

TAN CHING JI, PLAINTIFF-APPELLEE, VS. JUANITO MAPALO, IN HIS CAPACITY AS PROVINCIAL SHERIFF EX-OFFICIO OF COTABATO, THE PHILIPPINE NATIONAL BANK AND CAMPUA UY TINA, DEFENDANTS, ...

G.R. No. L-21933. February 22, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

The answer to the pivotal legal issue in this appeal on a question of law from a judgment of the Court of First Instance of Cotabato is supplied by *Uy Tina v. Avila*,^[1] a certiorari proceeding with the petitioner, the debtor, seeking to quash a writ of execution in favor of one of the respondents, Tan Ching Ji, plaintiff-appellee in this case. In the opinion of the Court penned by Justice Makalintal, the unequivocal holding is that the five-year period under Rule 39, Section 6 as to when a judgment may be executed on motion^[2] is to be counted not from the date "the judgment became final in the sense that no appeal therefrom could be taken, but when it became executory in the sense that it could already be enforced." There is thus sufficient legal basis for plaintiff's rescission suit, now before this Court on appeal, to set aside the auction sale of Uy Tina's properties, the debtor being the same petitioner in the aforementioned certiorari proceeding, in favor of defendant Philippine National Bank,^[3] sole appellant, insofar as it would adversely affect four specific items subject to prior attachment lien secured by plaintiff, included in the very same order of execution issued five years after the finality of the judgment but within such period counted from the time it could be executed and enforced. So the lower court held. It is thus apparent that its decision cannot be said to be vitiated by any error. We affirm, but subject to modification as will be hereinafter indicated.

As set forth in the appealed decision, plaintiff Tan Ching Ji filed a complaint for the rescission of an auction sale of certain properties of Uy Tina in favor of defendant, now appellant Philippine National Bank. It was shown in such complaint that in a civil case^[4] for the recovery of the sum of money, he obtained a first lien upon the properties of defendant Uy Tina by means of writs of attachment duly issued by the same court of first instance and that subsequently he obtained a judgment in his favor in the sum of P23,000.00. In another civil case filed against the same debtor, defendant Philippine National Bank was awarded the sum of P8,772.76. It then sued out a writ of execution and caused to be levied upon and sold at public auction the very same properties already attached by plaintiff. The facts were substantially admitted by defendant but as affirmative defense it was alleged that as a third party it was not bound by a writ of attachment issued. There was a pre-trial and thereafter a compromise agreement on both of which occasions there was an admission on the part of defendant Philippine National Bank that two parcels of land in the municipality of Dulawan, province of Cotabato, a commercial lot in the same municipality as well as a two-storey commercial and residential building, also in the same municipality, had been the subject of attachment in favor of plaintiff in his suit against the debtor, Uy Tina.^[5] The decision in the suit between plaintiff and Uy Tina rendered on February 4, 1954 awarded, as noted above, the sum of P23,000.00 to plaintiff, but upon agreement of the parties defendant Uy Tina was given a period of six years

within which to pay, during which time he could hold and enjoy the fruits of such properties. The judgment debt, however, remained unsatisfied and it was not until August 14, 1962 that there was an order for execution based on such judgment. In the meanwhile, as far back as February 23, 1959, the very same property, subject of the attachment, had been acquired by defendant Philippine National Bank in an execution sale resulting from a judgment in its favor in a suit filed by it against the same debtor for the amount of P8, 772,76.

On those facts, the lower court sustained plaintiff Tan Ching Ji, its decision of February 5, 1963, specifically declaring "the first and prior attachment lien in favor of the plaintiff, Tan Ching Ji, on the properties of the defendant Campua Uy Tina in Civil Case No. 536 valid and subsisting, and superior to the levy on execution and sale at public auction in favor of the Philippine National Bank in Civil Case No. 467. Consequently, the Court declares the levy on execution, the auction sale, and the Certificate of Judicial Sale, Exhibit 'H', rescinded and null and void and without any legal effect with respect only to the properties of Campua Uy Tina denominated in the said Exhibit 'H' as [first], [second], [third] and [fourth parcels], * * * [which] shall be held and remain as they were before the levy on execution and judicial sale on February 23, 1959, to await the execution and satisfaction of the judgment in Civil Case No. 536, pursuant to Secs. 1 and 5 of Rule 59, Rules of Court." [6]

The principal legal question on which appellant Philippine National Bank would seek a reversal of the aforesaid decision is the nullity of an order of execution upon mere motion filed after five years from the date it became final. Its appeal is doomed to failure. Such a contention was categorically rejected in *Uy Tina v. Avila*, [7] referred to at the opening of this opinion, with the very same debtor, Uy Tina, as petitioner and plaintiff-appellee Tan Ching Ji as one of the respondents.

