

**EDUARDO BIEN, PABLO NABOR, TOMAS AGPAY, JESUS LLAGAS,
FELICIANO NAVARRO, MARCELO ABELLENDE, SALVADOR
PECONCILLO, BENJAMIN PECONCILLO, JR., CARLOS BARCELA,
VICENTE BENAVENTE AND M...**

G.R. No. L-39644. September 30, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari, prohibition and/or injunction, with a prayer for the issuance of a restraining order, to annul and set aside the order of demolition issued by the respondent Judge Delfin Vir. Sunga in Civil Case No. 1940 of the Court of First Instance of Camarines Sur, entitled: "Raymundo S. Katigbak, plaintiff, versus Ramon Imperial, et al., defendants," on September 17, 1974 for having been issued without jurisdiction or with grave abuse of discretion since the same was issued pursuant to a motion for execution which was filed after the expiration of the 5-year period within which a judgment could be executed upon mere motion; and that the order of execution is directed at persons who are not parties to the case.

The records show that on July 30, 1951, Raymundo S. Katigbak filed an action against Ramon Imperial, Jesus Imperial, Manuel Imperial, Maria Imperial, Martin Don, Encarnacion Imperial, Paulo Limjoco, Dolores Imperial, Ramon Tolentino, Purification Imperial, Meliton Ortega, Alipio de la Torre, Andrea Basmayor, Anastacio Baracena, Pedro Padayag, Juan Baldor, Agustin Bastio, and Pedro Paballa with the Court of First Instance of Camarines Sur, docketed therein as Civil Case No. 1940, for the recovery of possession of a parcel of land with an area of 112.6367 hectares, situated in Pili, Camarines Sur, and covered by OCT No. 150 issued in his name.[1]

Thereafter, Braulio Bien, Anastacio Baracena, Esteban Yuta, Pedro Paballa, Esteban Bendaña, Bonifacio Aperto, Benigno Valenzuela, Emiliana Baracena, Inocentes Beldan, Higinio Baracena, Eduardo Bien, Juan Baldos, Gorgonio Peconcillo, Andres Bien, Luis Bendaña, Pablo Nabor, Balbino Bendaña, Toribio Buezon, Angeles Sinfuego, Guillermo Pagador, Agapito Flora, Sergio Cielo, Francisco Beño, Eladio de la Torre, Julian Bualoy, and Florencio Paballa, upon previous leave of court,[2] filed a complaint in intervention, alleging that they are the owners of the parcels of land occupied by them which is disputed by the plaintiff and the defendants.[3] On January 2, 1958, the trial court dismissed the complaint in intervention, saying:

"Acting upon the motion filed by the plaintiff herein, praying this Court to dismiss the complaint in intervention filed by the intervenors and the objection thereto by the latter, and it appearing that the land subject matter of litigation between the plaintiff and the intervenors is a public land wherein the plaintiff has been granted a sales title by the government, it is clear that this Court has no jurisdiction to take cognizance of the matter, for the reason that the land being a public domain is subject to the exclusive jurisdiction of the Director of Lands.

"Moreover, the intervenors have no cause of action against the plaintiff for the reason that they only alleged in their complaint in intervention, that they have possessed the land for more than 15 years to date, without

alleging how they came to possess the said land either by application for homestead or by application for sale.

"Considering that the controversy between the plaintiff and the defendants is for the acquisition of a portion of a public domain from the government and the said controversy having been decided by the Director of Lands, this Court has no jurisdiction over the subject matter to review the said decision.

"In view thereof, it is ordered that the complaint in intervention be, as it is hereby, dismissed." [4]

Then, after appropriate proceedings, or on July 29, 1958, the trial court dismissed the complaint upon the ground that "the land in question is a private land belonging to Engracio Imperial, the predecessor in interest of the defendants, who purchased it from the Spanish Government in 1894, and as such, the Director of Lands had no authority or jurisdiction to sell the same to either Maria Vercels in 1929, or Fulgencio Moreno in 1944, the predecessor in interest of the herein plaintiff." [5] On appeal, however, the order of dismissal was reversed by the Court of Appeals on August 28, 1968 and another one was entered, declaring the plaintiff Raymundo S. Katigbak the owner of the disputed parcel of land, and ordering "the defendants or those occupying the same" to vacate the premises and deliver the possession thereof to the plaintiff. [6]

The judgment became final and executory on January 21, 1969, [7] and since no further appeal was taken therefrom, the records of the case were remanded to the Court below on February 24, 1969, for the execution of the judgment.

