

**JOSE RAMOS, PETITIONER, VS. HON. HONORATO GARCIANO, JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, ANASTACIO G. AZCARRAGA, CLERK OF COURT OF THE COURT OF FIRST INSTANCE OF LEYTE...**

*G.R. No. L-22341. April 29, 1969*

Ponente: MAKALINTAL, J.

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**MAKALINTAL, J.:**

In a case for the collection of a sum of money before the Court of First Instance of Leyte (Civil Case No. 367), herein petitioner Jose Ramos - the defendant in said case - was ordered in the decision dated December 15, 1954, to pay the winning party the sum of P12,124.32, plus interest at 12% from November 9, 1946 until full payment, and costs. Jose Ramos appealed to the Court of Appeals, but the appeal was dismissed; his subsequent motion for reconsideration of the dismissal was denied for Lack of merit, "it appearing that judgment was already entered on June 21, 1956."

Conformably with the Court of Appeals' resolution the court a quo, Hon. Emigdio V. Nietes then presiding, issued on July 5, 1958 an order for the execution of the judgment. On August 20, 1958 the clerk of court of the Court of First Instance of Leyte, in his capacity as provincial sheriff ex officio, issued the corresponding writ of execution. The writ was, however, returned to the court unserved on October 7, 1958, with the following explanation from the sheriff:

"This Writ of Execution was received on the 20th day of August 1958 but was not served for the reason that Honorable Judge Emigdio V. Nietes suggested the undersigned Sheriff and Atty. Antonio Benedicto, attorney for the plaintiffs and a certain Manuel Trani, one of the plaintiffs, to suspend the execution in the meantime until Civil Case No. 102, Jose Ramos, vs. National Assurance Company and Felipe R. Santos, defendants, would be terminated.

"Said suggestion of Judge Nietes was agreed by all the above-mentioned Sheriff, Attorney and plaintiff(s).

"In view of this, the undersigned Sheriff could not serve this Writ of Execution for the reason stated above."

Nevertheless, even before the termination of Civil Case No. 102[1] a 1st alias writ of execution was issued on March 29, 1960. This writ was not served because the winning party could not or would not shoulder the necessary expenses of execution. Two other alias writs were subsequently issued on July 25 and October 13, 1960, respectively; but although both writs were served upon the defendant, the same were not satisfied because the plaintiff, on both occasions, "failed to deposit at the Clerk of Court money for expenses in registering Notice of Attachment at the Register of Deeds, Tacloban City and for publication of Notice of Sale at Public Auction within 60 days, the lifetime of said writ."

It was not until June 29, 1961 when the 4th alias writ of execution was issued. By virtue thereof the sheriff, on August 17, 1961 levied upon some seventeen (17) parcels of land belonging to Jose Ramos. After due notice as

required by law, all seventeen (17) parcels of land were sold at public auction on August 8, 1962 to satisfy the judgment in Civil Case No. 367.

More than a year later, or on October 23, 1963 to be exact, Jose Ramos petitioned the court a quo to set aside the execution sale of August 8, 1962 on the principal ground that the 4th alias writ of execution dated June 29, 1961 was null and void for having been issued five (5) years and eight (8) days after the entry of judgment on June 21, 1956. On October 28, 1963 the court a quo, this time presided by Hon. Honorato Garciano, denied the petition. A motion for reconsideration having been likewise denied, Jose Ramos filed the instant petition for certiorari with preliminary injunction. However, due to the inability of the petitioner to post a P10,000.00 property bond as required by our resolution of March 2, 1964, we did not issue the writ of preliminary injunction prayed for.

There seems to be no serious dispute that the 4th alias writ of execution was issued eight (8) days after the lapse of the five (5) year period from the date of the entry of judgment in Civil Case No. 367. As a general rule, after the lapse of such period a judgment may be enforced only by ordinary action, not by mere motion (Section 6, Rule 39, Rules of Court).

