

**VINCENT P. DAYRIT, PETITIONER, VS. THE COURT OF APPEALS,
HON. FRANCISCO ARCA, JUDGE OF THE COURT OF FIRST INSTANCE
OF MANILA, BRANCH I, MOBIL OIL PHILIPPINES, INC., AND ELADIO
Y...**

G.R. No. L-29388. December 28, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

Petition for certiorari by way of appeal from the Court of Appeals' minute resolution of June 14, 1968 dismissing the petition for certiorari in CA-G.R. No. 41359-R, as well as its resolutions of July 9, 1968 and August 5, 1968 denying the first and second motions for reconsideration, respectively, in the same case.

On July 21, 1965, the defendants Vincent Dayrit, Leonila T. Sumbillo and, Reynaldo Angeles entered into a contract with the Mobil Oil Philippines, Inc., entitled "LOAN & MORTGAGE AGREE-MENT," providing, among others, that:

"(a) For and in consideration of Sales Agreement dated July 21, 1965, among the parties here-in, Mobil grants a loan of P150,000 to borrowers.

"(b) Defendants-Borrowers shall repay Mobil the whole amount of P150,000 plus 10% interest per annum on the diminishing balance for 48 months.

"(c) To secure the prompt repayment of such loan by defendants-borrowers to Mobil and the faithful performance by Borrowers of that Sales Agreement, Defendants-Borrowers hereby transfer in favor of Mobil by way of first mortgage lands covered by TCT No. 45169 and TCT No. 45170, together with the improvements existing in said two (2) parcels of land.

"(d) In case of default of Defendants-Borrowers in payment of any of the installments and/or their failure to purchase the quantity of products stated therein Mobil shall have the right to foreclose this mortgage.

"(e) Mobil, in case of default and foreclosure shall be entitled to attorney's fees and cost of collection equivalent to not less than 25% of total indebtedness remaining unpaid.

"(f) All expenses in connection with the preparation and registration of this mortgage as well as cancellation of same shall be for the account of Defendants-Borrowers.

"(g) If Defendants-Borrowers shall perform the full obligation above stated according to the terms thereof, then this obligation shall be null and void, otherwise, it shall remain in full force and effect."

The defendants violated the Loan & Mortgage Agreement, they having paid but one installment in the amount of P 3,816, of which P1,250 was applied to interest, and the remaining P2,566 to the principal obligation. The defendants likewise failed to buy the quantities of products as required in the Sales Agreement (exh. D). The plaintiff made due demand (exh. I), which the de-fendant Dayrit answered, acknowledging his liability in his

letter exh. I-1.

On November 17, 1967, after trial and after the parties had submitted their memoranda,[1] the trial court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants Vincent Dayrit, Leonila T. Sunbillo and Reynaldo Angeles, ordering them to pay to the plaintiff one-third each of the sum of P147,434.00 with interest of 10% per annum from the time it fell due according to agreement, and in default of such payment, the properties put up in collateral shall be sold in fore-closure sale in accordance with law, the proceeds to be applied in payment of the amount due to the plaintiff from the defendants as claimed in the complaint, provided that, as to Dayrit, his liability shall in no case exceed 1/3 of the total obligation.

"The defendants are likewise ordered to pay to the plaintiff, in the same proportion of 1/3 each, 25% of the obligation as attorney's fees as provided in the contract; and P300.60 for the registration of the contract.

* * *

"Each of the three said defendants shall also pay 1/3 of the costs."

No appeal having been interposed by the defendants, the above decision became final and executory.

An undated Mobil's motion for execution of the decision and for the appointment of Eladio Ylagan as special sheriff (an-nex D) was received by the herein petitioner Dayrit on February 8, 1968. Whereupon, he filed his opposition and motion to stay execution, alleging that before the finality of the aforesaid judgment, he and the plaintiff had agreed not to appeal and/or file any motion for reconsideration, the petitioner offering to pay his one-third share with a reasonable discount, if possible, in so far as the interests and the award for attorney's fees were concerned, with the corresponding release of the mortgage on all his properties, and praying, in view thereof, for a 30-day grace period within which to pay the plaintiff. The 30-day grace period was granted by the court in its order of February 24, 1968.

