

**TEODORO V. JULIANO, PETITIONER, VS. THE COURT OF APPEALS,
HON. ALFREDO S. REBUENO, IN HIS CAPACITY AS JUDGE OF THE
COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH IV,
MANUEL S....**

G.R. Nos. L-38899-L-38901. June 29, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari, with preliminary injunction, seeking to set aside the decision[*] of the Court of Appeals dated 21 May 1974, in CA-G.R. Nos. 02580-82-SP, entitled "Teodoro Juliano v. Hon. Alfredo Rebueno, et al." and its Resolution, dated 21 June 1974, denying petitioner's motion for reconsideration of said decision which affirmed the Order of Execution of the Court of First Instance of Camarines Sur, Branch IV, contained in its Resolution[**] of 31 August 1973 in Civil Cases Nos. 437, 438 and 439, entitled "Domingo Pervera v. Teodoro Juliano," "Braulio Obias v. Teodoro Juliano" and "Jose Pervera v. Teodoro Juliano," respectively.

The facts of the case are as follows:

Private respondents herein, namely, Domingo Pervera, Braulio Obias and Jose Pervera, filed before the Court of First Instance of Camarines Sur three (3) separate complaints, all dated 2 November 1970, for rescission of contract with damages, against petitioner herein, Teodoro Juliano, docketed as Civil Cases Nos. 437, 438 and 439, respectively.

A judgment of default, dated 19 November 1971, was rendered by the then judge of said trial court, Judge Rafael S. Sison, against the petitioner. But when respondent Judge Alfredo S. Rebueno succeeded Judge Sison, the former reconsidered and set aside the latter's decision, dated 19 November 1971, thereby allowing petitioner to adduce evidence in support of his defense. But after the petitioner presented his evidence, the respondent judge rendered a decision, dated 31 March 1973, which was again adverse to herein petitioner. The dispositive part of said decision is quoted hereunder:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the contract, 'Deed of Assignment of Forest Concession' together with the supplementary document, 'Agreement on Manner of Payment' both executed on July 11, 1965, by the plaintiffs Domingo Pervera, Braulio Obias, and Jose Pervera in favor of the defendant, Teodoro Juliano, rescinded and cancelled, null and void, without force and effect ab initio; likewise declaring rescinded and cancelled, null and void without force and effect, the transfer of Ordinary Timber License No. 940-63, 855-60, and 1019-13 from the plaintiffs to the defendant; restoring to the plaintiffs the immediate and peaceful possession of the lumber concessions respectively covered and registered formerly on their names under Ordinary Timber Licenses Nos. 940-63, 855-60, and 1019-13, and ordering the O.I.C., Bureau of Forest Development, formerly Director of the Bureau of Forestry to reinstate said licenses corresponding in the name of the plaintiffs, as grantees and licensees immediately prior to July 11, 1965;

"In Civil Case No. T-437, condemning the defendant to return to the plaintiff, Domingo Pervera the six thousand (6,000) cubic meters of lumber he has taken from plaintiffs concession from July 11, 1965 up to the present or in lieu thereof to pay the said plaintiff the sum of P72,000.00 representing its value, plus the sum of P15,000.00 as damages for attorney's fees and other expenses of court litigation, less the sum of P3,432.00 refundable to the defendant, or the sum total of Sixty-Three Thousand (P63,000.00) Pesos, with six (6%) percent legal interest from July 11, 1966 until full payment is made and the costs of this action;

"In Civil Case No. T-439, likewise condemning the defendant to return to the plaintiff Jose Pervera the five thousand (5,000) cubic meters of lumber he has taken from the plaintiff's concession from July 11, 1965 up to the present, or in lieu thereof the sum of P60,000.00 representing its value, plus P15,000.00 as damages for attorney's fees and other expenses of court litigation, less the sum of P500.00 refundable to the defendant or the sum total of Seventy- Four Thousand Five Hundred (P74,500.00) Pesos, likewise with six (6%) percent legal interest from July 11, 1966 until full payment is made and the costs of this suit.

"Let a copy of this decision be furnished the O.I.C., Bureau of Forest Development, formerly Director of the Bureau of Forestry, Manila." (Annex D).[1]

Petitioner seasonably appealed the 31 March 1973 decision of the trial court to the Court of Appeals. The appeal was docketed as CA-G.R. Nos. 54368-70-R.[2] On the other hand, private respondents (as plaintiffs) filed before the trial court their "Motion For Execution Pending Appeal," dated 8 May 1973,[3] which petitioner opposed.

After hearing the parties on the "Motion For Execution Pending Appeal," on 31 August 1973, the trial court resolved the motion in favor of the movants (herein private respondents) and ordered that a writ of execution be issued, pending the appeal in CA-G.R. Nos. 54368-70-R, and in accordance with the 31 March 1973 decision in Civil Cases Nos. 437, 438 and 439.

Petitioner filed two (2) motions before the trial court, one, for the reconsideration of the 31 August 1973 Resolution, and the other, for the nullification of the writ of execution pending appeal, which was issued pursuant to said Resolution. The trial court denied both motions.

