

GELACIO BODIOGAN, PETITIONER, VS. HON. PATRICIO C. CENIZA, ETC., ET AL., RESPONDENTS.

G. R. No. L-8333. December 28, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for certiorari to annul certain orders issued by the respondent judge in Civil Case No. 1407 of the Court of First Instance of Occidental Misamis denying relief from the judgment rendered therein and authorizing the execution of said judgment.

It appears that the civil case mentioned was initiated by the herein petitioner Gelacio Bodiongan with a complaint filed on September 4, 1951 for the recovery of possession of a truck, which, so it was alleged, had been mortgaged and delivered to him by Antonio Barrientos, one of the defendants therein, but which, through force and intimidation and without the mortgage debt having been paid off, was later "snatched" by the said Antonio Barrientos and, without plaintiff's knowledge, sold, first to Roman Mabanag and later to the other defendant Prudencio Revelo. Mabanag intervened and claimed ownership of the truck through purchase from Antonio Barrientos. Plaintiff impugned the purchase as made in bad faith and in violation of the chattel mortgage law, and then amended his complaint to include Policarpio Barrientos as party defendant, alleging that the latter had also mortgaged a truck to him but had failed to pay the mortgage within the time stipulated. The amended complaint, therefore, prayed for the return of the truck taken from plaintiff by the defendant Antonio Barrientos and for the foreclosure of the chattel mortgage constituted on the other truck by the other defendant Policarpio Barrientos. The defendants filed their answer to the amended complaint, and plaintiff, on his part, filed a reply to the said answer. And with the issues thus joined and with most of the evidence already presented, the parties to the action submitted an agreement signed by themselves and their respective attorneys with the request that judgment be rendered in accordance therewith. In view thereof, the court rendered its decision, dated September 25, 1953, quoting and approving the agreement aforementioned and ordering the parties to comply with its terms.

The agreement reads:

"BETWEEN PLAINTIFF BODIONGAN AND INTERVENOR ROMAN MABANAG

- That the truck claimed by the Intervenor Roman Mabanag in the above entitled case shall remain with and belong to the herein plaintiff, Gelacio Bodiongan, whose ownership thereof Intervenor and defendant hereby recognize and respect;
- That plaintiff Gelacio Bodiongan shall pay the intervenor Roman Mabanag the sum of SIX THOUSAND NINE HUNDRED PESOS (P6,900.00) Philippine currency, the sum of P2,500.00 is hereby paid, and the Intervenor Roman Mabanag acknowledges to have received the same;
- That the balance of P4,400.00 with 8 per cent interest shall be paid by the said plaintiff Bodiongan within a period of one (1) year in twelve (12) monthly installments, to wit; the sum of P366.66 within the first 5 days after the end of each and every month effective October 1, 1953;

- That should plaintiff fail to pay the first four (4) or any four (4) installments as above specified, the whole sum shall thereby become due and payable, and execution shall issue on the Judgment rendered based on this agreement.

BETWEEN PLAINTIFF BODIONGAN AND DEFENDANT ANTONIO BARRIENTOS:

- That plaintiff Gelaejo Bodiongan shall return and deliver to "defendant Antonio Barrientos in good working condition and properly equipped and fit for TPU operation his passenger truck subject of the controversy between them in this case;

- That the work in putting the said truck in good working condition shall be done by the DERONG REPAIR SHOP at Ozamis City and that all the expenses incurred therein including labor, costs of spare parts and other services, shall be form exclusively by the plaintiff;

- That the delivery of the said truck in the conditions above stated shall be made to the defendant at Ozamis City within a period of two (2) months from the date of this agreement;

- That in satisfaction of the claim of the plaintiff, defendant Antonio Barrientos shall pay to him the sum of FIVE HUNDRED PESOS (P500.00) within the period of two (2) months from the date the passenger truck above referred to is delivered to and received by the defendant;

- That in case of failure of the plaintiff to comply with the obligation above stated, the Court shall order the repair of the said truck at the expense of the said plaintiff;

- That in ease of failure of the said defendant Antonio Barrientos to pay the sum herein above stated, the said truck shall answer for the said amount in the form of security."

On December 10, 1953, the defendant Antonio Barrientos filed a motion alleging that plaintiff had failed to return the truck to the said defendant within the two months stipulated in the agreement and praying, among' other things, that the court order the truck repaired at plaintiff's expense and that the sum of P7,717, the estimated cost of repairs be deposited with the city treasurer from whom the repair shop was to draw such amounts as might be needed from time to time. The motion contains a notice to plaintiff himself that it was to be submitted for the resolution of the court at 8 o'clock a.m. on December 15, 1953 and also a statement that copy thereof had been sent by registered mail to plaintiff on the 10th of that month. No objection having been made to the motion, the respondent judge, on December 15, rendered an order in open court directing the clerk of court to execute the decision in accordance with what was prayed for in said motion. But it would appear that, at the instance of plaintiff, the effectivity of the order was suspended so as to give him time to comply with the agreement and that, before the period of grace had expired, plaintiff delivered the truck to the clerk of court.