On March 25, 1968 the petitioner filed another motion for 20 days' extension within which to pay his one-third share of the judgment obligation and to submit the corresponding compromise agreement for the satisfaction of the judgment. The said motion was granted on April 1, 1968.

Thereafter, the respondent Mobil filed an "Urgent Reply to Opposition and Motion to Stay Execution dated Feb. 21, 1968 and Motion dated March 25, 1968," alleging therein that the respondent agreed to release the mortgage or collateral for the entire judgment obligation only if "the whole principal mortgaged debt plus the whole accrued interest" were fully paid. Mobil further prayed for a writ of execution to be issued against the petitioner after the lapse of 20 days from March 25, 1968, if by then the parties shall not have submitted a compromise agreement for the satisfaction of the judgment; Mobil also reiterated its prayer for the appointment of respondent Eladio Ylagan as special sheriff.

On April 3, 1968 the petitioner filed a manifestation and motion, praying that he be allowed to deposit with the Clerk of Court the amount corresponding to his one-third share of the obligation under the decision of November 17, 1967, and that there-upon the collateral or mortgage over petitioner's properties or lands be ordered released or cancelled.

On April 10, 1968 the court a quo ordered all pending incidents set for hearing on. April 19, 1968, "so that the Court may have the opportunity to confer with the parties to thresh out the settlement of this case." At this hearing Mobil did not appear; the court reset the hearing for May 23, 1968.

Under date of May 8, 1968, Mobil filed an addendum to its reply dated April 1, 1968 and opposition to

petitioner's motion dated April 3, 1968, praying that the motion of petitioner Dayrit that the entire mortgaged collateral be released upon his payment of mere 1/3 of the loan obligation, be denied and instead a writ of execution against him in accordance with the dispositive portion of the decision and sections 2 and 3 of Rule 68 of the Revised Rules of Court be issued.

On May 18, 1968 the petitioner filed his rejoinder to respondent Mobil's aforesaid addendum and opposition.

On May 23, 1968; after hearing oral argument, the court denied the manifestation and motion of Dayrit filed thru counsel and dated April 3, 1968; the court further ruled that "There is no further need to issue an order for the issuance of a writ of execution and appointment of special sheriff ... considering that the Court, in its order of February 24, 1968, has already ordered the issuance of a writ of execution for the satisfaction of the judgment."

The petitioner then filed his petition for certiorari with the Court of Appeals, dated May 30, 1968, alleging that "respondent Judge Arca acted without or in excess of his jurisdiction and/or with grave abuse of discretion, in denying petitioner's motion to allow him to pay or deposit his one-third share of the judgment obligation" as well as the consequent release or cancellation of the mortgage on his properties.

The Court of Appeals, however, in its minute resolution of June 14, 1968, dismissed the petition for certiorari, in the following words:

"Upon consideration of the petition for certiorari filed in this case, the Court RE-SOLVED TO DISMISS the petition, there being no abuse of discretion in ordering the execution of a final judgment. Details of execution for satisfaction of Vincent Dayrit's liability will be worked out in connection with the sale of the collateral for mortgaged debt, and the judgment in Civil Case No. 64138 of the CFI-Manila will control the disposition and application of the collateral."

The petitioner filed a motion for reconsideration dated June 9, 1968 which the Court of Appeals denied in its resolution of July 9, 1968, as follows:

"Both the petition and the motion for reconsideration are based on a misapprehension of the terms of the judgment. The Mortgage obligation is one and indivisible. It was executed to assure payment of the total indebtedness of the three defendants in Civil Case No. 64138, and not merely one-third (1/3) thereof corresponding to petitioner Vincent P. Dayrit's liability."

The petitioner's second motion for reconsideration of July 25, 1968 was summarily dismissed on August 5, 1968, for lack of merit.

