

DIONISIO AND LUZ SAKAY, COMPLAINANTS, VS. DEPUTY SHERIFF MAXIMO ANDAL, RESPONDENT.

A.M. No. P-92-740. February 15, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

This case arose from an action for unlawful detainer filed by one Jesus Morales against herein complainants as defendants before the MTC of Meycauayan, Bulacan involving the complainants' conjugal home which Morales alleged to have been sold by complainant spouses to him (Morales).

It appears that simultaneous to the filing of said unlawful detainer complaint, plaintiff Morales moved for the issuance of a writ of preliminary mandatory injunction for the purpose of acquiring possession of the property subject of the litigation. Plaintiff's motion was granted and a writ of preliminary mandatory injunction was issued by the MTC on January 22, 1992 pursuant to its order dated January 15, 1992.

On February 4, 1992, complainants filed a petition for certiorari, prohibition and mandamus against the MTC judge and the provincial sheriff of Malolos, Bulacan before Branch IX of the Regional Trial Court of the same province wherein the enforcement of said writ was temporarily restrained. Plaintiff Morales then filed a petition with the Court of Appeals (CA) for the nullification of the order of the RTC restraining the enforcement of the writ of preliminary mandatory injunction. On June 26, 1992, the Court of Appeals upheld the action of the MTC and set aside the assailed order of the RTC.

The decision of the CA was received by the complainants on July 21, 1992. It appears, however, that on July 8, 1992 and before complainants received the said CA order, respondent sheriff together with some members of the PNP of Meycauayan, proceeded to the subject premises and forcibly ejected the complainants by removing the personal belongings of complainants from the premises.

A complaint dated July 30, 1992 for "Serious Irregularities, Misconduct, Dishonesty and Misbehavior in the Performance of Official Duties in Official Transactions" was then filed by complainants against respondent sheriff before this Court. It alleged, among others, that respondent implemented the subject writ even before the decision of the Court of Appeals had become final and executory.

In his Comment, respondent admits having implemented the writ on the date alleged. Further, respondent alleged that even if the decision of the CA had not become final and executory when the preliminary mandatory injunction writ was enforced, any motion for reconsideration of the decision or further appeal would be useless as the CA had already made a pronouncement that the restraining order issued by the RTC was invalid.

In a resolution dated January 18, 1993, the Court resolved to require the parties to inform the Court if they will submit this case for resolution based on the pleadings filed. On February 15, 1993, complainants filed their manifestation expressing their willingness to submit the case for decision on the pleadings filed. A similar manifestation expressing willingness to submit the case for decision on the pleadings was filed by respondent on

February 18, 1993.

In its final evaluation and report dated December 3, 1992, which was reiterated in a memorandum dated May 31, 1993, the Office of the Court Administrator (OCA) thru Deputy Court Administrator Reynaldo Suarez and approved by Court Administrator Ernani Cruz Pano, recommended the imposition of a fine of P5,000.00 upon respondent sheriff. The OCA found that respondent had abused his authority when he prematurely enforced the writ of preliminary mandatory injunction in violation of Section 1 of Rule 39 in relation to Section 11 of Rule 51 of the Rules of Court.

We agree.

There is no doubt that the action of the respondent sheriff in enforcing the subject writ was premature. The second paragraph of Section 1, Rule 39, is explicit in providing that:

"SECTION 1. Execution upon final judgments or orders. - Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

"If the judgment has been duly appealed, execution may issue as a matter of right from the date of the service of the notice provided in section 11 of Rule 51."

The latter rule (Section 11, Rule 51), on the other hand, directs the remand of the records of the case by the Clerk of the Court of Appeals to the lower court, ten (10) days after the entry of judgment and the notification of the parties by the clerk of the lower court within five (5) days that such records have already been received from the appellate court.

There was no such notice issued in the present case, and in fact, complainants had not yet even received the CA decision when respondent executed the subject writ.

Based on the above-stated rules, a writ of execution can only be issued by the trial court after the records of the case are remanded to it for execution of the decision of the appellate court. The fact that respondent was able to get hold of the decision of the CA invalidating the assailed order of the RTC does not warrant the execution of the said decision since the appealed judgment had not acquired finality and the provisions of Section 1 of Rule 39 in relation to Section 11 of Rule 51 had not been complied with.

ACCORDINGLY, the Court finds respondent Sheriff Guilty of Serious Misconduct and hereby imposes a fine in the amount of P5,000 upon said respondent sheriff with a warning that a similar infraction would be dealt with more severely.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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