

JOSE V. DE LOS SANTOS, ET AL., PETITIONERS, VS. HON. NICASIO YATCO, ET AL., RESPONDENTS.

G. R. No. L-13932. December 24, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

Petition for certiorari to revoke the order of the respondent judge cancelling his previous order of execution. For the reasons stated hereinafter, it should be denied.

It appears that in Civil Case No. Q-2664 of Quezon City Court of First Instance, the parties submitted on December 9, 1957, a compromise agreement whereby, referring to the sale by installment of a parcel of land made by plaintiffs Pacita V. de los Santos and Jose V. de los Santos to defendant Francisco Mendonez, they asked the court to render a judgment subject to the following conditions:

- "a. On or before December 26, 1957, defendant shall pay to plaintiffs the amount of P1,000.00;
- b. Defendant shall pay P300.00 monthly installment within the first five days of every month beginning January, 1958, until the balance shall have been paid in full;
- c. The balance shall bear interest at 10% per annum;
- d. That failure of defendant to pay P1,000.00 on or before December 26, 1957 and/or any two (2) successive monthly installments shall be cause for plaintiffs to demand of defendant to immediately vacate the premises with forfeiture in plaintiffs favor of all previous payments made; that if defendant will refuse to voluntarily vacate, plaintiffs can ask for execution of judgment against the defendant;
- e. That plaintiffs shall execute the necessary absolute deed of sale of the lot, Lot No. 4, Block No. 13 C of T.C.T. No. 25094, Quezon City Registry, in favor of defendant upon payment in full of the balance."

Wherefore, the court issued on December 10, 1957, a decision approving the agreement, and saying "judgment is hereby rendered in accordance with the terms and conditions set forth therein, for the parties to comply therewith * * *."

On March 10, 1958, plaintiffs in the same case filed a motion for execution, because defendant had allegedly neglected to pay monthly installments since January 1958. Plaintiffs set the motion for hearing on March 15, 1958. However, on March 14, 1958, defendants moved (with the conformity of plaintiffs' counsel) for postponement. to March 22, 1958 "to give the parties sufficient time to come to a more just, fair and equitable agreement." (Annex "E") And the judge postponed, as requested.

It is not clear what happened at the hearing on March 22, 1958. According to plaintiffs, Mendonez admitted he violated the agreement, asked for, and was granted, two days to settle with plaintiffs, but' he failed to do so. According to defendant there was a misunderstanding at that hearing. The fact is, the court issued on March 25, 1958, an order of execution. However, defendant Mendonez filed on April 17, 1958, an urgent motion to quash the writ of execution, asserting under oath that "immediately after the execution of the compromise agreement * * * plaintiff Pacita V. de los Santos and defendant Francisco Mendonez entered into a verbal agreement whereby the former assured and led defendant to believe that provided he could pay in full and at one time the balance of

his indebtedness to her through a GSIS (Government Service Insurance System) loan which she is willing to facilitate for defendant, she would execute the necessary deed of absolute sale in favor of the defendant for Lot No. 4, Block No. 13-C, Pcs-3312-AMD of T.C.T. No. 25094 of Quezon City and would consider the terms and conditions favorable to her in their compromise agreement unenforceable against defendant. * * *."

Defendant further alleged, also under oath, among other things, that he applied for and secured the necessary loan from the GSIS; that plaintiffs had been so advised on March 28, 1958; but plaintiff Pacita V. de los Santos "arbitrarily and illegally demands and continuous demanding of defendant that before she complies with the content of said (verbal) agreement, defendant should pay her P1,000.00 by way of attorney's fees plus the balance of defendant's indebtedness computed by her in the amount of P14,363.00, excluding interest yet, all to be taken from defendant's GSIS loan as approved, and that the P1,000.00 already paid by defendant to her as stated in paragraph 4, supra, is considered by her forfeited in her favor. * * *."

This urgent motion was taken up on April 19, 1958. After listening to the parties, the judge in open court ordered; "In view of the statement of counsel for plaintiffs that they are still open to an amicable settlement, action on the motion to quash writ of execution of the defendant is held in abeyance for two (2) weeks during which period they can settle the case amicably and report to the Court whatever agreement they may have reached."

On April 28, 1958, defendant manifested in writing that he conferred with plaintiff Pacita V. de los Santos on April 22, 1958, that he made known to her "that he is ready to pay and is offering her the sum of P13,563, his balance indebtedness to her, in accordance with their verbal agreement on December 9, 1957 * * *. Plaintiff Pacita V. de los Santos brushed aside defendant's offer of payment, and instead, stated that she will abide by their said agreement only if she will be paid P14,500.00. She added that she is demanding now, P14,500.00 after she has forfeited the P1,000.00 already paid by defendant to her, and that she can not allow the P1,000.00 be deducted from the remaining balance of P14,563.00."

The judge called the parties to a pre-trial or conference on June 2, 1958. Noting defendant's insistence on non-violation of the compromise agreement, he set the case for hearing on June 3, 1958. On said date according to the Judge, Atty. Bernardo (for plaintiffs) refused to attend the hearing, and defendant proved the material allegations of his urgent motion as herein-above set forth.

Wherefore, convinced that there was no justification for the issuance of the writ of execution, the Hon. Nicasio Yatco, Judge, quashed it by his order of June 4, 1958.

Hence this petition for certiorari to revoke that particular order, which petition must necessarily be based on lack of jurisdiction or abuse of discretion.[1]

There is no question in this country that a judge has jurisdiction to quash a writ of execution issued by him, particularly where it was improvidently issued. (*Dimayuga vs. Raymundo*, 76 Phil., 143, 42 Off. Gaz., 2121). See also *Garcia vs. Muñoz*, 103 Phil., 628.

Was there abuse of discretion? We think not. In the first place, there being opposition on the part of the defendant, who alleged and proved a subsequent verbal agreement amending the compromise, execution could not validly be decreed without a hearing. As we said in *Co. vs. Lucero*, 100 Phil., 160, 52 Off. Gaz., (17), 7255, when under similar circumstances a breach of the compromise agreement is alleged, "there arises a cause of action which must be passed upon by the court requiring a hearing to determine whether such breach had really taken place." [2]

In the second place, the allegations proved by *Mendoza* about their verbal agreement, his having secured a loan from the GSIS and his consequent ability to discharge his obligation seemingly justified the court's refusal to eject defendant from the premises (on execution) with the consequent forfeiture in favor of the plaintiffs of more than

P12,000.00 already paid by defendant as previous instalments of the purchase price,[3] not to mention the loss of defendant's use of the house and theatre erected on that parcel of land. Upon the other hand, the respondent judge's action caused no irreparable or undue harm to plaintiffs, because the latter still have the judgment that may be enforced upon any further default of defendant Mendoñez. Note particularly that their unpaid credit continuous to earn 10% interest.

Wherefore, as the court had jurisdiction and has committed no grave abuse of discretion, the writ of certiorari may not be issued.

Petition denied, with costs against petitioners.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] The corollary request for mandamus to compel execution depends upon the petition for certiorari.

[2] A further issue might possibly be tendered concerning the effect of plaintiffs' repeated readiness "to come to a more just, fair and equitable agreement" (Annex E) or an "amicable settlement" (Annex X). Did this amount to a waiver of the right to demand execution as a condonation of the default? Cf. *Dimayuga vs. Raymundo*, *supra*.

[3] "With forfeiture in plaintiffs' favor of all previous

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