

TOPANDAS VERHOMAL, ET AL., PETITIONERS, VS. HONORABLE CONRADO V. SANCHEZ, ET AL., RESPONDENTS.

G. R. No. L-3823. April 27, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

The case.—This is a petition for mandamus to compel the respondent judges, or whoever of them may be acting on Civil Case No. 25 of the court of first instance of Manila, to order the Sheriff of Manila to take the bottles of liquor tendered by petitioners, sell them at auction, and then deliver the proceeds to respondent Antonio G. Azaola in satisfaction of the judgment therein rendered.

The facts.—On July 8, 1846 the respondent Azaola sued Guna Lalwani, V. Lilaram & Company and Gacilago & Company to enforce a certain credit note (Civil Case No. 25 of Manila). After the defendants had answered the trial took place. On July 19, 1949, judgment was rendered the dispositive part of which read:

"Wherefore, judgment is hereby rendered—

- 1 Dismissing plaintiff's complaint against V. Lilaram & Co.:
- Declaring that plaintiff is entitled to receive from defendant Gacilago & Co. whisky, rum and/or gin manufactured by the said Gacilago & Co. in 350 cc and 650 cc bottles and at the prices of P4.80 and P11.50 respectively per bottle, as may be sufficient to cover the amount of P10,000;
- Ordering plaintiff to take delivery from defendant Gacilago & Co. of said merchandise within 30 days from the date judgment herein becomes final; and declaring that in the event of failure of plaintiff so to do, defendants Gacilago & Co. and Guna Lalwani may pray that a writ of execution issue directing that the whisky, rum and/or gin in the quantity contracted in Exhibit A or so much thereof as they may have in their possession, be sold at public auction by the sheriff, and the net proceeds of the sale turned over to plaintiff; and
- Declaring, finally, that after deducting the contract value of the said whisky, rum and/or gin delivered or sold as hereinbefore provided from the sum of P10,000 set forth in Exhibit A, plaintiff may procure a writ of execution against defendants Gacilago & Co. and Guna Lalwani directing said defendants to pay plaintiff jointly and severally for the corresponding balance." Guna Lalwani had died about a month before. Proceedings to settle his estate in Eizal province Was begun on June 1949 and Topandas Verhomal, petitioner herein, was appointed and qualified as administrator. (Sp. Proc. No. 965 of Rizal.)

On July 19, 1949 an order was issued directing a writ of execution of the decision in Civil Case No. 25 of Manila and the writ was issued in the precise terms thereof. But no liquor was actually delivered to, nor seized by the Sheriff.

On October 31, 1949 Azaola filed a claim for P10,000 against the estate of Guna Lalwani in Sp. Proc. No. 965 of Rizal. The claim was founded on the aforesaid judgment. The administrator formulated no objection, and on December 16, 1949 the Rizal Court admitted Azaola's claim, the judge declaring that the aforesaid judgment "not

having been executed up to this time (and) said claim being satisfactorily proven, the same is admitted".

Meanwhile,—according to petitioners—on November 16, 1949 Topandas Verhomal requested the sheriff in Manila to take delivery of the liquor, but the sheriff declined to accept, explaining that Azaola had so instructed him because the liquor was poisonous.

On March 16, 1950 the petitioner asked the Manila court to command the sheriff to accept the liquor they were tendering and to sell it in satisfaction of the judgment for Azaola. Respondent Judge Oscar Costelo denied the motion, upon the ground that the Rizal Court had finally approved the claim for P10,000 submitted by G. Azaola against the estate of Guna Lalwani.

Hence this petition for mandamus to compel the respondent judges to act as requested by petitioners.

In another case G. R. No. L-3781 Verhomal V. Tan, filed in this court, the petitioners attempted to stop the Rizal judge from carrying out orders forcing the administrator to satisfy the approved claim of Azaola.

Petitioners' theory in this, as well as in the other proceeding (G. R. No. L-3781) is that pursuant to the decision, sale of the liquor must first be made before Azaola could exact any amount from Guna Lalwani or his estate. Consequently they now insist that such sale be ordered. And in the other case G. R. No. L-3781 they requested that the Rizal court be enjoined from requiring payment to Azaola, because its order approving the claim was erroneous.

Discussion. Last; month we dismissed G. R. No. L-3781 saying that petitioner's remedy to correct that order approving the claim was an appeal at the proper time—not certiorari proceedings. In that decision we indicated that the judgment in case No. 25 of Manila could not be executed, in view of the death of Guna Lalwani, and that Azaola's action in recurring to the intestate proceedings in Rizal was appropriate. We have thereby pointed out one reason why this petition for mandamus will not prosper: the judgment could not be executed in Civil Case No. 25, the debtor, having died before the execution.

As a second reason it should be stated that according to the answer, the order of the Rizal court approving Azaola's claim for P10,000 became final in January, 1950, because no appeal was interposed therefrom. It would then be useless to require the performance of an act—sale of the bottles of wine—that will not materially benefit petitioners, inasmuch as no matter what the value of the alcoholic beverage may be, Azaola could always insist on P10,000 in the Rizal court, for the reason that the order approving his credit has become final. The trouble lies in petitioners' failure to oppose Azaola's demand in the Rizal court or to make proper representations about the sale of the liquor in offset of his claim. Courts cannot always help those who fail to help themselves. At any rate it is not clear that the equities are on the petitioners' side, because respondents' allegation is undenied that the liquor offered to the sheriff had deteriorated. The petition will be denied, with costs.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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