

**LORETA CABRIAS AND CRESENCIO CABARGA, PETITIONERS, VS.
HON. MIDPANTAO L. ADIL, JUDGE OF THE COURT OF FIRST
INSTANCE OF ILOILO,(BRANCH II), CANDIDA CABAÑAS, AURORA
CABAÑAS, AND V...**

G.R. No. L-49648. March 18, 1985

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari to annul and set aside the orders issued by respondent judge on October 2, 1978 and November 22, 1978 in Civil Case No. 9002 of the Court of First Instance of Iloilo, entitled: "Loreta Cabrias, et al., plaintiffs, versus Candida Cabañas, et al., defendants" on the ground that the said orders were allegedly issued without jurisdiction or in excess of jurisdiction or with grave abuse of discretion.

The record shows that on January 29, 1968, the plaintiffs, now petitioners, Loreta Cabrias and Cresencio Cabarga, filed a complaint for FORCIBLE ENTRY against the herein private respondents Candida Cabañas, Aurora Cabañas and Venancio Cabañas, with the Municipal Court of Leon, Iloilo, docketed therein as Civil Case No. 49 for the recovery of possession of a parcel of land with an area of 6,987 sq. m., more or less, situated in Barangay Buga, Leon, Iloilo, and more particularly known as Assessor's Lot No. 317-part, which the defendants had allegedly usurped. At the start of the trial, the Municipal Court of Leon commissioned Asst. Municipal Treasurer Vicente C. Cabusbusan, Barrio Captain Elias Calambinay, and Chief of Police Quirico C. Cagampang to delimit the boundaries of the land in litigation.[1] After trial, or on May 11, 1971, judgment was rendered in favor of the plaintiffs, ordering the defendants "to vacate the premises of Assessor's Lot 317-part of plaintiffs; to pay plaintiffs P1,057.50 as damages suffered for 1969 and to pay annually said amount until possession of the property is delivered back to plaintiffs, and the costs of this action." [2]

From this judgment, the defendants appealed to the Court of First Instance of Iloilo where the case was docketed as Civil Case No. 9002. On September 22, 1975, judgment was rendered on the case as follows:

"WHEREFORE, premises considered, judgment is hereby entered in favor of plaintiffs and against the defendants ordering that:

"(1) Defendants, their representatives or agents immediately vacate Assessor's Lot No. 317-part, and deliver the same to the herein plaintiffs, their representatives, agents or assignees;

"(2) To pay plaintiffs the values of the bamboos, palay and mangoes, which they got when they forcibly usurped the disputed premises in 1969, all with a total value of P1,103.00 plus an interest of 12% per annum since 1970 until fully paid;

"(3) To deliver to plaintiffs 10 bultos, double measure, of palay, 125 bamboo poles, and 16 baskets (caing) or their current money value, yearly from 1970 until the plaintiffs are restored in possession of the premises, plus 12% interest annually;

"(4) To pay the plaintiffs P2,000.00 by way of moral damages; P2,000.00 as exemplary damages for wantonly

and maliciously usurping their property; P1,000.00 attorney's fees and to pay the costs.

"The writ of preliminary injunction issued by the Municipal Court of Leon, Iloilo, in this case is hereby made permanent." [3]

No appeal was taken therefrom so that a writ of execution was issued in the case on November 12, 1975. [4] The plaintiffs, however, did not wait for the sheriff to deliver to them the contested lot, but occupied an adjacent lot, Lot 359, belonging to the defendants, which they claimed to be the lot in question, and destroyed a house built thereon. They also harvested the palay crops, the fruits from the mango and coconut trees, and cut the bamboo planted on the land. [5] As a result, the respondent judge ordered the Deputy Sheriff to employ the services of a licensed Geodetic Engineer to effect a relocation of the premises to be delivered to the prevailing party. [6] On November 28, 1977, the Deputy Sheriff submitted a report which reads as follows:

"COME NOW, the Deputy Sheriff Manuel Balsimo and Commissioner of the Court, Manuel Alitre, and unto this Honorable Court most respectfully submits the following report in compliance with the Order of this Court dated September 20, 1977:

"The undersigned Deputy Sheriff and Court Commissioner, together with Patrolmen Leonardo Calawigan and Cesar Campronero of Leon Police Station, a team of Surveyors of the Manosa Surveying Office, Bo. Captain Juan Ca-amban of Barrio Buga, Leon, Iloilo, and the plaintiffs and defendants of the above-entitled case, went to the land in question on November 27, 1977, to effect the relocation and we found that the plaintiffs were already occupying the adjacent land, Assessor's Lot No. 359, owned by the heirs of Dionisio Cabanas, claiming that Lot No. 359 is Lot No. 317-part and they objected to occupying Lot No. 317-part for reason that this lot is not as productive as Lot No. 359 where mangoes, coconuts and palay are found growing, hence, the area subject of execution could not be implemented for reason of mistaken identity." [7]

In view thereof, the respondent judge, in an order dated April 26, 1978, directed the plaintiffs "to show cause within 30 days from today why they should not be ordered arrested or contempt of court for failure to respect the Writ of Execution issued by this Court awarding them only Lot No. 317-part and until now have been illegally occupying Lot 359 which is not included in Lot No. 317-part per Report of the Commissioners constituted by this Court, dated November 28, 1977." [8]

On August 3, 1978, the respondent judge, upon motion of the plaintiffs, ordered the issuance of an alias writ of execution. [9] Pursuant thereto, several properties of the defendants and their bondsmen were levied upon and advertised to be sold at a public auction sale on October 5, 1978.

