

BASILIO UNSAY AND ANTONIA MANALO, PETITIONERS, VS. HON. CECILIA MUÑOZ-PALMA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, FELIZA DIAZ AND DAVID LIWANAG, RESPONDENTS.

G. R. No. L-17712. May 31, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition to review a decision of the Court of Appeals.

The facts are set forth clearly in the decision under review, as follows:

"It appears that the petitioners, Basilio Unsay and Antonia Manalo, together with Marta Mendoza, Hilario Nonato and Asuncion Tuason, and respondents Felisa Diaz and David Liwanag were defendants and plaintiff's respectively, in Civil Case No. 2798 of the Court of First Instance of Rizal. This action was for the collection of a certain sum of money and to enforce a right of usufruct over certain parcels of land located in the municipalities of Pasig, and Cainta, province of Rizal. The defendants resisted that action on the ground that as the right of usufruct claimed by the plaintiffs was not noted on the Torrens certificate of title covering the property and defendants Basilio Unsay and Antonia Manalo were purchasers for value and in good faith, the latter were not obligated to recognize said right. After trial, in which the parties were given ample opportunity to substantiate their respective contentions, the trial court rendered judgment ordering, among other things, that the defendants deliver to the plaintiffs the possession of the land involved in the action for the duration of the latter's right of usufruct thereon. From this judgment, only defendants Marta Mendoza and Hilario Nonato appealed. The other defendants, including the petitioners herein, did not appeal. Instead, the petitioners on January 14, 1960, or almost five months after the judgment rendered in the case had become final and executory as regards them, filed a motion to dismiss the action on the ground that the trial court had acted, not only in excess, but without jurisdiction in rendering said judgment, as their title to be land free of all encumbrances is indefeasible and could not be stacked collaterally. This motion was denied by the respondent Judge. A motion for a reconsideration of said order was likewise denied.

"On March 8, 1960, the respondent Judge, upon motion, issued a writ for the execution of judgment in so far as it concerned the petitioners, ordering the provincial sheriff of Rizal to eject the latter from the parcels of land involved in the action for the duration of the right of usufruct thereon of respondents Feliza Diaz and David Liwanag. Informed of the issuance of this writ, the petitioners filed on March 9, 1960, a motion asking that said writ be quashed, alleging that the judgment had not yet become final as regards them, because defendants Maria Mendoza and Hilario Nonato had appealed therefrom and said appeal had the effect of suspending the finality of said judgment as regards all the defendants. This motion was likewise denied by the respondent Judge in an order dated March 16, 1960. Served with notice of the order of denial of their motion, petitioners filed another motion asking that, instead of ejecting them from the lands, respondents Feliza Diaz and Hilario Nonato be ordered to receive from them the amount of P30.00 a month during the pendency of the case on appeal. This motion was likewise denied by the respondent Judge. xxx."

Petitioners then went to the Court of Appeals on a petition for certiorari with preliminary injunction seeking to

annul the order of the Court of First Instance of Rizal denying dismissal of the action and also the order denying the motion to quash execution. The appellate court, however, dismissed the petition, finding both requests to be without merit.

For simplification, We shall discuss the errors assigned in only two questions, namely, (1) whether or not the action filed in the Court of First Instance (Civil Case No.2798) may be dismissed; and (2) the propriety of execution with respect to the defendants who did not appeal.

As found correctly by the appeals court, the Court of First Instance of Rizal had jurisdiction over the person and the subject matter of the action. In the first places the action is merely an ordinary one to collect a sum of money and to enforce a right of usufruct on certain parcel of land situated in the said province of Rizal, and moreover, the parties thereto were duly served with summons. It may be possible, it is true, that the defendants in that action have set up as their defense the existence of a Torrens Certificate of Title which would show or prove their ownership over the land in question and wherein there appears no annotation as to any usufruct, but this defense alone does not alter the nature of the action filed and does not, therefore, divest the trial court of its jurisdiction thereon. It is difficult to see how the complaint here to enforce the right of usufruct would constitute a collateral attack against the indefeasible title to the property in question.

For the above reasons, we do not see any plausibility of setting aside the decision of the trial court on the ground of lack and/or in excess of jurisdiction. Parenthetically, it is worthy to note from respondents' brief that from the very start of the proceedings in the court of origin, there never were invoked by herein petitioners (defendants therein) the defenses of lack of jurisdiction, *res judicata* nor indefeasibility of title—which defenses they have raised in the Court of Appeals and here again. As a matter of fact, according to the respondents, the alleged title claimed by the defendants to cover the property was never presented during the trial.

Of course, We are not here, for the present and under the instant proceedings, to decide on the tenability of the defense thus raised. That question is properly the subject of appeal.

As to the second point, jurisprudence on the matter has established that—

“Whether an appeal by one of several judgment debtors will affect the liability of those who did not appeal, must depend upon the facts in each particular case. If the judgment can only be sustained upon the liability of the one who appeals, and the liability of the other judgment debtors solely depends upon the question whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all. Where the liability of each judgment debtor is several, and one appeals only, the judgment on appeal will not affect those who did not appeal.” (*Municipality of Orion vs. Concha*, 50 Phil. 679)

Petitioners herein are sued for the collection of a sum of money and upon the basis of a contract of usufruct supposed to have been entered into between their co-defendants and the plaintiffs. As already stated, the defense set up is that there was no annotation of any such usufruct on the title issued in their names and that they were purchasers for value and in good faith of the property under litigation. The right of any of the defendants to retain the property would depend upon the holding on the appellate court on the tenability of such defense raised by them. In other words, the defense is not personal to any or some of the defendants—it would apply to all. As the ruling is reiterated, “if the judgment can only be sustained upon the liability of the one who appeals and the liability of the other judgment debtors solely depends upon the question whether or not the appellant is liable and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all.” Exactly the same situation as described in this quotation is found to be obtaining in our case and therefore, We fell that execution on the holding as to the usufruct, pending appeal by some of the defendants, should not issue against

the other defendants who did not appeal (Petitioners herein).

Since the record of the aforesaid civil case has not been forwarded to this Court, there is nothing before us to clarify whether or not there was a pronouncement on part of the trial court that the defendants are liable for the sum of money claimed from, them, and whether or not their liability, if any, would be several. No mention of this aspect of the case has been discussed either in the petition, in the briefs, or even in the decision of the Court of Appeals affirming the orders of the lower court. such a case, our holding on the matter would be in that if the judgment of the trial court condemns defendants, severally, to pay the plaintiffs a sum of money, then this part of said judgment may be executed with respect to the herein petitioners (defendants therein who did not appeal).

In conformity with the above pronouncements, the decision of the Court of Appeals is hereby modified in that the order of execution issued against petitioners requiring them to deliver possession of the land in question is hereby annulled. Be it understood, however, that execution may issue as to the money judgment, if any, and if held to be several- In all other respects the decision appealed from is affirmed. No costs.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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