

**ANITA DE LOS REYES, PETITIONER, VS. DOLORES DE UGARTE,
ASSISTED BY HER HUSBAND JUAN UGARTE, THE COURT OF FIRST
INSTANCE AND THE SHERIFF OF MANILA, RESPONDENTS.**

G.R. No. L-82. December 01, 1945

Ponente: MORAN, C. J.

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MORAN, C. J.:

On April 3, 1945, Dolores de Ugarte filed a complaint for ejectment in the Municipal Court of Manila against Anita de los Reyes. The municipal court held for Dolores de Ugarte and ordered Anita de los Reyes to vacate the premises in question, designated as 336-B Cataluna Street. From this order, Reyes appealed to the Court of First Instance of Manila.

On July 10, 1945, at the trial in the Court of First Instance of Manila, the parties through their respective attorneys, submitted a compromise-agreement for approval. In substance, the pertinent portion of the agreement provides that defendant Reyes could occupy the premises until September 15, 1945, at the same rate of rental, i. e., P30 per month, binding herself to vacate the premises on that date. Judgment was rendered in accordance with the compromise, but written notice thereof was not served upon the parties.

On September 18, 1945, Ugarte filed a motion asking for a writ of execution, which was granted. On September 19, and subsequent dates, defendant Reyes filed a motion to quash the writ of execution and a motion for relief on the ground of fraud or misrepresentation. The court denied the motion to quash the writ, and Reyes filed a motion for reconsideration, which was denied. The motion for relief was likewise denied. Hence, this petition for certiorari praying for the annulment of the writ of execution upon the ground that it was issued without jurisdiction.

Petitioner alleges that no formal notice has ever been served upon her of the judgment rendered approving the compromise. Requirement as to notice was, however, substantially complied with when petitioner acquired knowledge of the writ of execution containing a literal copy of the judgment, so much so that she later filed a motion to quash and a motion for relief. A judgment on compromise is not appealable and is immediately executory unless a motion is filed to set aside the compromise on the ground of fraud, mistake or duress, in which event an appeal may be taken from the order denying the motion, and that is petitioner's remedy in this case and not certiorari in this Court. Petition is dismissed, without costs.

Ozaeta, Jaranilla, Feria, De Joya, Pablo, Hilado, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.,

On April 3, 1945, Dolores de Ugarte filed a complaint in the Municipal Court of Manila to eject Anita de los Reyes from an accesoría located at No. 336-B Cataluna, Sampaloc, Manila. Said court rendered decision ordering defendant to vacate the premises and to pay the monthly rent of P30 from April 1, 1945. Defendant appealed to the Court of First Instance of Manila.

On July 10, 1945, at the hearing of the case, on the basis of an agreement submitted by both parties, decision was rendered allowing Anita de los Reyes to remain in the premises only until September 15, 1945. She agreed to vacate the accesoría on or before said date. It was also agreed that plaintiff may withdraw from the court the amounts deposited by defendant as rents, that defendant shall continue paying the monthly rent of P30 until September 15, 1945, and that she will pay the costs. The decision was verbally rendered by Judge De la Rosa in open court, and was noted down by the official stenographer, including the text of the agreement which forms part of the decision. This was later transcribed and on July 11, 1945, the decision, as transcribed, was signed by Judge De la Rosa. On the same day a copy was secured by the attorney for plaintiff in order to enable her to withdraw the rents deposited in court.

No notice or copy of the decision as signed by respondent judge was served on the defendant or her attorney.

Upon ex parte application of plaintiff, a writ for the execution of the decision was issued on September 18, 1945. Upon learning of the issuance of said writ of execution, defendant filed on September 19 a motion to quash said writ of execution on the ground that she was not notified of the decision rendered in the case and that, upon notification of said decision, she intended to pray that said decision be vacated on the ground that the stipulation upon which it is based was obtained from the defendant by fraud or false representation on the part of the plaintiff's agent.

On September 27, defendant filed a motion for new trial, on the grounds of fraud, mistake and surprise, supported by an affidavit signed by defendant, wherein she stated that when she entered into the agreement upon which the decision was based she at the same time had an understanding with the administrator or agent of the plaintiff to the effect that she could continue occupying the property "by paying a reasonable increase in the rental," which was never specified or agreed upon. Defendant alleged also that she consented to the stipulation because of the assurance of the administrator that she could continue occupying the premises after September 15, by paying an unspecified increased rental.

On October 2, the motion to quash the writ of execution was denied. On October 3, defendant filed a motion for reconsideration which was denied on October 4. The motion for new trial was denied on October 8, upon the ground that the judgment rendered in the case became final and executory.

