

CENONA OLEGO, PETITIONER, VS. HON. ALFREDO REBUENO, JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH IV AND ATTY. PEDRO SERVANO, RESPONDENTS.

G.R. No. L-39350. October 29, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

On October 13, 1962 Pedro D. Servano, a lawyer from Naga City, filed a complaint against Cenona Olego in the Court of First Instance of Camarines Sur, Tigaon Branch IV. In that complaint he asked for a declaration as to the legality of his title to a residential lot with an area of 1,225 square meters located at Sta. Cruz Street, Lagonoy, Camarines Sur, supposedly covered by a tax declaration in his name (its number was not specified).

He alleged that he acquired the lot by purchase in November, 1960; that he and his predecessors had possessed it en concepto de dueño since time immemorial and that after he had acquired the lot, his possession was disturbed by Cenona Olego, who claimed to be the owner of the lot, "thereby casting a cloud of doubt" on his title and rendering it necessary that his "title and possession" "be declared legal". He also averred that Cenona Olego's claim of ownership caused him damages in the sum of P300 as attorney's fees and P120 annually as rentals which he was not able to collect because of her "unjustified claim of ownership".

He prayed that his "title" be declared "legal", that he be adjudged as the absolute owner of the land, entitled to its "peaceful possession", and that Cenona Olego be ordered to pay him the above-mentioned damages (Civil Case No. T-17).

Cenona Olego in her answer denied that Servano owned and possessed any land located at Sta. Cruz Street, Lagonoy. She pleaded the defense that she was the "absolute owner and lawful possessor" of the land located at Sta. Cruz Street, Lagonoy with an area of 1,390 square meters, covered by Tax Declaration No. 255 in the name of Santiago Olego. (It is now covered by Tax Declaration No. 9882 in her name and the area indicated therein is 1,090 square meters.)

She averred that if Servano's complaint referred to that land, then he had "absolutely no right whatsoever over the land"; that he had never possessed it nor manifested his claim of ownership; that she inherited the land from her late father, Santiago Olego (in 1920); that she and her predecessors had been in actual possession of the land en concepto de dueño since time immemorial, and that Servano's claim was "unfounded and without any legal basis". She filed a counter-claim for P3,000 as actual and moral damages and P300 as attorney's fees.

The case was set for hearing on February 19, April 15, May 28, August 13, September 24 and November 19, 1963. The first two hearings were postponed at Atty. Servano's instance. One postponement was made at the instance of Cenona Olego's lawyer who was not ready for trial. Two hearings were cancelled by agreement of the parties.

The case was set for hearing for the seventh time on January 8, 1964. On that date the parties submitted the

following compromise:

"AMICABLE AGREEMENT

"The parties, the plaintiff in his own behalf and the defendant represented by her counsel Atty. Eriberto J. Fante hereby agreed to compromise this case as follows:

"That the defendant admits the allegation of the plaintiffs complaint as to his claim of ownership of the land described therein in said complaint and that judgment be rendered declaring the plaintiff the owner thereof;

"That the plaintiff waived his claim for attorney's fees and all other damages against the defendant.

"WHEREFORE, it is respectfully prayed that decision be rendered in accordance with the foregoing stipulation and without pronouncement as to costs.

"Tigaon, Camarines Sur, January 8, 1964.

(Sgd.) Right Thumbmark (Sgd.) Illegible

CENONA OLEGO PEDRO D. SERVANO

Defendant Plaintiff

Assisted by:

(Sgd.) Illegible

ERIBERTO FANTE

Counsel for the Defendant"

The lower court approved the compromise in its decision of the same date, January 8, 1964. There is a notation in the original of the decision that copies thereof were sent by registered mail on January 11, 1964 to plaintiff Servano and Atty. Eriberto Fante, defendant's counsel. There are also notations in that original that Servano received copies of the compromise agreement and the decision on January 10, 1964 while Atty. Fante received his copies on January 16, 1964.

The record shows that there was no further proceeding in the case more than ten years after the alleged compromise settlement was concluded.

