* for want of jurisdiction, should be considered a written extrajudicial demand which interrupted the statute of limitations, is unmeritorious. Article 1155 of the Civil Code provides:

"ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

In *Philippine National Bank vs. Osete, et al.*, G.R.No. L-24997, July 18, 1968 (24 SCRA 63), this Court, in holding that Article 1155 of the Civil Code refers to actions to collect not based on a judgment sought to be revived, said:

"Moreover, the lower court expressed the view that said 'Art. 1155 of the New Civil Code refers to the tolling of the period of prescription of the action to collect, not to the action to enforce' or revive - a 'judgment'. Understandably, either an 'extrajudicial demand' by the creditor or an 'acknowledgment of the debt' may interrupt the prescription of the action to collect, not based upon a judgment, since the demand indicates that the creditor has not slept on his rights - and removes the basis of the statute of limitations of actions - but, was vigilant in the enforcement thereof, whereas an acknowledgment by the debtor provides a tangible evidence of the existence and validity of the debt. Who would, however, make an 'extra-judicial demand' for the payment of a judgment, when the same may be enforced by a writ of execution? And, how could an acknowledgment or partial payment affect the rights of a creditor, when the same are based, no longer upon his contract with the debtor or upon the law, but upon no less than a judicial decree, which is final and executory?"

The doctrine in the *Osete* case was reiterated in *Philippine National Bank vs. Pacific Commission House*, G.R. No.L-22675, March 28, 1969 (27 SCRA 766), where this Court added:

"Even under the Code of Civil Procedure, Act No. 190, a distinction was made between a debt based on contract and one already confirmed by judgment insofar as the effect of acknowledgment was concerned. Under Section 43 thereof an action upon a contract or upon a judgment prescribed in ten years; but under Section 50 the renovating effect of payment or of a written acknowledgment of the debt is limited to the first kind of action, thus: 'when payment has been made upon any demand founded upon contract, or a written

acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment or promise."

The conclusion is, therefore, inescapable that even if the complaint in Civil Case No. 4953 be considered a writ-ten extrajudicial demand, it could not have interrupted the prescription of the action to revive the judgment in Civil Case No. 1044.

The other question raised by plaintiff-appellant was squarely ruled upon by this Court in *Gutierrez Hermanos vs. De la Riva*, 46 Phil., 827 (1923), where it held that the ten-year prescriptive period commences to run from the date of finality of the judgment and not from the expiration of five (5) years thereafter. Three reasons were there ad-anced, to wit: (1) Section 447 of the Code of Civil Pro-cedure (which is similar to the last sentence of Section 6, Rule 39 of the Revised Rules of Court) should be construed in relation to Section 43, No. 1, of the said Code (which is similar to Article 1144 of the Civil Code); and as thus construed, "the conclusion one arrives at is that after the expiration of the five years within which execution can be issued upon a judgment, the winning party can revive it only in the manner therein provided so long as the period of ten years does not expire from the date of said judgment, accord-ing to section 43, No. 1, of the same Code." (2) The right of the winning party to enforce the judgment against the defeated party "begins to exist the moment the judgment is final; and this right, according to our Code of Procedure, con-sists in having an execution of the judgment issued during the first five years next following, and in commencing after that period the proceeding provided in section 447 to revive it, and this latter remedy can be pursued only before the judgment prescribes, that is to say, during the five years next following. It is so much an action to ask for an execution as it is to file a complaint for reviving it, be-cause, as we know, by action is meant the legal demand of the right or rights one may have." (3) If it is held that the winning party has still ten (10) years within which to revive the judgment after the expiration of five (5) years, then the judgment would not prescribe until after fifteen (15) years, which is against No. 1 of section 43 of the Code of Civil Procedure, "[a]nd it cannot be said that such is the letter, and much less, the intention of the law, for there is nothing in section 447 of the said Code, making this new period different from the one prescribed in said section 43, No. 1, or reconciling these two provisions, there being no other way of reconciling them than to say that after the expiration of the first five years next fol-lowing the judgment, there remain to the victorious party only another five years to revive it." The doctrine in *Gutierrez Hermanos* has tacitly, yet consistently, been adhered to by this Court (Cf. *Asociacion Cooperativa de Credito Agricola de Miagao vs. Monteclaro, et al.*, 74 Phil. 281 (1943); *PNB vs. Silo*, G.R. No. L-3498, March 19, 1951; *Ansaldo vs. Fidelity and Surety Co.*, G.R.No.L-2378, April 27, 1951; *Carrasozo vs. Fuentebella*, G.R.No.L-5888, April 22, 1953; *Miciano vs. Watiwat, et al.*, G.R.No.L-8769, November 21, 1957; *Lazaro, et al., vs. Gomez, et al.*, G.R.Nos. L-12664-65, September 30, 1960; *Potenciano vs. Gruenberg, et al.*, G.R.No. L-16956, February 27, 1962; *PNB vs. Monroy*, G.R. No. L-19374, June 30, 1964; *PNB vs. Bondoc*, G.R.No.L-20236, July 30, 1965); so that it is now settled that the ten-year period within which an action for revival of a judgment should be brought, commences to run from the date of final-ity of the judgment, and not from the expiration of the five-year period within which the judgment may be enforced by mere motion (Art. 1152, Civil Code).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the order of dismissal appealed from is affirmed, with treble costs against plaintiff-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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