Petitioner then filed a petition before this Court to review the 31 August 1973 Resolution of the trial court, ordering the issuance of a writ of execution pending appeal. However, in a Resolution of 14 November 1973, this Court resolved to refer the petition to the Court of Appeals (the notice of appeal in the main case having been filed in, and the petition being properly within the jurisdiction, of said appellate court). The petition referred to the Court of Appeals was docketed as CA-G.R. Nos. 02580-82-SP.

The Court of Appeals gave due course to the petition in CA-G.R. Nos. 02580-82-SP, at the same time issuing the writ of preliminary injunction prayed for by the petitioner. In due course, the appellate court dismissed the petition and dissolved the writ of preliminary injunction, in its decision of 21 May 1974.

On 10 July 1974, petitioner appealed to this Court the decision of the Court of Appeals in CA-G.R. Nos. 02580-82-SP, by filing the instant petition, claiming that the Court of Appeals erred in sanctioning the 31 August 1973 Resolution of the respondent judge, which ordered immediate execution of judgment pending appeal, and praying, among others, that:

"3. Pending the hearing and adjudication of this Petition, this Honorable Supreme Court issue a Writ of Preliminary Injunction, enjoining the Court of Appeals from enforcing its Decision, dated May 21, 1974, in CA-G.R. Nos. 02580-82-SP (Annex "A"), and restraining the respondent Judge, Hon. Alfredo S. Rebueno, from enforcing his "Resolution," dated August 31, 1973, as well as his Order, dated June 7, 1974 in Civil Cases Nos. T-437, T-438 and T-439 (Annex "D"), and, likewise, ordering the respondent Mauro Fajardo, as Provincial Sheriff of Camarines Sur, and/or his deputy, to refrain from taking any further action in connection with the said "Resolution," dated August 31, 1973, and Order, dated June 7, 1974 (Annex "D"). and to desist

from continuing with the sale on July 13, 1974 of the properties belonging to herein petitioner and to the Makabayan Development Corporation, until this Petition is finally heard and decided."[4]

Without giving due course to the petition, on 15 July 1974, this Court issued a temporary restraining order.[5] The Clerk of Court of this Court sent a telegram to respondent Provincial Sheriff Mauro Fajardo, restraining him, his agents and/or representatives, from taking further action in Civil Cases Nos. T-437-39, pending before the trial court, and from continuing with the sale of properties belonging to the petitioner. However, despite the telegram of the Clerk of Court, properties allegedly belonging to petitioner were sold pursuant to the writ of execution afore-mentioned. As a result, on 25 November 1974, this Court issued a Resolution finding, among others, respondent Provincial Sheriff Mauro Fajardo in contempt of court, and ordering respondent Judge Alfredo S. Rebueno to issue all the necessary orders for the recovery and return of all the properties prematurely sold by said respondent sheriff.

Presently, however, the Court has learned upon verification with the Court of Appeals that the main case from which the present case arose, that is, the appeal of Teodoro Julianano (petitioner herein) before said Court, and docketed as CA-G.R. Nos. 54368-70-R, was decided[***] on 24 September 1980, affirming the decision of the trial court, dated 31 March 1973, which granted the reliefs prayed for in the complaints of the private respondents, i.e., rescission of contracts with damages. Said decision of the Court of Appeals was not appealed to this Court[****]. Hence, said decision of the respondent Judge, dated 31 March 1973, as affirmed by the Court of Appeals decision, dated 24 September 1980, has long become final and executory, if not actually executed by now, thereby making the issue in the case at bar, namely the propriety of the issuance by the trial court of its Order of Execution Pending Appeal, dated 31 August 1973, which was also affirmed by the Court of Appeals in its Resolution dated 21 May 1974 in CA-G.R. Nos. 02580-82-SP, moot and academic.

Furthermore, the Court notes that the respondent sheriff who executed the questioned writ of execution pending appeal, Atty. Mauro B. Fajardo, died last 23 May 1975.[6]

WHEREFORE, premises considered, the petition is DISMISSED for being moot and academic. The temporary restraining order issued by the Court, dated 15 July 1974, is lifted, and the Resolution, dated 25 November, 1974, is recalled. No costs.

This decision is immediately executory.

SO ORDERED.

Yap, C. J., Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[*]Penned by then Court of Appeals Associate Justice Hermogenes Concepcion, Jr. with the concurrence of Associate Justices Guillermo D. Santos and Sixto A. Damondon.

[**] Issued by Judge Alfredo S. Rebueno.

[1]Rollo, pp. 3-4.

[2] Rollo, p. 13.

[3] Decision of the Court of Appeals, CA-G.R. Nos. 02580-82-R, p. 3.

[4]Rollo, p. 23.

[5] Rollo, p. 54.

[***] Penned by Justice Jose A.R. Melo, with the concurrence of Justices B.S. De La Fuente and Carlos L. Sundiam.

[****]It became final and executory on 17 February 1981. Entry of judgment was made on 21 April 1981.

[6]Rollo, p. 657.

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