On April 7, 1969, the plaintiff filed a motion for the execution of the judgment, [8] and on May 3, 1969, the trial court directed the issuance of a writ of execution. [9] On June 27, 1969, the corresponding writ of execution was issued. [10]

On July 5, 1969, Tomas Agpay, Carlos Barcelá, Vicente Benavente, Manuel Peconcillo, Eduardo Bien, Pablo Nabor, Jesus Llagas, Feliciano Navarro, Marcelo Abelende, Salvador Peconcillo, and Benjamin Peconcillo, Jr., however, filed a motion to quash the writ of execution upon the ground that: (1) the order of execution and writ of execution, having been issued after the lapse of more than 10 years from the issuance of the order dismissing the complaint in intervention on January 2, 1958, can no longer be enforced against Eduardo Bien and Pablo Nabor since the judgment sought to be executed upon a mere motion had already prescribed; and (2) the order of demolition cannot be enforced against the other movants because the court had not acquired jurisdiction over them since they were not parties to the action. The motion was apparently denied because on July 28, 1969, an amended writ of execution was issued commanding the Provincial Sheriff of Camarines Sur "to restrain the defendants, their agents, representatives, attorneys or any other person or those occupying the same possessing and benefitting the land in question above-described and that you deliver the material possession of the same to the plaintiff or any of his representatives." The Sheriff was further commanded that of the goods and chattels of the defendants be caused to be made the sum of P500.00 to be delivered to the plaintiff in payment of attorney's fees, the costs of suit and the sheriff's fees. [11] Pursuant thereto, the persons occupying the disputed parcel of land were given a period of 30 days from August 7, 1969, within which to demolish their respective houses and vacate the premises. The defendants, upon service of the writ, voluntarily surrendered the possession of the land to the plaintiff. [12]

The writ of execution, however, "was not implemented as the same was aborted by the movants themselves who through persistent pleas, backed up by force and near violence or intimidation, bided for added time and opportunity to relocate themselves elsewhere." [13]

On March 6, 1974, the herein private respondent Raymundo S. Katigbak filed a motion for the issuance of an alias order of demolition against "the houses or any construction on the land in question made or caused to be constructed" by Braulio Bien, Anastacio Baracena, Esteban Yuta, Pedro Paballa, Esteban Bedaña, Bonifacio

Aperto, Benigno Valenzuela, Emiliana Baracena, Inocentes Beldad, Higino Baracena, Eduardo R. Bien, Juan Baldos, Gorgonio Peconcillo, Andres Bien, Luis Bedaña, Pablo Nabor, Bal-bino Bendaña, Toribio Buazon, Angeles Sinfuego, Guillermo Pagador, Agapito Flora, Sergio Cielo, Francisco Beno, Eladio de la Torre, Julian Bualoy, and Florencio Paballa,[14] which was opposed by the aforementioned persons who invoked the provisions of Memorandum Circular No. 29 of the Department of Agrarian Reform, series of 1973, in relation to Presidential Decree Nos. 316 and 27. The private respondent filed his rejoinder thereto, and on May 22, 1974, the respondent Judge issued an order, directing the demolition of all the houses constructed in the land of the plaintiff by the defendants and/or intervenors, their agents, representatives and all persons acting for and in behalf of said defendants and intervenors. A motion for the reconsideration of the order was filed, and the court issued an order, setting an ocular inspection of the land on May 27, 1974, "for the Court to determine who among the respondents claimed ownership over the portion they were occupying and who among them claimed to be tenants or farmer-tillers of the said land." In the course of the ocular inspection of the land, the respondent Judge asked each and everyone of those occupants present if he was a tenant, but none of them claimed to be a tenant. All claimed to be the owner of the land occupied by them, prompting the judge and the Team Leader of the Pili Land Reform Office to announce that Memorandum Circular No. 29 of the Department of Agrarian Reform, series of 1973, was not applicable. On July 9, 1974, the herein petitioners filed a motion to quash the order of execution and/or writ of execution, and the order of demolition and/or alias writ of demolition upon the grounds that (1) the order of execution and writ of execution having been issued after the lapse of five (5) years from the date judgment had become final and executory, the judgment could no longer be enforced by mere motion for execution against the petitioners Eduardo R. Bien and Pablo Nabor and that said judgment had already prescribed insofar as the said petitioners are concerned; and (2) the order of execution and writ of execution and the order of demolition can not be enforced against the other petitioners because the court had not acquired jurisdiction over them for the reason that they were not parties to the action. The motion was denied on September 16, 1974, the court reiterating its order of demolition dated May 22, 1974.[15] Pursuant thereto, an alias writ of demolition was issued on September 17, 1974.[16]