The petitioner, in his present petition, tenders the following issues for resolution:

- "1) Whether or not respondent Judge [CFI-Manila] acted without or in excess of his jurisdiction, and/ or with grave abuse of discretion in denying petitioner's motion to allow him to exercise his clearly legal right to pay or deposit his one-third share of the judgment;
- "2) The next issue was that brought about by the Court of Appeals resolution dismissing the petition for certiorari, and which was raised in petitioner's motion dated June 19, 1968 for reconsideration of said resolution, contending that the ground for dismissal did not jibe with the issue raised in the petition for certiorari;
- "3) And lastly, the Court of Appeals' resolution of July 9, 1968 denying said motion for reconsideration apprehension on the part of petitioner of the terms of the respondent judge."

1. The question raised by the respondent Mobil that the present petition for certiorari was filed way beyond the reglementary period of 15 days from appellant's receipt of notice of judgment or of the denial of his motion for

reconsideration pursuant to section 1, Rule 45 of the Revised Rules of Court,[2] needs to be resolved before consideration of this case on the merits. Admittedly, the ex parte first motion for reconsideration filed by the herein petitioner was denied, and copy of such denial was received by the petitioner on July 15, 1968. Still not satisfied, petitioner filed another ex parte motion for reconsideration on July 26, 1968, notice of the denial of which, under CA resolution dated August 5, 1968, was received by said petitioner on August 9, 1968.

Respondent Mobil contends that the second motion for reconsideration filed by the petitioner was a mere scrap of paper and pro forma since it was filed ex parte and without express leave of court, contrary to the mandate of section 1, Rule 52 of the Rules of Court.[3]

The rule appears to be inflexible in the sense that no more than one motion for reconsideration shall be filed without express leave of court. The requirement that the second motion for reconsideration must be presented, with leave of court, within fifteen days from notice of the order or judgment, deducting the time during which the first motion was pending, is to afford the court sufficient time to evaluate whether there is prima facie merit therein, so that, "if the court finds merit prima facie in the motion for rehearing or reconsideration, the adverse party shall be given time to answer, after which the court, in its discretion, may set the case for oral argument." [4] And only upon compliance with the above stated requirements may the second motion for reconsideration stay the final order or judgment sought to be re-examined.[5]

The Court of Appeals gave due course to the second motion for reconsideration of the herein petitioner, but nevertheless, dismissed the same summarily for lack of merit.

However, even assuming, that the ex parte second motion for reconsideration was properly filed so as to toll the reglementary period within which to appeal, it appears that the petition for certiorari filed with this Court on August 20, 1968 was time barred. From the date of denial of the petitioner's ex parte first motion for reconsideration received by him on July 15, 1968 assuming that the period was interrupted by the ex parte second motion for reconsideration from July 26, 1968 to August 9, 1968 (15 days) - to the elevation of the said case to this Court on August 20, 1968, 36 days had elapsed. Deducting the 15 days during which the ex parte second motion for reconsideration was pending from the total period of 36 days leaves 21 days. This means that the present petition was filed with this Court six days late, contrary to and in violation of section 1, Rule 45, which specifically provides that a petition for certiorari under such Rule should be filed within 15 days from notice of judgment or denial of motion for reconsideration. Hence, the present petition may be dismissed on the aforesaid ground.

But we opt, nevertheless, to consider the merits of this case, if only to demonstrate to the petitioner his error.

2. The decision of the lower court, let it not be forgotten, has admittedly become final and executory. The controverted judgment ordered the defendants (Dayrit, Sumbillo and Angeles) "to pay the plaintiff one-third each of the sum of P147,434.00 with interest of 10% per annum from the time it fell due according to agreement, and in default of such payment, the properties put up in collateral shall be sold in foreclosure sale in accordance with law, the proceeds to be applied due to the plaintiff from the defendants as claimed in the complaint, provided that, as to Dayrit, his liability shall in no case exceed 1/3 of the total obligation."

In sum, the issue that must be resolved in the instant case is, whether or not the Court of First Instance of Manila erred in ordering the sale at public auction of the mortgaged properties to answer for the entire P147,434 principal obligation after the defendants (Dayrit Sumbillo and Angeles) had failed to pay their respective one-third shares of the obligation to the respondent Mobil; otherwise stated, whether or not the respondents Court of First Instance and the Court of Appeals erred in refusing to allow the alleged proposed deposit of a sum equivalent to 1/3 of the loan agreed upon and in refusing to release forever the collaterals owned by Dayrit, although the other 2/3 portion

of the loan obligation had not been satisfied due to insolvency of the other two co-defendants.