Plaintiff contends that the fact that defendant was not notified of the decision as signed by the judge does not operate to nullify the writ of execution. Among others, her attorney cites the following authority:

"In the absence of statute, a judgment or decree entered by the consent of the parties can not be reviewed by appeal or by error proceedings. The consent however must extend to the entire judgment." (Nashville, C. M. St. L. E. Co. vs. United States, 113 U. S., 261; Adler vs. Van Kirk Land & Construction Co., 114 Ala., 551; 62 Am. St. Rep., 135; 21 S. O., 490; Show vs. Apelke, 110 Conn., 208.)

Plaintiff denies the existence of the understanding which defendant alleges she had with plaintiff's agent to allow the defendant to remain in the premises after September 15 by paying a reasonable increase in the rental.

On the hypothesis that the plaintiff's administrator could bind plaintiff by said understanding, which, defendant alleges, induced her to enter into the stipulation submitted in open court and later incorporated in the decision rendered, hypothesis that appears to be unacceptable in the absence of express authority granted by the plaintiff, on the basis of the facts stated in the pleadings and by attorneys of both parties in their oral argument during the hearing before us, we are not inclined to accept that such understanding really took place.

We can not see why defendant did not secure some evidence of the understanding to assure its enforcement knowing, as she did, that a decision was to be rendered and in fact, was rendered, stating September 15 as a dead line for her to remain in the premises.

It was alleged that defendant conveyed to her attorney the information about said understanding and that, at the time the stipulation was submitted by both parties to the court, defendant tried to make of record said understanding, but plaintiff's attorney opposed. It was admitted, nevertheless, by defendant's attorneys that no stenographic notes were taken about said incident. The narrated circumstances lead us to conclude that, in fact, no definite understanding took place. It is possible that the administrator had given defendant some hope or a possible understanding by which defendant may remain in the premises if the parties should agree on a reasonable increase of rent, but the fact that that reasonable increase was never specified proves conclusively that the alleged understanding never passed beyond the form of mere negotiations.

Now the question we have to consider is whether the court below had authority to issue the writ of execution on September 18, before defendant was notified of the decision as signed by the judge, or received any copy thereof. It is a fact that the decision was orally rendered in open court on July 10, in the presence of the defendant and her attorney, and since then both had full knowledge of said decision.

But it is also a fact that said decision, as transcribed, was signed by the judge only on July 11, and as signed was never served on the defendant.

In accordance with section 1 of Judicial Rule 35, all judgments "shall be in writing personally and directly prepared by the judge, and signed by him." From this provision it appears that what was dictated in open court on July 10 did not contain the essential requirements of a judgment and that the real judgment was rendered only on July 11.

It seems evident that, on the basis of legal technicality, defendant can allege that she was never notified of the judgment until September 18, when the writ of execution was issued, and that her knowledge of the decision dictated on July 10 must not be counted against her as a notification, as no judgment was yet rendered in accordance with court rules of which notice is to be served.

Against the legal technicality invoked by defendant, there is the undeniable fact that on July 10 the decision was orally rendered.

That she knew fully what the decision was.

That she could not expect that a different decision could be rendered, when said decision was rendered on the basis of a stipulation submitted by both parties and, in fact, just to approve and make effective said stipulation as agreed upon by the parties.

What is the purpose of the Rules of Court in allowing some time within which any party may file a motion for reconsideration, for new trial, or appeal, before a judgment may become executory?

It is to give him an opportunity to seek redress from any error in all or any pronouncement in the decision that may aggrieve him. In the present case, defendant had opportunity since July 10 to seek said redress.

What is the purpose of the judicial rules in requiring that all judgments shall be in writing personally and directly prepared by the judge, and signed by him? To eliminate uncertainty as to the contents of said judgment. In the present case the defendant could not allege any uncertainty in the decision rendered, because it was rendered to approve a stipulation which she herself submitted, with the plaintiff, to the court. Even before the decision was orally rendered, she was fully aware of the decision to be rendered, as the decision was a mere approval of the stipulation agreed upon between her and the plaintiff and submitted to the court before the same rendered it.

Defendant stated in her motion to quash the writ of execution that it was her purpose, "after notice of said decision" to petition the court "to vacate the judgment on the ground that the stipulation upon which it is based was obtained from the defendant by fraud or false representation." Why did she not make said petition right then and there on July 10, when the decision was rendered orally in open court?