Although admitting the pertinent dates to be accurate, respondents nevertheless insist that the 4th alias writ of execution was issued on time. It is their theory that the suspension of the execution of the judgment on October 7, 1958, upon suggestion of the trial court, interrupted the running of the five (5) year period, since Jose Ramos' properties were in custodia legis while Civil Case No. 102 was being litigated and therefore could not have been attached or levied upon. Respondents assert that it was only on October 21, 1960, when the decision in said case became final, that Jose Ramos properties became legally free from any lien; and that it was only from said date that the five-year period for execution started to run again.

It is not correct to say that the properties involved herein were in custodia legis in Civil Case No. 102. For a property to be in custodia legis it is essential that the same be legally seized or attached pursuant to a valid order or judgment issued by a competent court and held by an officer of the court, subject to its order (see *Tamisin vs. Odejar*, L-12068, May 31, 1960). Nothing in the records of this case, particularly the decision in Civil Case No. 102, shows that Jose Ramos' properties were ever attached at the commencement of that case or anytime thereafter, and during its pendency respondents were not legally barred from executing the judgment in Civil Case No. 367.

The limitation that a judgment be enforced by execution within five years, otherwise it loses efficacy, goes to the very jurisdiction of the Court. A writ issued after such period is void, and the failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.[2] In *Arambulo vs. Court of First Instance* (see footnote below) it was held that "the mere filing of a motion for a writ of execution of a judgment, without having taken the necessary steps to obtain said execution, does not interrupt the five-year period ... and that the order granting said motion entered after said period had elapsed, is null and void for lack of jurisdiction." In fact, an injunction which stops the sale of property levied under execution but does not enjoin the execution of the judgment, does not interrupt the period of limitations.[3] The reason, of course, is that such an injunction does not prevent execution otherwise than by the sale which has been enjoined.

In cases where this Court has held that the statutory period was suspended, it was because the delay was attributed to the judgment debtors. "The general rule is that there should not be included the time when execution is stayed either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without scire facias." [4] The reason for this is

that, the stay of execution being with the consent and for the benefit of the, judgment debtor, and the injunction on writ of error being his own act, he should not take advantage of them, nor could he be surprised or prejudiced by the delay.

In the case at bar the several writs of execution issued within the five-year period were not carried out because of the plaintiff's own act; and never at the instance of the defendant. And with particular reference to the initial writ of August 20, 1958, its suspension did not interrupt the said period because, first, such suspension was without the knowledge and consent of the defendant, and secondly, the reason therefor was the pendency of another case wherein certain lands owned by herein petitioner were involved, the pendency of which case did not preclude the levy of the writ of execution upon other properties.

In view of the foregoing considerations, the writ prayed for is granted, and the execution sale of the petitioner's properties pursuant to the fourth alias writ of execution dated June 29, 1961, is annulled and set aside. No pronouncement as to costs.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.  
Concepcion, C.J., and Castro, J., on official leave.  
Capistrano, J., did not take part.

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[1] The decision in that case was dated September 21, 1960. It was an action filed by Jose Ramos - the same defendant in Civil Case No. 367 - assailing the validity of a mortgage over several parcels of land owned by him which he allegedly made in favor of the National Surety & Insurance Company. Jose Ramos denied having executed the mortgage, claiming that his signature thereon had been forged by one Felipe R. Santos. To prevent the alleged mortgagee from foreclosing the mortgage and the sheriff from going on with the auction sale, Jose Ramos obtained a writ of preliminary injunction. After trial court a quo rendered judgment in favor of Jose Ramos.

[2] *Compañia General de Tabacos vs. Martinez*, 17 Phil. 160; *Arambulo vs. CFI of Laguna*, 53 Phil. 302; *Francisco, Rules of Court*, Sec. 61 Rule 39, p. 629, citing *Organo v. Florendo*, 61 Phil. (unpub.) 1028.

[3] *Demetrio vs. Lesaca*, 63 Phil. 112.

[4] *Lancita vs. Magbanua*, L-15467, January 31, 1963, 7 SCRA 42; *Manila Railroad Co., vs. Court of Industrial Relations*, L-18389, January 31, 1963, 7 SCRA 174, 33 C.J.S. Sec. 66, p. 208.

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