To begin with, the prayer of the complaint filed with the respondent Court of First Instance recites as follows:

"WHEREFORE, it is respectfully prayed that judgment be rendered –

"a) Ordering the defendants to pay the sum of P147,484 with 10% interest per annum from the time it fell due as agreed upon and that in default of such payment, the above described properties be sold and the proceeds of sale be applied to the payment of the amount due to the plaintiff from the defendants under this complaint."

The complaint, in effect, is a collection suit with damages and foreclosure of mortgage against the three defendants, Leonila Sumbillo, Reynaldo Angeles and Vincent Dayrit. Although the Loan and Mortgage Agreement was signed by the three defendants as mortgagors, the properties being foreclosed belong solely to, and are registered solely in the name of, the petitioner Vincent Dayrit.

The pertinent dispositive portion of the decision rendered by the lower court reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants" Vincent Dayrit; Leonila T. Sumbillo and Reynaldo Angeles, ordering them to pay to the plaintiff one-third each of the sum of P147,434 with interest of 10% per annum from the time it fell due according to agreement, and in default of such payment, the properties put in collateral shall, be sold in foreclosure sale in accordance with law, the proceeds to be applied in payment of the amount due to the plaintiff from the defendants as claimed in the complaint, provided that, as to Dayrit, his liability shall in no case exceed 1/3 of the total obligation."

The petitioner contends that the said judgment is a simple money judgment and not a foreclosure judgment, and that because the respondent Mobil resorted to the remedy of enforcing his right by a complaint against the defendant-petitioner for collection of a sum of money, with the consequent simple money judgment, the satisfaction of his 1/3 share of the joint obligation would release all the mortgaged properties put up as collateral to secure the payment of the whole obligation. The reason advanced by the petitioner is that the decision rendered being a simple money judgment and not a mortgage-foreclosure judgment, the distinction in its execution is decisive, that is, whereas in mortgage foreclosure the judgment should conform to the requirement, embodied in section 2, Rule 68 of the Rules of Court, that the order of payment be made into the court "within a period not less than ninety (90) days x x x and in default of such payment, the property mortgaged be sold to realize" the indebtedness, in a simple money judgment, upon satisfaction of part (in the instant case his 1/3 share) of the joint obligation, the mortgaged properties should be released from such mortgage contract.

This contention of the petitioner is clearly devoid of merit.

The decision which the petitioner describes as a simple money judgment orders the defendants Vincent Dayrit, Leonila T. Sumbillo and Reynaldo Angeles to pay the plaintiff the sum of P147,434, and in default of such payment, the properties put up in collateral shall be sold in foreclosure sale in accordance with law, the proceeds to be applied in payment of the amount due to the plaintiff from the defendants as claimed in the complaint. While it is true that the obligation is merely joint and each of the defendants is obliged to pay only his/her 1/3 share of the joint obligation, the undisputed fact remains that the intent and purpose of the Loan and Mortgage Agreement was to secure, inter alia, the entire loan of P150,000 that the respondent Mobil extended to the defendants. The court below found that the defendants had violated the Loan and Mortgage Agreement, they having paid but one installment. The undisputed fact also remains that the petitioner alone benefited from the proceeds of the loan of P150,000, the said amount having been paid directly to the Bank of the Philippines to bail out the same properties from a mortgage that was about to be foreclosed. In effect, Mobil merely stepped into the shoes of the Bank of the Philippines.

The petitioner insists that the dispositive portion of the judgment declaring the obligation merely joint with the proviso that "as to Dayrit, his liability shall in no case exceed 1/3 of the total obligation, should be construed in the light of the opinion of the lower court that "said collateral must answer in full but only to the extent of Dayrit's liability which as above determined, is 1/3 of the obligation, thereby entitling him to pay or deposit in court his corresponding share of the joint obligation in satisfaction thereof, with the automatic release of all the mortgaged properties.