On March 9, 1954 and then again on the 22nd of that month, Antonio Barrientos filed a second motion. for execution, alleging that the truck delivered by Bodiongan to the clerk of court was not in good working condition and was disapproved for registration by the office of the district engineer, for which reason the movant prayed that the order suspending execution be lifted. On March 26 plaintiff filed his opposition to the second motion for execution, but on the following day, March 27, the date set for the hearing of the motion, the court, finding the motion well founded, handed down an order (similar to the one rendered on December 15) requiring plaintiff to deposit with the city treasurer the sum of P7,717, the estimated costs of repairs, and directing a levy on his property to cover that amount should he fail to do so within 15 days. On April 14, plaintiff asked for a reconsideration of this last order, but the motion having been found to be groundless and without merit, the court handed down an order, dated July 3, 1954, directing that its order of March 27, 1954 be immediately executed.

Five days thereafter, that is, on July 8, 1954, plaintiff served notice on the court that he was changing counsel and that thereafter Cayetano P. Paderanga was to be his attorney "of record" in place of the attorneys-of-record, Attys.

Crispin C. Labaria and Ceferino E. Paredes" and on that same day plaintiff also filed a verified petition to have the aforementioned agreement of September 5, 1953 and the decision rendered in accordance there with, as well as the orders thereafter handed down, set aside, on the grounds (1) that plaintiff had affixed his signature to said agreement after the respondent judge had exerted pressure and undue influence upon him to the extent of making the judge's action in that regard amount to a fraud; (2) that fraud was also committed when notice of hearing of the motions for execution, and the motion for reconsideration was not served on his attorney; (3) that the order for execution dated March 27 was "manifestly unconscionable, highly oppressive, evidently unreasonable, and contrary to law;" and (4) that plaintiff had sufficient, valid and sound causes of action against the other party litigants. In an ex parte motion separately filed on that same day, plaintiff, through his new attorney, asked the respondent judge to "disqualify or inhibit himself from further acting in the instant case on grounds of propriety and delicacy."

Opposing the petition for relief, the defendant Antonio Barrientos denied the imputations of fraud and judicial pressure and undue influence therein contained and called attention to the fact that the said petition was too late, the same having been filed more than 9 months after the decision sought to be set aside. Finding the opposition "to be well-founded, in that the petition for relief has been filed out of time as provided for in Section 3, Rule 38," the court under date of August 28, 1954 rendered an order denying the said petition, and on September 11 issued another order directing the clerk of court "to issue a writ of execution as prayed for."

On September 18, plaintiff filed a motion asking for a reconsideration of the order of August 28, denying his petition for relief; and the motion for reconsideration having been denied, he filed the present petition for certiorari in this Court on October 2, 1954, alleging that the respondent judge, gravely abused his discretion in ignoring his motion for disqualification and also acted arbitrarily and with bias in passing upon and denying the petition for relief in which the said judge's "own actuations have been questioned and put in issue," declaring the said petition out of time and not applying the ruling of his Court in the case of Jose Samaniada vs. Epifanio Mata, et al., 92 Phil., 426.

After going over the record, we agree with the respondent trial judge that the petition for relief was out of time, it appearing that it was filed more than nine months after the decision sought to be set aside was rendered.

Arguing that the petition was filed on time, petition cites in the case of Samaniada vs. Mata, supra. We find the citation not in point. Though the judgment in that case was also based on a compromise agreement, that judgment was not considered final because a commissioner designated by the parties was still to segregate from a disputed parcel of land the portion to be awarded to one of the parties and this Court said that "for all practical purposes the proceedings after the compromise agreement was a partition of real estate" which, according to the Rules, needed court approval. It was, therefore, there held that the decision based on the agreement did not become final until after the submission of the report by the commissioner on segregation and its approval by the parties and the court, so that the period to file the petition for relief did not commence to run from the date of the decision but only after the court had acted on the commissioner's report. In the present case, however, the agreement of the parties contained nothing which would require subsequent court approval. All that remained for the court to do was to enforce its judgment. The fact that the court could, at that stage of the proceeding, still act in the ease in the proceeding for execution, does not make the judgment to be executed any the less final.

Petitioner makes capital of the fact that the respondent judge issued his order denying the petition for relief without first deciding the motion for his disqualification for reasons of "propriety and delicacy". These, however, are no legal grounds for disqualifying a judge, and while it is true that the respondent judge did not expressly declare himself qualified, still in denying the petition for relief instead of withdrawing from the case, he must be deemed to have in effect decided in favor of his competency. At any rate, the question of whether or not the

respondent judge should have disqualified himself from taking cognizance of the petition for relief is really of no importance, considering that the said petition was, as the record does show, filed more than nine months after the decision sought to be set aside and, therefore, beyond the period allowed by section 3 of Rule 88.

Wherefore, the petition is denied with cost against the petitioner.

Paras, C. J., Bengzon, Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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