

[With resolution of November 21, 1961]

G.R. No. L-14113. September 19, 1961

Ponente: NATIVIDAD, J.

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NATIVIDAD, J.:

This special action of mandamus is now before this Court on the appeal by certiorari interposed by the petitioner against the judgment therein rendered by the Court of Appeals dismissing the action with costs.

The facts, as found by the Court of Appeals, are as follows:

"In Civil Case No. 28836 of the Juvenile and Domestic Relations Court, of the City of Manila, the petitioner herein, Josephine Cotton, and the respondent Eugenio S. Baltao were the plaintiff and defendant respectively (Annex "A", petition). Sometime after the filing of the Answer (Annex "B", petition) to the complaint therein, defendant Baltao proposed that the case be settled, and after several negotiations, the parties reached a settlement and on July 26, 1936, executed and signed, with the assistance of counsel, a compromise agreement, copied in full, as follows:

"COME NOW the parties, personally and by counsel, and to this Honorable Court respectively state that they have arrived at an amicable settlement of the above-entitled case as follows:

"1. Defendant will pay to plaintiff guardian for the support of plaintiff minor, the sum of TWO HUNDRED FIFTY(P250.00) PESOS per month, payable within the first five (5) days of each month; it being understood that this sum shall not include extraordinary hospital or medical expenses, which shall be paid separately by defendant;

"2. Defendant will continue to administer without need of an accounting, the properties of plaintiff described in the complaint, provided that:

(a) Defendant binds himself to pay all obligations encumbering the aforesaid properties within the period set forth in the contracts to sell executed by and between Josephine Cotton and the Guaranteed Homes, Inc., the said contracts being Doc. No. 155, Page 34, Book No. 1, Series of 1951 of the notarial register of Notary Public Eugenio T. Estavillo of Manila and Doc. No. 170, Page 37, Book No. 1, Series of 1952 of the same Notary Public;

(b) Defendant will turn over to plaintiff, through her judicial guardian, upon the expiration of the said agreements the properties mentioned therein, to wit:

"Lot No. 31, Psd-33597, TCT No. 23678, containing an area of 478 sq. m. Lot No. 36, Psd-33598, TCT No. 23678, containing an area of 401 sq. m. together with all improvements that may now be existing or may be erected thereon, as well as the 5,000 shares of stock in Guaranteed Homes, Inc., mentioned in the complaint, and any stock or other dividends declared thereon, all free from any and every lien and encumbrance. It is understood, however, that the plaintiff will not sell, cede, transfer or convey the 5,000 shares of stock in Guaranteed Homes, Inc. to any person, without first giving an opportunity to defendant to purchase the same at the same price being offered to plaintiff by any third party;

(c) Defendant will, every six (6) months from this date, submit to this Honorable Court the receipts of payments called for in the aforesaid contracts; and should he fail to do so, plaintiff may immediately take possession of the aforesaid assets, with all their improvements, through her judicial guardian;

(d) In the event that defendant should leave the country, either temporarily or permanently, he hereby designates JOSEFINA P. LOPEZ as the person to whom plaintiff may look for the fulfillments of the obligations assumed by defendant in this compromise agreement; and Josefina B. Lopez hereby acquiesces thereto by signing at the bottom hereof;

"3. Defendant shall pay plaintiff's counsel fee in the sum of FIVE HUNDRED (P500.00) PESOS;

"4. This agreement is subject to the approval of the Court of First Instance of Rizal in Sp. Proc. No. 1813 entitled 'Guardianship of the Minor Genevieve Cynthia Cotton Baltao'.

"WHEREFORE, the parties respectfully pray this Honorable Court to approve the foregoing agreement and to render judgment in accordance therewith, enjoining the parties to comply with the terms and conditions set forth therein."

On August 31, 1956, respondent Judge rendered a decision which, after reciting the contents of the compromise agreement, disposed that the terms and conditions thereof were in conformity with law, morals, good customs and public policy, and enjoined the parties therein to comply with the said agreement, without special pronouncement as to costs (Annex C, petition). On November 19, 1957, (after one (1) year and four (4) months, from the execution of the agreement), on the ground that respondent Baltao, had failed to comply with his commitments under paragraphs (b) and (c) of the compromise agreement, petitioner filed with the respondent Judge a motion for the execution of the judgment, praying that an order be issued directing the respondent Baltao to comply with his commitments under the said compromise agreement (Annex D, petition). On December 28, 1957, date set for the hearing of the motion, respondent Baltao, asked for 5 days from January 2, 1958, within which to comply with the agreement, manifesting that he had already effected the payments required under paragraph 2, subpar. (a) of the agreement, but needed more time within which to produce the receipts evidencing the payments as required in paragraph 2, sub-par. (c). At the hearing on January 7, 1958, respondent Baltao asked for more time to produce the receipts. On January 14, 1958, respondent Baltao, filed an opposition to the motion for execution, alleging that on January 11, 1958, he had submitted to respondent Judge the receipts of payment and prayed for the denial of the motion for execution, on the ground that it had already become moot (Annex E, petition). The only payment made by respondent Baltao on the properties in question, however, was made on January 10, 1958, far beyond the period agreed upon and several weeks after petitioner's motion for execution of judgment had been filed. On January 15, 1958, respondent Judge issued an order, denying petitioner's motion for execution, for the reason that defendant (respondent Baltao) had complied substantially with the terms of the compromise agreement (Annex F, petition). The motion for reconsideration of said order was denied on March 12, 1958."