When did she happen to know that she was the victim of fraud or false representation? If we accept what defendant states in her affidavit signed on September 27, such discovery took place "about the first days" of September, when she saw the administrator and offered him to pay a rental of ₱70 a month and, on his refusal, she offered to increase the rent to ₱100 monthly, but he still refused "and no longer wanted to abide by our agreement." Why did she not file the announced petition since then? Why did she wait until September 27 to file her motion for new trial on the grounds of fraud, mistake and surprise? Why did she not file said motion before the writ of execution was issued on September 18? Why did she wait more than a week after she was notified of said writ of execution before filing her motion for new trial? We tried in vain to look for defendant's answers to these questions.

It was never explained why the court failed to serve copy of the decision as signed on July 11 or to notify the defendant thereof, but it seems to us evident that such notification, under the circumstances of this case, has the nature of an empty formality, when the parties were notified in open court on July 10 of the decision rendered. Under these circumstances, we are of opinion that the purposes of notification were duly accomplished since July 10, although it took place one day before the decision as transcribed was signed by the judge.

Since then the defendant had full opportunity to require the administrator to fulfill the alleged understanding and to negotiate with him as to the reasonable increase of rent that must be agreed upon in order that defendant may be allowed to remain in the premises after September 15. The failure of defendant to make the negotiations and to see the administrator for nearly two months has never been explained.

The facts in this case show that defendant does not appear before us with hands completely untarnished. We are of opinion that, under the circumstances of the present case, defendant was notified of the decision or judgment since July 10, and since then she must have started to count the period within which she must seek redress by motion for new trial or reconsideration or by appeal, or other remedy provided by law, against said decision.

We come to this conclusion taking into consideration the spirit of the Rules of Court as shown in section 2 of Rule 1 where it is provided that the rules "shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

At any rate, even putting aside the notification made in open court on July 10, at the time when the decision was rendered in open court, approving the agreement submitted by the parties, the letter of the Rules of Court was complied with on September 18 when petitioner was notified of the writ of execution containing the text of the decision rendered on July 10, and, at least, since then, the decision must be considered as final and unappealable, because a decision rendered just to approve and make effective a stipulation or an agreement of the parties becomes ipso facto final and unappealable upon notification to the parties. The reason of this doctrine is obvious. When both parties enter into an agreement to end a pending litigation and request that decision be rendered

approving said agreement, it is only natural to presume that such action constitutes an implicit, as undeniable as *asi express*, waiver of the right to appeal against the decision. For a party to reserve, under the circumstances, the right to appeal against said decision, is to adopt an attitude of bad faith which courts cannot countenance. If the agreement was entered into with good faith and with honesty, there is no reason why a party to such agreement should reserve to himself the right to impugn said agreement by appealing against a decision approving the same.

We are of opinion therefore that the petition is without merit and must be denied.

DISSENTING

PARAS, J.,

Under the theory of the majority, the petitioner was notified of the decision of the respondent Court of First Instance of Manila on September 18 or 19, 1945, when she "acquired knowledge of the writ of execution containing¹ a literal copy of the judgment." Immediately thereafter, or on September 19, 1945, the petitioner filed a motion to quash the writ of execution. On September 27, 1945, she filed a motion to set aside the decision and for a new trial based on the grounds of fraud, mistake and surprise. The motion to quash was denied on October 2, 1945, whereupon, on the following day, the petitioner filed a motion for reconsideration which was denied on October 4, 1945. The motion for new trial was in turn denied on October 8, 1945.

At the time the present petition for certiorari was filed in this Court, the petitioner's motion for new trial was still pending before the respondent court and the respondent sheriff of Manila was threatening or about to enforce the writ of execution. In view whereof, I am of the opinion that appeal could not afford a plain, speedy or adequate remedy. As a matter of fact, the petitioner has prayed for the issuance of a writ of preliminary injunction which, however, was not acted upon by this Court. There was really a need for some preventive measure incident only to a certiorari proceeding. The judgment was not yet executory because the period for appealing, if not from the judgment of compromise, at least (as recognized by the majority) from the refusal of the respondent court to set it aside and to quash the execution, had not yet expired.

I therefore vote to grant the petition for certiorari in the first place or, otherwise to allow the petitioner to perfect an appeal without the regular period which has been suspended by the institution of this proceeding. The petitioner has not attempted to substitute the remedy for another which has been lost by inaction or abandonment, but merely availed herself of a procedure by which, before the lapse of the period for appealing, she sought to correct an alleged abuse of discretion or excess of jurisdiction on the part of the respondent court; and pending resolution on her petition, it cannot fairly be said that she was under any obligation to push her appeal through.

BRIONES, J., concurring:

I concur in the foregoing dissenting opinion.

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