

REYNALDO V. DULAY, PETITIONERS, VS. THE HONORABLE ROSE MARY ALIM, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 33, BAUANG, LA UNION AND SPOUSES MARCO MICHAEL & JOSEPHINE QUICHO...

Ponente: CARANDANG, J.

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CARANDANG, J.:

Petitioner Reynaldo Dulay impugns, on ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the September 8, 2004 Order of the Regional Trial Court, Branch 33, of Bauang, La Union in Civil Case No. 1280-BG. The RTC, in the herein assailed Order, granted private respondents' Motion for Execution pending appeal to effect the immediate implementation and enforcement of its June 30, 2004 Decision, thereby directing the Register of Deeds of the Province of La Union to cancel the annotation of Notice of Lis Pendens, including the Affidavit of Adverse Claim, in the Memorandum of Encumbrances of TCT No. T-51431, and to remove the same encumbrances as appearing in the tax declarations corresponding to said transfer certificate of land title (Rollo pp. 97-99).

The antecedents of the case are as follows:

Herein petitioner Reynaldo Dulay is a lawyer by profession. Sometime in 1995, Filomeno Castro engaged the professional services of Dulay to act as his counsel in a civil action against Albert Padilla and Dioscoro E. Yoro Jr., for recovery of inherited property involving a 3,046 square-meter parcel of land located at Barangay Paringao in Bauang, La Union, which is more specifically described and covered by TCT No. T-39949. The civil suit was assigned and docketed as Civil Case No. 1001-BG before Branch 33 of the RTC of Bauang, La Union. Dulay's compensation for rendering legal services to Castro was on a contingent fee scheme, and accordingly Castro assigned to Dulay 1/3 of the total area of land that he shall recover from Civil Case No. 1001-BG. It is evident that Castro secured victory in Civil Case No. 1001-BG, and he eventually acquired the real property covered by TCT No. T-39949. Nonetheless, Castro failed and refused to honor his commitment with Dulay with respect to the latter's attorney's fees. Consequently, Dulay instituted a Complaint for Specific Performance against Castro, the case having been filed and docketed as Civil Case No. 1027-BG before the same court, that is, RTC, Branch 33, of Bauang, La Union. On October 30, 1995, Dulay caused the annotation of an Affidavit of Adverse Claim in TCT No. T-39949 in order to protect his interest over the land pursuant to his contingent fee arrangement with Castro. The affidavit of adverse claim was eventually cancelled at the instance of Castro.

Dulay thereafter discovered that Castro already transferred and conveyed the land covered by TCT No. T-39949 by way of sale in favor of the Spouses Marco Michael and Josephine Quicho on June 17, 1999. On the strength of the conveyance, the Spouses Quicho were able to cause the cancellation of TCT No. T-39949, and to consolidate and register title over the land in their names by virtue of the issuance of TCT No. T-51431 in lieu of the previous title. Dulay then impleaded the Spouses Quicho as parties-defendants in Civil Case No. 1027-BG. On August 6, 1999, Dulay caused the inscription of a notice of lis pendens (as well as an Affidavit of Adverse Claim) in the Memorandum of Encumbrances of TCT No. T-51431.

On July 7, 2000, the Spouses Quicho lodged a Complaint before the trial court praying for the cancellation of the annotation of Notice of Lis Pendens and Affidavit of Adverse Claim in TCT No. T-51431 (Rollo pp. 23-26).

On June 30, 2004, after trial on the merits, the RTC rendered a Decision disposing as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in FAVOR of the plaintiffs and AGAINST defendant;

- ORDERING the Register of Deeds of the Province of La Union, to cancel the affidavit of adverse claim annotated as Entry No. 139691 (Exhibit "C-1") and the notice of lis pendens under Entry No. 139692 (Exhibit "C") both in TCT No. T-51431 (Exhibit "B, 6") in the name of plaintiffs; to cancel likewise the same encumbrances annotated in the tax declaration issued covering the title of the plaintiffs;

- ORDERING defendant to pay attorney's fees in the amount of Php10,000.00 and to pay the costs.

The counterclaim of defendant is DISMISSED for lack of merit.

SO ORDERED. (Rollo 81-87)

On July 7, 2004, the Spouses Quicho filed a Motion for Execution of Judgment Pending Expiration of Time to Appeal, praying for the issuance of a special order that allows for the immediate enforcement pending appeal of the June 30, 2004 Decision of the RTC in accordance with Section 2, Rule 39 of the 1997 Rules of Civil Procedure (Rollo 89-90).

Dulay lodged a Notice of Appeal from the June 30, 2004 Decision of the RTC on July 14, 2004 (Rollo pp. 88). Withal, Dulay subsequently registered an Opposition against the Motion for Execution filed by the Spouses Quicho (Rollo pp. 92-96).