Thereafter, the Sheriff of Camarines Sur started the demolition of the houses constructed on the land in question and the removal of improvements therein. As a consequence, the herein petitioners filed the instant recourse to annul and set aside said alias writ of demolition. As prayed for, the Court issued a temporary restraining order, restraining the respondents from demolishing the houses and destroying the improvements and crops of the petitioners on the land and from enforcing the questioned order of September 14, 1974.[17] The telegram from the Court restraining further execution of the judgment was received by the Provincial Sheriff of Camarines Sur on November 21, 1974.[18] By that time, however, the judgment sought to be restrained had already been enforced and the houses built in the disputed parcel of land had already been demolished, thus rendering the instant petition moot and academic. The Sheriff's Return, dated November 1, 1974, reads, as follows:

"SHERIFF'S REPORT

"The undersigned Deputy Provincial Sheriff of Camarines Sur, in obedience to the Writ of Execution issued by the Court of First Instance of Camarines Sur, Branch I, dated September 17, 1974, personally effected the import of said Writ to the defendants and intervenors and other persons occupying inside the land in question at Binanwaan, Pili, Camarines Sur immediately after its issuance, starting September 18, 1974. That the defendants, intervenors and other persons occupying in the land in question were given five (5) days within which to remove their respective houses erected thereon or to transfer their houses to the subdivision lot allotted to them by plaintiff and with a total area of 600 sq. meters, each family.

"That within the latter part of September, 1974, the following defendants, intervenors and other persons voluntarily removed and/or transfer their houses, namely: Anastacio Pubucan, Moises Conel, Salvador Bragais,

Sergio Cielo, Domingo Beldad, Santos Beldad, Inocentes Beldad, Justo Baracena, Sulpicio Valenzuela, Rosario Raynancia, Rustico Colasi, Luis Bendana, August Rizo, Felix Rizo, Silvestre Rizo, Eladio de la Torre, Delfin de la Torre, Elias Baldos and Marcelino Malagueno.

"That it is to be noted in this regard that the transfer of the houses of the foregoing defendants, intervenors and other persons occupying inside the land in question were at the expense of the plaintiff with of course the supervision of the undersigned sheriff.

"That the houses owned by the following defendants, intervenors and other occupants were demolished by the undersigned sheriff with the assistance of the PC soldiers and policemen of Pili, Camarines Sur, in the month of October, 1974 are: Carlos Barcelá, Pablo Nabor, Eduardo Bien, and Francisco Bino, because of their continuous refusal to vacate from the land in question subject of the said Writ of Demolition.

"That the following intervenors and other occupants who transferred their houses outside the land in question are: Igmedio Penalosa, a certain Mr. Cada and his son, Manuel Piconcillo and Benigno Valenzuela.

"In view of the foregoing, this Writ of Demolition is hereby returned to the Court of origin duly SERVED and complied.

"Naga City, Philippines, November 1, 1974."[19]

The Sheriff also certified that the petitioners Feliciano Navarro, Marcelino Abelende, Salvador Peconcillo and Benjamin Peconcillo, Jr., were not occupants of the disputed parcel of land, and that the petitioners Tomas Agpay and Jesus Llagas had voluntarily abandoned their holdings. The certificate, issued on November 27, 1974, reads, as follows:

"CERTIFICATION

"TO WHOM IT MAY CONCERN:

"This is to certify that I was the Deputy Sheriff who served the original Writ of Execution dated June 10, 1969, the Amended Writ of Execution dated July 28, 1969, and the Alias Writ of Demolition dated September 17, 1974, all issued by the Court of First Instance of Camarines Sur in Civil Case No. 1940 of said Court.

"That, my service of said Writs is complete, and during my service of said Writs (the original Writ dated June 10, 1969, served in July, 1969; the Amended Writ of Execution, served on July 25, 26, 27, 28, 29 and 30, and August 4, 5, 6 and 7, 1969; the Alias Writ of Demolition, served in September and October, 1974) I did not encounter, meet or find any of the following persons as landowner, tiller, occupant or house-owner on the land object of the said Writs in Binanuanan (formerly Curry), Pili, Camarines Sur, namely, FELICIANO NAVARRO, MARCELINO ABELENDÉ, SALVADOR PECONCILLO and BENJAMIN PECONCILLO, JR.

"Further, that TOMAS AGPAY had already abandoned his 'landholding' on the land in question and had already removed his house thereon at the time of my enforcement of the aforementioned Alias Writ of Demolition; as to JESUS LLAGAS, he has no house on the land in question, and as to his 'holding' on the said land, he had already abandoned the same at the time of the enforcement of the alias Writ of Demolition."[20]

That the petitioners had already abandoned their landholdings is further corroborated by the fact that in their motion dated March 16, 1981, they prayed that their co-petitioners Eduardo Bien, Pablo Nabor, and Vicente Benavente should be excluded from the instant petition since they were no longer in possession of their respective claimed portions.[21]

Since there is no question regarding the validity of the decision of the Court of Appeals which had already been enforced, the petition is moot and academic. There is no longer anything to be restrained.

