

BALBINO PAMINTUAN AND ILUMINADA STA. ANA, PETITIONERS, VS. HON. EMANUEL M. MUÑOZ, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, THE PROVINCIAL SHERIFF OF BULACAN AND OLIMP...*G.R. No. L-26331. March 15, 1968*

Ponente: BENGZON, J.P., J.

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Petitioners spouses and private respondent Olimpio Mendoza were plaintiffs and defendant, respectively, in a civil case before the Court of First Instance of Bulacan for quieting of title to certain properties consisting of logs, lumber, a sawmill and its accessories. In the course of the litigation, the parties entered into an amicable settlement wherein respondent recognized petitioners' ownership of the sawmill, while the latter recognized the former's right over all the sawed logs and lumber subject of the action. The amicable settlement also provided, in par. 4 thereof[1] -

"4. That as a further condition of this agreement, plaintiffs have agreed, as they hereby agree, to pay to the defendant the sum of THREE THOUSAND (P3,000.00) PESOS, Philippine Currency, in consideration of the mutual quit-claim, which amount the herein defendant assigns to Mr. Demetrio Fajardo, as represented in this agreement by Mr. Bonifacio Dimalanta, his representatives" (Underscoring supplied)

Upon its submission, the lower court on October 9, 1964 rendered a decision approving the amicable settlement and enjoining the parties to comply with the terms and conditions thereof.

On November 11, 1964; respondent filed a motion before the lower court for a writ of execution to enforce payment to him of P3,000.00 by petitioners pursuant to par. 4 of the amicable settlement. It was alleged by respondent that while the judgment based on said settlement had already become executory, petitioners still have not yet paid the said P3,000.00 and that Demetrio Fajardo had, on this same date, filed a written waiver of his right to the assignment of said sum.

The court, on November 20, 1964, granted respondent's Motion and ordered the issuance of a writ of execution which was issued on the very same day. On November 23, 1964, petitioners filed a motion to reconsider the order of November 20, 1964, and also an opposition to the waiver of the assignment executed and filed by Fajardo. The lower court denied both motion and opposition.

On December 7, 1964, the Provincial Sheriff of Bulacan levied upon two (2) lots and a house built thereon owned by petitioners. Notice of levy was filed and registered with the local Register of Deeds. Subsequently, the sheriff issued the "Notice of Sale" setting the sale on January 29, 1965 and on December 28, 1964 served a copy of said notice to petitioners by registered mail. At the sale, the levied properties were acquired by respondent for P3,269.00. The certificate of sale was then delivered to respondent's counsel and registered with the Register of Deeds on February 15, 1965.[2]

On April 21, 1966, respondent filed an ex-parte motion for an alias writ of possession to place him in actual possession of the properties in question. The court granted the motion and the alias writ was issued. On June 14, 1966, petitioners filed an urgent motion to quash said alias writ of possession. This was denied and petitioners filed an amended motion to quash.

On July 18, 1966, the lower court denied petitioner's amended motion to quash and issued, instead, a second alias writ of possession as prayed for in respondent's ex-parte motion of July 11, 1966. Thereupon, petitioners instituted the instant petition for certiorari with preliminary injunction. We gave due course thereto and is sued preliminary injunction.

Three questions are presented for determination:

- (1) Are petitioners entitled to prior notice and hearing before the trial court can order execution of a final and executory judgment?
- (2) Was the writ of execution issued, substantially at variance with the judgment of the lower court rendered on October 9, 1964?
- (3) Was the manner of levy by the provincial sheriff attended with irregularity?

Regarding the first point, it is by now axiomatic that a judgment on a compromise - like the one in the case at bar - is at once final and immediately executory. Also of the same stature is the rule that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right and the granting of execution becomes a ministerial duty of the court. Otherwise stated, once sought by the prevailing party, execution of a final judgment will just follow as a matter of course. Hence, the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearing.^[3] This renders of little significance then the fact alleged by petitioners that they received copy of respondent's motion for execution only on the afternoon of the day set for its hearing.

On the second point, petitioners' claim that variance obtains because under par. 4 of the amicable settlement their obligation to pay the P3,000.00 is in favor of Demetrio Fajardo and not to respondent is without merit. The cited paragraph very clearly states that "as a further condition x x x plaintiffs [herein petitioners] have agreed, as they hereby agree, to pay to the defendant [herein respondent] the sum of P3,000 x x x." The matter of the assignment of this amount Fajardo is purely between him and respondent. But it is an uncontroverted fact that petitioners have not made any payment: to anyone and that Fajardo had already waived all his rights under the assignment back to respondent. The lower court therefore neither abused its discretion nor acted in excess of or without jurisdiction in ordering execution of the judgment for P3,000.00 in respondent's favor.

Petitioners finally argue that they had not been served a notice of the levy nor a notice of the sale as required by the Rules. The sheriff's return, however, shows that the notice of levy had been registered with the Register of Deeds pursuant to Rule 57, Sec. 7 in Connection with Rule 39, Sec. 15 of the Rules, and that the notice of sale had been sent by registered mail on December 28, 1964, to petitioners. Even assuming then that petitioners were not served a copy of the notice of levy, yet We have already ruled in *Philippine Bank of Commerce V. Macadaeg*, G.R. No. L-14174, October 31, 1960, that this defect is cured by service of notice of sale upon the judgment debtors prior to the sale, which was done here. The levy was validly effected then.

WHEREFORE, for lack of merit, the petition is hereby dismissed and writ of preliminary injunction heretofore issued revoked and set aside. Costs against petitioners.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] Rollo, pp. 11-12

[2] See Sheriff's return, Rollo, p. 22.

[3] Rule 39, Sec. 1, Rules of Court; Luther v. Clay, 100 Ga. 236, 28 S.E. 46.

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