The background facts of the above Uy Tina certiorari proceeding are set forth in the opinion of Justice Makalintal thus: "In Civil Case No. 536 of the Court of First Instance of Cotabato, Tan Ching Ji, plaintiff, vs. Campua Uy Tina, defendant, the parties executed a compromise agreement, which was submitted to and approved by the Court in its decision dated February 4, 1954. Under that agreement the defendant obligated himself to pay the plaintiff the sum of P23,000.00 'without interest, within a period of six (6) years from date hereof.' It was also stipulated that certain properties which had been attached as security would not be released until full payment and that the defendant 'during the period of six (6) years, shall hold and fully enjoy the fruits of said properties.'" [8] After which came the following recital: "On September 20, 1960, after the six-year period had expired, plaintiff Tan Ching Ji filed a motion for execution. The motion was granted and the writ was issued on August 14, 1962. Defendant Campua Uy Tina moved to reconsider on September 13, 1962, announcing in his motion that he was going to file an ordinary action to enjoin the enforcement of the decision. This he did on the following September 18 (Civil Case No. 1843). On October 20, 1962 the court denied the motion for reconsideration in Civil Case No. 536, and on January 3, 1963 another writ of execution was issued. Several other motions were subsequently filed by the defendant – to quash the writ of execution or stay its enforcement – but they were all denied by the Court in its order dated February 11, 1963." [9]

It was at that stage that Uy Tina filed the petition for certiorari to have the writ of execution issued on August 14, 1962 and all subsequent proceedings thereafter annulled and set aside. He invoked "Rule 39, Section 6, which provides that a judgment may be executed on motion within five (5) years from the date of its entry, and that after the lapse of such time and before it is barred by the statute of limitations, a judgment may be enforced by action. The contention is that since the decision approving the compromise agreement was rendered on February 4, 1954, it could no longer be executed by mere motion when respondent, plaintiff below, moved for that purpose on September 20, 1960, more than five years having then elapsed. Petitioner would have respondent file an ordinary action in order to realize the amount to which he is unquestionably entitled." [10] In the answer of respondent Judge Avila, it was stated "that entry of judgment in Civil Case No. 536 was made by the Clerk of Court only on

February 5, 1960, because it was only then that the judgment had become final and executory, and consequently the writ of execution issued on August 14, 1962 was well within the period of five years provided for in Rule 39, Section 6. Petitioner, on the other hand, argues that said period should be counted from the date the judgment became final, which was immediately upon its rendition because it was a judgment on compromise."[11]

Then came the holding in the opinion of Justice Makalintal, speaking for the Court: "The uncontradicted statement of respondent Judge that judgment was entered only in 1960 should be sufficient to dispose of this petition on the basis of the literal terms of Rule 39, Section 6, as invoked by petitioner. But even irrespective of the date of entry of judgment, the decisive issue here is not when the judgment became final in the sense that no appeal therefrom could be taken, but when it became executory in the sense that it could already be enforced. For it would be idle to speak of execution or to try to obtain a writ for that purpose if the judgment was not yet enforceable. Rule 39, Section 6, in providing that a judgment may be executed on motion within five (5) years from the date of its entry, clearly and logically contemplates the usual situation wherein such judgment is susceptible of execution or enforcement the moment it acquires the character of finality."[12]

There can be no disputing the validity of the conclusion reached by us in the Uy Tina decision: "Could defendant, petitioner here, be compelled to comply with his obligation under the judgment and, upon failure to do so, could his properties be levied upon, at any time within six (6) years from the rendition of the judgment on February 4, 1954? The answer is obvious. He was given that period within which to pay. His obligation was one with a term and the term was indubitably for his benefit, as shown by the fact that the obligation carried no interest liability and that in the meantime he continued in possession and enjoyment of the properties which were under attachment for purposes of security. Under Article 1193 of the Civil Code an obligation with a term is demandable only when the term expires. Had respondent demanded payment from petitioner before the expiration of the term given to him, he could very well have refused to pay on the ground that his obligation had not yet become due. A writ of execution would have been as futile. Since such writ could only have been effectively issued after the lapse of six (6) years from February 4, 1954, respondent court committed neither error nor abuse of discretion when he did issue it upon motion on August 14, 1962 pursuant to Rule 39, Section 6."[13]