On September 8, 2004, the trial court issued the herein impugned Order allowing the implementation of the June 30, 2004 Decision pending the resolution of the appeal interposed therefrom by Dulay, the dispositive part of which is reproduced hereunder verbatim, thus:

ACCORDINGLY, in view of the foregoing, the motion is GRANTED and hereby orders immediate execution of the Decision dated June 30, 2004, but, only as regards to No. (1) of the dispositive portion of the said decision. The plaintiffs are ordered to file a bond in the amount of Php10,000.00 CASH to answer for any damage that defendant may suffer by virtue of the execution considering that he has already taken an appeal of the said decision, which is given due course, considering that it was filed within the reglementary period and the appellate docket fees, have likewise been paid within the same period.

The Branch Clerk of Court is directed to transmit the record of this case to the Court of Appeals, Manila for purposes of the appeal taken by defendant, within (15) days hereof.

SO ORDERED.

In disagreement with the ruling of the court a quo, Dulay instituted the instant Petition for Certiorari, citing as sole ground that -

The Honorable public respondent committed grave abuse of discretion amounting to lack of jurisdiction when it granted execution pending appeal despite the absence of any good reasons allowed by law and jurisprudence.

The Petition for Certiorari is impressed with merit.

After a careful examination of the factual and procedural backdrop of the case, We are led to the well considered view that there are no good and firmly grounded reasons for the court a quo to allow the execution of its June 30, 2004 Decision during the pendency of the appeal interposed therefrom by petitioner. As a general rule,

enforcement of a court decision should not be effected until and unless the judgment has attained a final and executory nature, that is, upon the expiration of the right to appeal therefrom and no appeal has been duly perfected to impugn the judgment. The prevailing party is entitled to prompt enforcement of judgment as a matter of right under this general rule, thereby making it the ministerial duty of the court to issue the pertinent writ of execution once the judgment becomes executory (Rule 39, Section 1). By way of recognized exception, however, discretionary execution of judgment may be allowed when there are good reasons for its immediate implementation pending appeal, or before such judgment has been rendered final and executory in character (Rule 39, Section 2 [a]). “Good reasons” for execution of judgment pending appeal, as pronounced by the Supreme Court, must constitute superior circumstances demanding urgency as to outweigh the injury or damage on the part of the losing party should it eventually secure a reversal of the judgment on appeal (*Jaca vs. Davao Lumber Company*, 113 SCRA 107). In the case at bench, We do not see any weighty or superior justification for the immediate cancellation of the notice of lis pendens and affidavit of adverse claim while the appeal from the June 30, 2004 Decision has yet to be resolved by this Court. In ordering the cancellation of the annotations on the strength of its June 30, 2004 Decision, the court a quo ratiocinated, in essence, that the notice of lis pendens and affidavit of adverse claim were inappropriately annotated in the transfer certificate of title considering that Civil Case No. 1027-BG is a purely personal suit, and that these annotations are no longer indispensable for the protection of petitioner’s right and interests over the land. If at all, on the other hand, all that We read from the herein assailed September 8, 2004 special Order are virtually the same reasons that served as the ratio decidendi behind the trial court’s June 30, 2004 Decision. To be sure, however, these are not the specie of reasons that are good and sufficient enough to warrant the enforcement of the judgment pending the resolution of the appeal that impugns the same. Certainly, it would have to take something more aside from the reasons stated in the court a quo’s judgment on the merits, for if the rule is otherwise then judgments on the merits would be placed in the same category of a special order for execution pending appeal, and would make executions pending appeal routinary, which is not what prevailing rules and jurisprudence contemplate.

Being in the nature of a legal exception, a motion for execution pending appeal must be construed against the movant, and therefore it is incumbent upon private respondents to come up with good reasons that shall warrant the immediate execution, albeit the judgment has not yet attained a final and executory nature. Perusing private respondents’ brief Motion for Execution pending appeal (Rollo pp. 89-90), it is clear that they failed to raise and convincingly prove that there are good reasons to allow the cancellation of the subject annotations in TCT No. T-51341 pending the resolution of the appeal from the judgment on the merits.

The remedial measure of certiorari under Rule 65 lies against an order granting execution pending appeal where the same is not founded upon good reasons. Such being the case, in view of the absence of good justifications, We hold that the issuance of the September 8, 2004 Order is tainted with whimsicality and arbitrariness, thus the herein assailed Order directing for the immediate cancellation of the notice of lis pendens and affidavit of adverse claim in TCT No. T-51341 must be struck down for being fatally flawed with grave abuse of discretion.

WHEREFORE, premises considered, it appearing that the trial court acted with serious and reversible indiscretion in the exercise of judicial power when it allowed the execution of its judgment pending appeal albeit without any good reasons, the instant Petition for Certiorari is granted, and accordingly, the herein assailed September 8, 2004 Order of the trial court is hereby annulled and vacated.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

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