What transpired after that decade of inactivity was that on February 19, 1974 Servano filed in the lower court a "petition for contempt" against Cenona Olego and her children, Segundo Rivero and Rosita Rivero, wherein he alleged that he (Servano) was the prevailing party and Cenona Olego the defeated party in the decision of January 8, 1964 which allegedly was "immediately executory"; that Cenona Olego and her children prevented Servano from having "the peaceful use and enjoyment" of the said land; that they branded the decision as "fake" and "not worthy of respect", and that they occupied a portion of the land and disturbed Servano's "property rights".

Servano prayed that Cenona Olego and her children be punished for contempt of court and ordered to pay damages to him. His petition, which was already verified, was accompanied by his affidavit (not incorporated in the petition) wherein he alleged that Cenona Olego and her two children prevented him and his agents from enjoying "the peaceful use and possession" of the said land (not merely a part thereof). The affidavit echoed the other allegations of the petition. The record does not show that respondents Cenona Olego and her two children were served copies of the petition which was dated February 19, 1974 and set for hearing two days later, or on February 21.

On February 21, the scheduled date for hearing the petition for contempt, Judge Alfredo S. Rebuena issued the following order:

"When this case was called for trial this morning, the respondents did not appear but in the afternoon they voluntarily appeared before this Court and explained that they did not leave the property because they believe that the property is still theirs. The Court explained to them that by virtue of the decision of Judge Sison dated January 8, 1964 which is based upon the amicable settlement entered into between the plaintiff and the defendant Cenona Olego which decision is already long final and executory they have no more right to remain in the property and the Court is disposed to give them three (3) months within which to leave the premises with the warning that if after three (3) months they have not complied with the order of this Court to leave the premises, the complaint for contempt will proceed to be tried.

"In the meantime, the hearing of the petition for contempt is held in abeyance."

Copies of the order were served on Cenona Olego and her two children. During the hearing they were not assisted by their counsel, Atty. Fante. In fact, no copy of the petition was served on him. How Cenona Olego and her children learned of the petition, when the record does not show that they were served copies thereof, is not indicated in the record. They were not given any chance to hire counsel and to answer the petition.

On March 23, 1974 plaintiff Servano filed an ex parte motion for the amendment of the aforementioned order. He asked that Cenona Olego and her children, who, despite Judge Rebuena's explanation, still persisted in not recognizing the lower court's decision and who had threatened to injure the persons who would dispossess them of the land, be given only fifteen days to remove their "small nipa huts". Acting on that ex parte motion, Judge Rebuena ordered Cenona Olego and her children to appear in court "on April 4, 1974 at 8:30 a. m. in a manner intransferable" (sic). Subpoenas were issued to them for their "intransferable" appearance on April 4.

On that date Cenona Olego through a new counsel, Atty. Abel G. Flores, filed a motion to dismiss the contempt charge. The motion was based on the grounds (a) that the amicable settlement was obtained through fraud and misrepresentation, (b) that the execution of the judgment was barred by the statute of limitations, and (c) that the court had lost jurisdiction over the case.

It was pointed out in the motion that the judgment does not require Cenona Olego to vacate the land or deliver its possession to Servano; that, being illiterate, she was unaware that she had signed an amicable settlement; that she was never furnished with copies of both the amicable settlement and the "decision" of January 8, 1964; that she was made to understand that what she was signing was a motion for postponement, and that, being ignorant of the decision, she never vacated the land and she thought that the case was still to be tried.

Atty. Flores further alleged in his motion to dismiss that Servano did nothing to implement the decision within the ten-year period for enforcing it; that he never occupied any portion of the land, and that Cenona Olego came to know of the decision when she was being charged with contempt of court. Atty. Flores contended that the lower court had no more jurisdiction over the case in view of the expiration of the ten-year period for enforcing its judgment.

Atty. Servano interposed an "objection" to the motion to dismiss his "petition for contempt". He contended that the decision in his favor was based on an agreed statement of facts as contemplated in section 2, Rule 30 of the Rules of Court (formerly section 2, Rule 33); that inasmuch as his ownership of the disputed land is recognized in the compromise and decision, there was no need for a writ of execution "to place" him "in the material possession of the land"; that he was provoked to file the "petition for contempt" because Cenona Olego and her children had told certain persons that the decision was "not worthy of respect for being false"; that his "petition for contempt had never prescribed"; that the allegation as to fraud and misrepresentation in the rendition of the decision was "childish"; that it was hard to believe that Cenona Olego had not known of the decision during the past ten years, and that she was bound by that decision.

