

JAIME PELEJO AND BELEN C. ZABALLERO, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, PATERNO C. ZABALLERO AND AURORA GONZALES, RESPONDENTS.*G.R. No. L-60800. August 31, 1982*

Ponente: RELOVA, J.

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In this petition for certiorari, spouses Jaime Pelejo and Belen C. Zaballero pray that the Writ of Possession, dated March 30, 1982, issued by the lower court be declared null and void for having been issued without or in excess of jurisdiction and with a grave abuse of discretion amounting to lack of jurisdiction, and that the private respondents and the Sheriff of Manila be enjoined from enforcing the said Writ of Possession.

On July 3, 1979, herein petitioners filed Civil Case No. 124771 for Annulment of Deed, Title, Reconveyance and Damages. According to petitioners, respondents Paterno C. Zaballero and his wife Aurora Gonzales Zaballero approached them sometime in 1974 for assistance. They borrowed the title TCT No. T-49125, covering the property so that they could have a collateral for a loan from the Monte de Piedad Bank, the proceeds of which would finance respondents' rice mill business in San Juan, Batangas. To accommodate herein private respondents, who are the brother and sister-in-law, respectively of petitioner Belen C. Zaballero, a simulated Deed of Absolute Sale with Assumption of Mortgage was executed in favor of Mr. and Mrs. Paterno C. Zaballero. The Zaballeros took the Deed of Sale to mean what it stated and had the title transferred to their names. As a consequence, TCT No. T-49125 was cancelled and TCT No. 130117 was issued in the names of the Zaballeros.

In their answer to the complaint, respondents denied the allegations of simulated sale and claimed that the Deed of Absolute Sale was properly executed in good faith before a notary public of the Philippine National Bank; that the P400,000.00 stated in the deed was paid to herein petitioners while the P200,000.00 PNB Mortgage was eventually paid to the bank; that the P600,000.00 was a fair price for the properties in 1974 when the conveyance was executed; that petitioner Belen Zaballero, an older sister of respondent Paterno Zaballero, now regrets having sold the property for only P600,000.00 because a relative volunteered to help her negotiate a one-million peso loan on the property as collateral.

On August 22, 1980, the trial court issued an order dismissing the complaint but allowing the petitioners to file an amended complaint within ten (10) days. The original complaint was dismissed upon motion of the private respondents on the ground that it did not state a cause of action, and assuming there was a cause of action, it was already barred by statute. The petitioners filed their amended complaint after September 18, 1980 which was beyond the ten-day period.

On October 14, 1980, the trial judge denied the admission of the amended complaint in an order which reads:

"Acting on the Motion to Admit Amended Complaint as well as the opposition thereto, and it appearing that said amendment is studiously not in accordance with what the parties have agreed upon in open Court, which is inimicable for collection of a Sum of Money, the same should be, as it is hereby, DENIED."

This order dismissing the complaint in Civil Case No. 124771 was not appealed or otherwise elevated to an appellate court. Instead, petitioners filed a new complaint for "Annulment of Deed, Title, Reconveyance and Damages" which was docketed as Civil Case No. 140996 and assigned to another branch of the Manila Court of First Instance.

On September 9, 1981, Judge Fidel P. Purisima of Branch XX dismissed the new case (Civil Case No. 140996) on the ground that the dismissal of Civil Case No. 124771 and the subsequent denial of the Motion to Admit Complaint amounted to res judicata barring the new complaint.

The dismissal of the second case (Civil Case No. 140996) was appealed to the Court of Appeals where it is still pending resolution.

In the meantime, respondents Paterno Zaballero and Aurora Gonzales Zaballero filed Civil Case No. 144435, captioned "Accion Reinventicatoria or Publiciana, with Collection and Damages," but the same was dismissed by Court of First Instance Judge Maximo A. Maceren on February 4, 1982 on the ground that it was actually an action for illegal detainer which is not within the jurisdiction of his court.

The dismissal of said Civil Case No. 144435 was appealed by private respondents to this Court where it is still pending action.

Thereafter, herein private respondents filed a motion for the issuance of a Writ of Possession in Civil Case No. 124771. On March 30, 1982, Judge Abelardo Dayrit of the Court of First Instance granted the motion and issued a Writ of Possession "ordering the Sheriff of the City of Manila to place in possession the herein defendants Paterno C. Zaballero and Aurora Gonzales Zaballero, in the premises at 541 M. V. delos Santos Street, Sampaloc, Manila, and eject therefrom the herein plaintiffs Jaime Pelejo and Belen Zaballero Pelejo, and all persons claim-ing under said plaintiffs."

It is the position of herein petitioner that the lower court acted in excess of its jurisdiction and with grave abuse of discretion when it issued the writ of possession because Civil Case No. 124771 was not decided on the merits and the rights and obligations of the parties were not defined. They alleged that there was no decision on who the owners were in the order dismissing the complaint.

The Court of Appeals, sustaining the lower court when it issued the writ of possession, said:

"The order in Civil Case No. 124771 was to dismiss the complaint. The respondent Judge obviously believed that to issue a writ of execution to implement an order dismissing a complaint was a superfluity. The effect of a writ of execution would have been the same.

"The very arguments of the petitioners support the action taken by the respondent Judge. According to the petitioners, Judge Dayrit could not issue a writ of execution because Civil Case No. 124771 was dismissed without determining the rights of the parties and hence no judgment was rendered. They argue that no writ of execution may issue because a writ of execution must conform to that ordained in the dispositive part of the decision. If this argument is right and no writ of execution may issue, the action taken by the respondent Judge could not be error, much less grave abuse of discretion. How else could an order of dismissal, long final and executory, be given meaning and effect? What the petitioners really seek to achieve through this petition for a writ of certiorari is to delay execution of a final and executory order while they file case after case in attempts to reopen the issue of simulated deed of sale. A petition for certiorari cannot take the place of a long lost appeal. It cannot be used to delay or prevent the logical consequences of an order that has become final and of issues that have become res judicata because of a failure to appeal.

"The ex-parte motion filed on April 19, 1981 urging Us to order restoration of possession is untenable in the light of Our above findings."

There is merit in the petition of the Pelejos.

Execution is the remedy provided by law for the enforcement of a judgment and the only portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and while they may serve as guide or enlightenment to determine the ratio decidendi, what is controlling is what appears in the dispositive part of the decision (Robles vs. Timario, et al., 107 Phil. 809).

In the case at bar, the trial judge issued the writ of possession in Civil Case No. 124771 which was dismissed in an Order, dated August 22, 1980. In other words, the complaint for "Annulment of Deed of Sale, Title, Reconveyance and Damages" was not decided on the merits because the order states:

"Acting on defendants' Motion to Dismiss for the grounds therein alleged which the Court finds to be well taken, the Complaint is hereby DISMISSED, without pronouncement as to costs. However, considering that defendants have no objection to plain-tiffs amending their complaint, plain-tiffs may do so, provided they file in Court an amended complaint within ten (10) days from today.

"SO ORDERED."

WHEREFORE, finding the petition for certiorari justifiable, the Writ of Possession, dated March 30, 1982, having been issued by the lower court with grave abuse of discretion, is hereby NULLIFIED; and, the private respondents and the City Sheriff of Manila are enjoined from enforcing the said Writ of Possession.

SO ORDERED.

Melencio-Herrera, Plana, and Vasquez, JJ., concurs.

Teehankee, (Chairman), J., in the result.

Gutierrez, Jr., J., no part.

Makasiar, J., on leave.

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