Upon the above facts, the Court of Appeals, in its judgment of June 27, 1958, dismissed the action with the costs taxed against the petitioner. This is the judgment now before this Court for review.

It is contended by counsel for the appellant that as it is well settled that "a judgment upon a compromise agreement of the parties is not appealable and is immediately executory," *Reyes vs. de Ugarte*, 75 Phil., 505; *Enriquez vs. Padilla*, 77 Phil., 373; that "upon a final and executory Judgment, execution becomes a matter of right and it is a ministerial duty of the court to order its execution," *Buenaventura vs. Garcia*, 78 Phil., 759; and that "mandamus is the proper remedy should the court or judge fail to comply with said ministerial duty," *Seifert vs. Bachrach*, 79 Phil., 748, the trial court failed to comply with its ministerial duty to issue a writ of execution of the judgment in question, and that the Court of Appeals committed error in dismissing this action with costs, instead of compelling said trial court by mandamus to do so.

We do not share counsel's view. We agree with counsel that the rules he is invoking are each backed up by decisions of this Court, and that they are good law. We are, however, of the opinion that said rules only hold true when the judgment sought to be executed is complete and certain in itself. Where the judgment is indefinite or uncertain, or requires the performance of a condition, or obligates the parties or one of them to do certain acts, the rules above enunciated have no application. In such cases, the court must construe the judgment and declare first whether or not the condition imposed therein had been complied with, and then act accordingly. And this is particularly true as regards consented judgment. For, although judgments by consent have the same force and effect as any other court judgment, nevertheless they partake of the nature and have the force and effect of contracts and must be construed and enforced as such. 49 C. J. S. 314-317; 31 Am. Jur., 107; Freeman on Judgment 2773-2776.

"A judgment by consent ordinarily has the force and effect of a contract and is so construed, although it also partakes of the nature of a judgment and will be upheld and enforced as such." 49 C. J. S. 314.

The judgment involved in this action is one by consent, and it is not complete in itself, or definite, or certain. It requires the performance of a condition by and obligates the respondent Eugenio S. Baltao to do an act, upon the compliance or non-compliance with which depends the respective rights of the parties. It is not a judgment, therefore, upon which a writ of execution should ministerially issue upon its becoming final and executory. The question whether or not such condition has been fulfilled must be determined first before a writ of execution should or should not issue. And in case of dispute between the parties on the matter, the trial court, before taking any action on a motion to order its execution, must construe it and determine, through proper proceedings, whether or not the condition imposed has been fulfilled. Such action calls for the exercise of judgment on the part of the trial court, and whatever error it may commit in arriving at a decision is error committed in the exercise of its jurisdiction and is only correctible by appeal. *Castro vs. Surtida*, 87 Phil., 166; 47 Off. Gaz., Supl. No. 12; p. 351. *Mandamus* would not lie. As correctly ruled by the Court of Appeals.

"It is a familiar rule that *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the right to exercise judgment in reference to the matter he is required to act. (*Blanco vs. B. of Medical Examiners*, 46 Phil., 190; *Diokno vs. R.F.C.*, 91 Phil., 608; 48 Off. Gaz., 2717, cited in *II Moran's* 1957 Ed., p. 186)."

We, therefore, find that the judgment of the Court of Appeals appealed from is in accordance with law. Consequently, the same is hereby affirmed, with the costs taxed against the appellant.

Bengzon, C. J. Padilla, Labrador, Reyes, J. B. L., Dizon, and De Leon, JJ., concur.
Concepcion and Barrera, JJ., took no part.

RESOLUTION

November 21, 1961

LABRADOR, J.:

Upon considering the motion for reconsideration filed by petitioner and it appearing that the obligations imposed upon respondent Eugenio S. Baltao by the judgment were complied with by said Baltao only after a court order, the motion to reconsider the grant of costs against petitioner is hereby granted and the decision is, with respect to the grant of costs to respondent Baltao set aside.

Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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