Judge Rebueno in his order of June 3, 1974 denied the motion and set the contempt charge for hearing "in a manner intransferable" on June 15, 1974.

He reasoned out that inasmuch as Cenona Olego had not disputed the validity of the decision on the ground of fraud or mistake during the period of more than ten years "her right of action to impugn its validity" had already prescribed; that the judgment, which was *res judicata*, was "self-executing", and that the "violation thereof may be enforced by contempt proceedings notwithstanding that no writ of execution was issued".

The counsel of Cenona Olego in his motion for reconsideration alleged that no safeguards were taken when she, an illiterate party, thumbmarked the alleged compromise and that it was possible for Atty. Servano and Atty. Fante "to conspire with each other to commit fraud for their mutual benefit". Judge Rebueno denied the motion.

On August 17, 1974 Cenona Olego filed the instant special civil action of certiorari against Atty. Servano and Judge Rebueno, praying that the orders setting the contempt charge for hearing be set aside and that the case should be dismissed because the lower court had no more jurisdiction over it.

Claiming to be a sickly widow over seventy years old, without means of support and dependent on her relatives for her subsistence, she was allowed to litigate in *forma pauperis*.

Atty. Fante was asked to comment on the allegations of the petition that he and Atty. Servano on January 8, 1964 conspired to deceive Cenona Olego and were able to make her affix her thumbmark to a compromise on the misrepresentation that it was a motion for postponement. Atty. Fante alleged that there was a pre-trial in the morning of January 8, 1974; that Atty. Servano exhibited the deed of sale for the land in question executed in his favor by Sabas Aran and the prewar tax declarations and tax receipts in the name of Sabas Aran; that, on the other hand, Cenona Olego was able to present a tax declaration in her father's name; that she had allegedly not paid the realty taxes for the said land; that the amicable settlement was arrived at upon the suggestion of the Presiding Judge on condition that Atty. Servano should waive his claim for damages, and that Cenona Olego was given a copy of the compromise agreement. Atty. Fante denied that he conspired with Atty. Servano to deceive Cenona Olego.

On the other hand, Atty. Servano in his comment alleged that the decision of January 8, 1964 was "self-executory"; that Cenona Olego delivered the possession of the lot to him and that she and her children later re-entered the lot.

Atty. Flores, in his reply to the comments of Attys. Fante and Servano, alleged that the land in question was sold in 1960 to Atty. Servano by Sabas Aran (Arrans), the uncle and guardian of Cenona Olego; that in 1956 Cenona Olego filed with the Register of Deeds of Camarines Sur a document known as "Declaration of Ownership", wherein she affirmed that she inherited the said lot in 1930 (or 1920) from her father, Santiago Olego, to whom Tax Declaration No. 255 was issued; that Tax Declaration No. 8606, which cancelled Tax Declaration No. 235,

was issued to Cenona Olego for the said lot, and that she possessed tax receipts covering her payment of realty taxes. Atty. Flores particularized on the circumstances constituting the fraud perpetrated on Cenona Olego.[1]

The issues are (a) whether Cenona Olego could be held in contempt of court for not vacating the land involved in the compromise and (b) whether the lower court's decision should be set aside on the ground of fraud or could be enforced after the expiration of more than ten years from the date of its finality.

We hold that Cenona Olego's failure to vacate the lot could not be the basis of a contempt proceeding against her. The orders citing her for contempt are oppressive, unjust and unwarranted.

In the compromise agreement and in the decision approving it, she was not ordered to vacate the lot. It was stipulated in the compromise that she admitted Atty. Servano's ownership of the lot and "that judgment be rendered declaring" him to be the owner thereof. The decision approving the compromise followed the usual pattern of judgments in such cases: ordering the parties to comply with the terms and stipulations of the compromise.