A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. "While the two may be combined in one instrument, the opinion forms no part of the judgment. There is a distinction between the findings and conclusion of a court and its judgment. While they may constitute its decision and amount to a rendition of a judgment they are not the judgment itself. They amount to nothing more than an order for judgment which must be distinguished from the judgment. Only the dispositive portion may be executed." [6]

Besides, well-entrenched in law is the rule that a mortgage directly and immediately subjects the property upon which it is imposed, [7] the same being indivisible even though the debt may be divided, [8] and such indivisibility likewise being unaffected by the fact that the debtors are not solidarily liable. [9] As Tolentino, in his Commentaries and Jurisprudence on the Civil Code of the Philippines, [10] puts it -

"When several things are pledged or mortgaged, each thing for a determinate portion of the debt, the pledges or mortgages are considered separate from each other. But when the several things are given to secure the same debt in its entirety, all of them are liable for the debt, and the creditor does not have to divide his action by distributing the debt among the various things pledged or mortgaged. Even when only a part of the debt remains unpaid, all the things are still liable for such balance. Hence, a mortgage voluntarily constituted by the debtor on two or more parcels of land is one and indivisible, and the mortgagee has the right to have either or both parcels, jointly or singly, sold to satisfy his claim. In case the mortgaged properties are a house and lot, it can not be claimed that the lot and the house should be sold separately and not together."

But then there is this other seeming posture of the petitioner: that the judgment which has become final and executory either modified or superseded the Loan and Mortgage Agreement between the parties, and since the obligation is merely joint, upon payment thereof, as in attachment, the properties mortgaged are released from liability. The decision under consideration, however, did nothing of the sort. The petitioner conveniently refused to recognize the true import of the dispositive portion of the judgment. The said portion unequivocally states that "in default of such payment, the properties put up in collateral shall be sold in foreclosure sale in accordance with law, the proceeds to be applied in payment of the amount due to the plaintiff as claimed in the complaint." And the claim in the complaint was the full satisfaction of the total indebtedness of P147,434; therefore, the release of all the mortgaged properties may be authorized only upon the full payment of the above-stated amount secured by the said mortgage.

With respect to the provisions of section 2 of Rule 68 of the Rules of Court giving the petitioner a period of 90 days within which he might voluntarily pay the debt before the sale of the collateral at public auction was ordered, we agree that the trial court failed to provide such period. However, this failure can be regarded as having resulted in mere *damnum absque injuria*. From November 17, 1967 when the decision was rendered to May 23, 1968 when the final order to sell the mortgaged properties was issued, a period of more than six months had passed, which is considerably much more than the 90-day period of grace allowed the petitioner to validly tender the proper payment.

ACCORDINGLY, the petition is denied, at petitioner's cost.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., no part.

[1] Defendants Leonila T. Sumbillo and Reynaldo Angeles, by motion of the plaintiff Mobil, were declared in default for failure to answer the complaint. Only Vincent P. Dayrit filed an answer to the Mobil complaint.

[2] "Filing of petition with Supreme Court. - A party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying at the same time, to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of service of a copy thereof to the Court of Appeals."

[3] "Motion for re-hearing. - A motion for a re-hearing or reconsideration shall be made ex parte and filed within fifteen (15) days from notice of the final order or judgment. No more than one motion for re-hearing or reconsideration shall be filed without express leave of court. A second motion for reconsideration may be presented within fifteen (15) days from notice of the order or judgment deducting the time in which the first motion has been pending."

[4] Section 2, Rule 52, Rev. Rules of Court.

[5] Section 3, *ibid.*

[6] *Casilan vs. Kapunan*, G.R. No. L-23247, Jan. 31, 1969, 26 SCRA 744.

[7] Art. 2126, Civil Code of the Philippines.

[8] Art. 2089, *ibid.*

[9] Art. 2090, *ibid.*

[10] Vol. V, 1959 ed., pp. 463-464. To the same effect, see *Philippine National Bank vs. Mallorca*, G.R. No. L-22538, Oct. 31, 1967, 21 SCRA 694, 697-698.

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