

FELIX AZOTES, PETITIONER, VS. MANUEL BLANCO, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, CONSTANTINO Z. CANTO, PROVINCIAL SHERIFF OF ILOILO, AND JULIAN FIGURA, RESPONDENTS.

G.R. No. L-2593. December 07, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari and prohibition to review an order of execution, issued by Judge Manuel Blanco of the Court of First Instance of Iloilo and to prevent its enforcement.

It appears that the petitioner, Felix Azotes, was defendant in civil case No. 11396 of the Court of First Instance of Iloilo, Julian Figura being the plaintiff. The case involved the ownership and recovery of two parcels of land and was decided in 1940 in plaintiff's favor. Execution of the judgment having been ordered, the plaintiff in a sworn statement dated September 9, 1941, acknowledged that on that date he had received from the deputy sheriff "the two parcels of land situated in the same barrio the subject of our litigation with Felix Azotes, civil case No. 11896, according to the judgment of the Court of First Instance of November 12, 1940."

On March 30, 1942, the defendant re-entered and re-occupied the land by reason of which he was cited for contempt, upon complaint of Figura. The result of the charge for contempt is not disclosed by the record and is immaterial.

On February 27, 1946, Julian Figura filed a motion for the reconstitution of the case, the record of which had been destroyed, and after the reconstitution, on June 3, 1946, sued out an alias writ of execution which was granted. Azotes objected in due time on the grounds that the judgment sought to be executed had been complied with long before the war broke out; that even if the judgment had not been executed, the execution was illegal because more than five years had elapsed from the date of the final entry of judgment. Other grounds not necessary to state here were alleged.

Section 6, Rule 39, of the Rules of Court provides:

"Execution by motion or by independent action.—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

This provision is clear and need no comment. Five years having expired from the date the judgment became final, the issuance of execution was without jurisdiction. The plaintiff's remedy is a new action, an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment.

The execution of the judgment in 1942, the subsequent prosecution of the defendant for contempt, and the war (granting that the war interfered with the execution, which it did not), did not suspend or interrupt the period

prescribed in section 6 of Rule 39.

The petition is granted and the respondents are ordered to desist from carrying out the execution complained of, with costs against respondent Julian Figura.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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