The rule is that an order or judgment which declares the rights of the parties without any express command or prohibition is not one which may be the basis of a contempt proceeding (*Hammock vs. Hammock*, 209 Ga. 751 S.E. 2d 15). A violation of the rights of ownership does not constitute contempt of court, even though they have been ascertained and declared by judgment, unless it consists in doing something that was prohibited, or in failing to do something that was required, by the terms of the judgment (*Hotaling vs. Superior Court*, 191 501, 217 Pac. 73, 29 ALR 127).

Where there is no decree or order commanding accused or anyone else to do or refrain from doing something or anything, disobedience of it is impossible (17C.J.S. 30). Hence, Cenona Olego could not be held guilty of contempt of court.

With respect to the validity or enforceability of the lower court's judgment approving the compromise, Cenona Olego raised the issue of fraud. A compromise may be annulled on the ground of fraud and mistake (Art. 2038, Civil Code. See Arts. 24, 1330, 1332, 1338 and 1390, Civil Code). A judicial compromise may be set aside if fraud vitiated the consent of a party thereof (*Serrano vs. Miave*, L-14678, March 31, 1965, 13 SCRA 461, 466).

The extrinsic fraud, which nullifies a compromise, likewise invalidates the decision approving it. (As to the meaning of extrinsic fraud, see *Soriano vs. Asi*, 100 Phil. 785, 788; *Brady vs. Beams*, 132 F. 2d 985; 49 C.J.S. 743; *Crouch vs. McGaw*, 138 S.W. 2d 94; *Heirs of Celestino vs. Court of Appeals*, L-38690, September 12, 1975; 2 *Moran's Comment on the Rules of Court*, 1970 Ed., pp. 246-247).

As to the enforceability of the lower court's decision, it should be noted that assuming arguendo that that decision is valid, it becomes necessary to find out whether the decision includes the delivery of the possession of the land to Atty. Servano. The decision was based on Cenona Olego's supposed admission that Atty. Servano is the owner of the land in question.[2]

Does Cenona Olego's acknowledgement of Servano's ownership include the obligation to deliver the possession of the land to him? The general rule is that the adjudication of ownership does not include the possession of the property (*Talens vs. Garcia*, 87 Phil. 173; *Jabon vs. Alo*, 91 Phil. 750).

The exception is that the adjudication of ownership would include the delivery of possession if the defeated party has not shown any right to possess the land independently of his claim of ownership which was rejected (*Perez and Alcantara vs. Evite and Manigbas*, 111 Phil. 564).

But then in such a case a writ of execution would be required if the defeated party does not surrender the

possession of the property. The owner should enforce his right to possess the land (as an incident of his ownership) by asking for a writ of execution within five years from the finality of the decision. Thereafter, he could enforce his right by action within the next five years (Sec. 6, Rule 39 of the Rules of Court; Art. 1144, Civil Code).

Atty. Servano did not enforce his right to possess the land within the ten-year period. To enforce the judgment in his favor by means of a contempt proceeding after the expiration of the ten-year period would be a circumvention of the statute of limitations. What the law prohibits directly should not be allowed to be done indirectly.

Mr. Justice Antonio believes that the judgment against Cenona Olego, which had become unenforceable by reason of prescription, is a dormant judgment. The dormancy of a judgment destroys its legal force and effect (*Stanley C. Hanks Co. vs. Scherer*, 27 ALR 2d 832). It is inert and incapable of any effective manifestations of legal life (*First National Branch of Norton vs. E. E. Harper*, 166 ALR 761). Indeed, proceedings for the enforcement of a dormant judgment have been declared a nullity (*Berg vs. Torgerson*, 100 N.W. 2d, 153, 77 ALR 2d 1060). Mr. Justice Barredo concurs in that view.

Considering that the judgment against Cenona Olego is no longer enforceable and taking into account her imputation that the compromise, on which the said judgment was based, was vitiated by fraud and mistake, the said judgment cannot possibly affect her possession of the disputed land. Nor can it destroy the legal presumption in her favor that as possessor of the land in the concept of owner she has a just title thereto (Art. 541, Civil Code).