At any rate, We find no merit in the petitioners' contention that the motion for the execution of judgment was filed beyond the reglementary period. Under Section 6 of Rule 39 of the Revised Rules of Court, a judgment may be executed on motion within five (5) years from the date of its entry or from the date it became final and executory and, thereafter, and before it is barred by the statute of limitations, it may be enforced by action. The prescriptive period for an action to enforce a judgment is 10 years from the time the judgment became final.[22] In the instant case, the judgment of the Court of Appeals, which is sought to be executed, became final and executory on January 21, 1969. There being no further appeal interposed, the records of the case were remanded to the Court of First Instance of Camarines Sur for execution of the judgment. On April 7, 1969, the private respondent, Raymundo S. Katigbak, filed a motion for the execution of the judgment which was granted by the trial court on May 3, 1969. Thereafter, the corresponding writ of execution was issued on June 27, 1969. However, on July 5, 1969, the herein petitioners moved to quash the writ of execution. The motion was obviously denied because on July 28, 1969, an amended writ of execution was issued. This writ of execution was not fully implemented, so that on March 6, 1974, the private respondent Katigbak filed a motion for the issuance of an alias writ of demolition which was ultimately issued on September 17, 1974 and effected before the end of October, 1974. From July 28, 1969, when the unexecuted writ of execution was issued, to March 6, 1974, when a motion was filed for the issuance of an alias writ of demolition, only a period of four (4) years, seven (7) months and nine (9) days had elapsed. Hence, the motion for the issuance of an alias writ of execution was filed well within the reglementary period.

"In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without scire facias." [23]

With respect to the petitioners' contention that they are strangers to the case between Katigbak and the Imperials and hence, cannot be bound by the judgment rendered therein, suffice it to state that the petitioners Feliciano Navarro, Marcelino Abelende, Salvador Peconcillo, and Benjamin Peconcillo, Jr., are, indeed, strangers in the case, as well as in the land in question. In his certification, issued on November 27, 1974, the Deputy Sheriff of Camarines Sur who served the writs of execution issued in Civil Case No. 1940 of the Court of First Instance of Camarines Sur, attested that he did not encounter, meet or find any of the said petitioners as "landowner, tiller, occupant or house-owner on the land subject of the said writs." Besides, the said petitioners are not among those against whom an alias writ of demolition had been prayed for in the motion of March 6, 1974. For sure, if they were occupying certain portions of the disputed property, they would have been included in the said motion. Having no interest in the disputed property, they have no cause of action against the respondents.

However, with respect to the petitioners Vicente Benavente, Carlos Barcela, and Manuel Peconcillo, the record shows that they are the successors-in-interest of the intervenors therein and, hence, bound by the judgment. Vicente Benavente stated that he acquired the land claimed by him from Balbino Bendaña in 1968,[24] while Carlos Barcela acquired that portion possessed by him in 1967, from the intervenors Esteban Yuta and Bonifacio Aperto.[25] The petitioner Manuel Peconcillo, for his part, derived his title from Gorgonio Peconcillo, also an intervenor in the case.[26]

Under the circumstances, it cannot be said that the respondent Judge abused his discretion in ordering the execution of the judgment of the Court of Appeals.

WHEREFORE, the petition should be, as it is hereby, DISMISSED. The temporary restraining order heretofore issued is hereby LIFTED and SET ASIDE. With costs against the petitioners.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur. Aquino, J., in the result.

[1] Rollo, p. 15.

[2] Id., p. 57 (19, 20).

[3] Id., p. 18.

[4] Id., p. 24.

[5] Id., p. 33.

[6] Id., p. 26.

[7] Id., p. 57 (36).

[8] Id., p. 33.

[9] Id., p. 57 (37).

[10] Id., p. 38.

[11] Id., p. 57 (37).

[12] Id., p. 57 (39).

[13] Id., p. 57 (45).

[14] Id., p. 57 (40).

[15] Id., p. 42.

[16] Id., p. 35.

[17] Id., p. 53.

[18] Id., p. 57 (52).

[19] Id., p. 57 (50).

[20] Id., p. 57 (53).

[21] Id., pp. 209-210.

[22] Art. 1152, Civil Code.

[23] *Lancita vs. Magbanua*, 117 Phil. 39.

[24] Rollo, p. 57 (57).

[25] Id., p. 57 (59).

[26] Id., p. 57 (63).

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