On August 30, 1978, the defendants filed a motion to declare the plaintiffs in contempt for illegally occupying Lot 359. [10]

The defendants also presented in court, a motion to annul the public auction sale scheduled for October 5, 1978, [11] and a motion to quash the alias writ of execution issued on August 3, 1978, [12] claiming that they cannot be held liable for the judgment in view of the plaintiffs' claim that the land in controversy is Lot 359 and not Lot 317-part, so that there was no basis for the judgment.

The plaintiffs opposed the motions on the ground that the judgment rendered by the court had already become final and executory and can no longer be assailed. [13]

Acting upon the motions, the respondent judge, in an order dated October 2, 1978, ordered the suspension of the public auction sale, saying:

"Pending resolution of the incidents filed in this case, the sale at public auction of the lot involved is hereby suspended and the issuance of Alias Writ of Execution is hereby held in abeyance." [14]

Then, on November 22, 1978, the respondent judge ordered the plaintiffs to vacate Lot 359. The order reads, as follows:

"It appearing that the plaintiffs had not complied with the order of this Court dated April 26, 1978 per Motion for Contempt dated August 30, 1978 filed by counsel for the defendants, the plaintiffs are hereby ordered to vacate Lot No. 359 (Cad. Lot No. 3745 of Leon Cadastre) which belongs to the defendants herein within five days from receipt of this Order." [15]

The plaintiffs filed a motion for the reconsideration of said order, claiming that the respondent judge had no jurisdiction over Lot 359 on the ground that the said lot was not the subject matter of the case and the recourse of the defendants if any, is not to file a case for contempt, but to file a separate civil action before the proper court for the vindication of their rights over said Lot 359. [16] The plaintiffs also filed a motion for the reconsideration of the order dated October 2, 1978, [17] but the court denied both motions for lack of merit. [18] Hence, the present recourse.

On January 5, 1979, the plaintiffs vacated Lot. 359. [19]

1. The petitioners' claim that the respondent judge had no jurisdiction to order them to vacate Lot 359 on the ground that the said lot was not the subject-matter of the controversy is without merit. It is a truism that every court has the power "to control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto." [20] It has also been said that:

"x x x every court having jurisdiction to render a particular judgment has inherent power and authority to enforce it, and to exercise equitable control over such enforcement. The court has authority to inquire whether its judgment has been executed, and will remove obstructions to the enforcement thereof. Such authority extends not only to such orders and such writs as may be necessary to carry out the judgment into effect and render it binding and operative, but also to such orders as may be necessary to prevent an improper enforcement of the judgment. If a judgment is sought to be perverted and made the medium of consummating a wrong the court on proper application can prevent it." [21]

The final judgment rendered by the respondent judge calls for the delivery of Lot 317-part to the petitioners. It did not license the delivery of Lot 359 to the prevailing party. Since the herein petitioners are trying to enforce the judgment of the court by occupying Lot 359 which is not in accord with the terms of the judgment rendered, the court had the power and authority to order the petitioners to vacate the same and adhere to the terms of the judgment sought to be enforced.

2. There is also no merit in the petitioners' contention that the respondent judge abused his discretion in issuing the questioned order of October 2, 1978, holding in abeyance the issuance of an alias writ of execution and suspending the public auction sale of the properties of the defendants and their bondsmen to satisfy the judgment of the court. While it may be conceded that a court cannot refuse to issue a writ of execution upon a final and executory judgment, certain facts and circumstances transpired after the judgment became final which would render the execution of the said judgment unjust. As hereinbefore stated, the plaintiffs, without waiting for the sheriff to restore to them the possession of the contested parcel of land, occupied an adjacent lot, Lot 359, belonging to the defendants, which they claimed to be the lot in question, and destroyed the house of the defendants built thereon. They also harvested the palay crop, the fruits of the mango and coconut trees, and cut bamboos planted on the land, to the damage and prejudice of the defendants. It is but proper that the sale at public auction be suspended to give the defendants an opportunity to set off a claim against the plaintiffs. [22]

WHEREFORE, the petition should be, as it is hereby, **DISMISSED**. The respondent judge, or somebody appointed in his stead, is hereby directed to assess the damage incurred by the defendants as a result of the

wrongful occupation of their land by the plaintiffs which amount should, thereafter, be set off against the judgment rendered in Civil Case No. 9002 of the Court of First Instance of Iloilo. With costs against the petitioners.

SO ORDERED.

Makasiar, Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] Rollo, p. 53.

[2] Id., p. 2.

[3] Id., pp. 2-3.

[4] Id., p. 3.

[5] Id., p. 98.

[6] Id., p. 54.

[7] Id., p. 43.

[8] Id., p. 14.

[9] Id., p. 19.

[10] Id., p. 20.

[11] Id., p. 25.

[12] Id., p. 29.

[13] Id., pp. 28, 32.

[14] Id., p. 34.

[15] Id., p. 22.

[16] Id., p. 22.

[17] Id., p. 35.

[18] Id., p. 24.

[19] Id., p. 42.

[20] Sec. 5(d), Rule 135, Revised Rules of Court.

[21] 31 Am Jur., Judgments, Sec. 882, pp. 363-364.

[22] Lee vs. Mapa, 51 Phil. 624.

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