WHEREFORE, the lower court's order of February 21 and June 3, 1974, citing Cenona Olego for contempt of court, are set aside. The lower court's judgment of January 8, 1964 can no longer be enforced against Cenona Olego because it had already prescribed. Costs against respondent Servano.

SO ORDERED.

Antonio, Concepcion, Jr., and Martin[*], JJ., concur.

Barredo, (Acting Chairman), J., to be more exact, his view is that the compromise itself has completely lost already any legal force and effect it might have been intended to leave.

Fernando, J., on leave.

[*] Designated to sit in the Second Division.

[1] "That at the hearing of this case on January 8, 1964, the defendant Cenona Olego was advised by her former counsel, Atty. Eriberto Fante, to come early to Court. She came to Court, CFI of Tigaon, Camarines Sur accompanied by her daughter Rosita Rivero and waited in the lobby of the Court for the hearing of her case.

"Suddenly, her counsel Atty. Fante with the plaintiff Pedro Servano approached her with three or four typewritten paper ***. That they will have to postpone the hearing of her case and asked her to sign the typewritten paper they showed her. Cenona Olego, being an illiterate old woman, complied and they made her stamp her right thumbprint on the alleged motion for postponement.

"This alleged motion was not read and translated to her in Bicol dialect but signed it blindly as requested by her counsel, in the presence of Rosita Rivero and were told to go home.

"That since then, from January 8, 1964, for a period of more than 10 years she did not hear anything from her counsel or seen the plaintiff at least to inform her of the status of her case. The defendant however was not worried as she and her children remained peacefully in possession of their land.

"Unexpectedly on or about February 25, 1974, after ten (10) years, one (1) month and seventeen (17) days from that date when she was made to sign the alleged motion for postponement, she was served by a policeman of Lagonoy, Camarines Sur, copy of the Motion for Contempt which was translated to her in Bicol dialect.

"Cenona Olego became alarmed of what was read to her and immediately look for Atty. Eriberto Fante, her counsel, why she and her children were being castigated by the Court for not vacating their property. She could not however contact her counsel Atty. Fante and began to suspect that there was a serious mistake somewhere.

"She then engaged another counsel, the undersigned, and informed him of her trouble and showed him a copy of the motion for contempt... Defendant Cenona Olego denied vehemently to have signed any kind of amicable settlement .. .

"The behavior of Atty. Fante in inducing his client, an ignorant and illiterate woman to sign the amicable settlement, without much ado, stinks to high heavens and leaves a bad taste in the mouth that smacks collusion and conspiracy to defraud the defendant." (sic)

[2] In all his pleadings Atty. Servano never disclosed from whom he purchased the lot in question. He was reticent on the details regarding his supposed ownership of the lot.

On the other hand, Atty. Flores in his memorandum for Cenona Olego said that her father, Santiago Olego, died when she was ten years old; that she lived with a relative named Sabas Arrans (Aran) who became the guardian of her person and property consisting of a parcel of banana land with an area of 1,390 square meters that when she was thirteen years old Sabas Arrans gave her in marriage to Teodorico Rivero, a sixty-year old man; that they lived in a remote barrio and begot two children; that Sabas Arrans was then in possession of the lot; that after Rivero's death, she returned to Barrio Sta. Cruz (San Isidro Norte), Lagonoy and took possession of the lot in question which she had inherited from her father; that (as already stated) in 1956 she filed with the Register of Deeds a sworn declaration as to her ownership of the lot, and that a new tax declaration for it was issued in her name but the area of the lot had been reduced to 990 square meters because it had been eroded by the Malabog River.

According to Atty. Flores, Cenona Olego and her children had always possessed the lot. They constructed their nipa huts on the lot and planted vegetables therein. After Cenona Olego had fenced the lot, Sabas Arrans filed an ejectment suit against her. The justice of the peace of Lagonoy, after examining the documents supporting her claim for the lot, dismissed the case.

Apparently, it was Sabas Arrans who sold the lot to Atty. Servano. After buying the lot, Atty. Servano sued Cenona Olego for the purpose of securing a judicial declaration that he had a legal title to the lot.

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