The question has thus been definitely set at rest. The compelling force of the above decision leaves appellant without any support for his stand. The decision on appeal is not vitiated therefore by the allegations in the three related assigned errors that the order of execution in 1962 is without legal basis as the judgment in favor of plaintiff had ceased to be enforceable by a mere motion under Section 6 of Rule 39. Nor would it call for a reversal of the appealed decision even if the first assigned error to the effect that the lower court should have allowed an amendment of the answer of appellant to include additional affirmative defenses, since even if it were thus, the authoritative force exerted by Uy Tina v. Avila precludes a reversal of the appealed decision.

In the appealed decision, however, the lower court declared "the levy on execution, the auction sale, and the Certificate of Judicial Sale, Exhibit 'H', rescinded and null and void and without any legal effect with respect only to the properties of Campua Uy Tina denominated in the said Exhibit 'H' as [first], [second], [third] and [fourth parcels], * * * [which] shall be held and remain as they were before the levy on execution and judicial sale on February 23, 1959, to await the execution and satisfaction of the judgment in Civil Case No. 536, pursuant to Secs. 1 and 5 of Rule 59, Rules of Court."[14] It should not have gone that far. It suffices that such "levy on execution, the auction sale, and the certificate of Judicial Sale, Exhibit 'H'," be deemed as subject to the rights of the plaintiff Tan Ching Ji by virtue of the prior and superior attachment lien, which he may now enforce according to law.

WHEREFORE, the lower court decision of February 5, 1963 is affirmed, with the modification above set forth. With costs against appellant Philippine National Bank.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, and Villamor, JJ., concur.

Dizon, J., in the result.

Makasiar, J., no part.

[1] L-20900, May 16, 1967, 20 SCRA 37.

[2] Sec. 6 of Rule 39, Rules of Court, reads in full: "Execution by motion or by independent action. - A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

[3] The other defendants in the lower court were the then Sheriff ex-officio of Cotabato, Juanito Mapalo, and the debtor, Campua Uy Tina, petitioner in the aforementioned certiorari proceeding and a debtor, who owed money to both plaintiff and defendant Philippine National Bank.

[4] Civil Case No. 536 of the Court of First Instance of Cotabato.

[5] The parcels of land were described thus: "Tax Declaration No. 9194 - A parcel of land situated in the Barrio Lupapak, Municipality of Dulawan, Province of Cotabato, Bounded on the North by Zainal Guiaman, on the East by Guiaman, on the South by Ikot, and on the West by Ala River, containing an area of 60.0000 hectares, with a total assessed value of P14,230.00; Tax Declaration No. 5629 - A parcel of land situated in the Barrio of Reina-Regente, Municipality of Dulawan, Province of Cotabato, Bounded on the North by Rio Grande de Mindanao, on the East by same Rio Grande de Mindanao, on the South by Dr. Alejandro Segovia, and on the West by Datu Piang, containing an area of 70.0000 hectares, with an assessed value of P20,600.00; A two-story commercial and residential building constructed on the land of the owner, Campua Uy Tina, situated at Dulawan, Cotabato, with an assessed value of P15,500.00 under Tax Dec. No. 11704 in the name of said owner; A commercial lot situated in Dulawan, Cotabato, bounded on the NE- Dulawan Mun. Street, on the SE-Proposed Mun. Street, on the SW-Lot No. Ab, and on the NW-Lot of Chio To, with an assessed value of P1,120.00 under Tax Dec. No. 7106 in the name of Campua Uy Tina."

[6] Decision, Record on Appeal, pp. 139-141.

[7] L-20900, May 16, 1967, 20 SCRA 37.

[8] Ibid., p. 37.

[9] Ibid., p. 38.

[10] Ibid.

[11] Ibid., pp. 38-39.

[12] Ibid., p. 39.

[13] Ibid., pp. 39-40.

[14] Ibid., p. 141.

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