

**CONCEPCION DE LA ROSA, PETITIONER, VS. TARCELA FERNANDEZ,
AS NATURAL GUARDIAN OF THE MINORS SHEILA, NILO AND JOSE,
JR., ALL SURNAMED FERNANDEZ, HON. EDUARDO C. TUTAAN,
JUDGE, CF...**

G.R. No. L-46127. April 18, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

The proceedings at bar originated from an action filed by Jose Fernandez in the Court of First Instance at Quezon City,¹ described by that Court as one "mainly for recovery of the sum representing his share in the proceeds of the sale of a bakery, proportionate to the amount he contributed in a partnership he had with his deceased brother, husband of defendant Concepcion de la Rosa."² Judgment was rendered on September 21, 1971 on the basis of plaintiffs evidence only, defendants and their counsel having failed to appear for trial despite notice.

The evidence established that Jose Fernandez and his brother, Ignacio, entered into a partnership to engage in the bakery business. The former contributed P15,000.00, the latter, P5,000.00 as well as the use of his lot in Paco, Manila. The business was set up as planned, and for some time was operated quite uneventfully. However, upon the death of Ignacio Fernandez, his widow, Concepcion de la Rosa, excluded his brother, Jose, from any participation in the management of the bakery. To protect his rights, Jose caused annotation of the articles of partnership on the certificate of title of the land on which the bakery had been set up. Thereafter, Jose Fernandez made formal demand on Concepcion for the return of his investment in the business; and when that demand was ignored, brought suit for the purpose, as above stated. Concepcion's reaction was to sell the bakery to one Alberto Lopez for P17,000.00.¹

As aforesaid after presentation of evidence by plaintiff ex parte, the Trial Court rendered judgment against "defendant Concepcion de la Rosa as the party responsible for the disposition of the bakery owned by the partnership of plaintiff and defendant's deceased husband," and accordingly ordered her "to account for the proceeds of the sale of said bakery and to pay plaintiff the sum equivalent to two-thirds (2/3) thereof or P11,335.00 and the sum of P600.00 as reasonable attorney's fees considering the extent and nature of the services rendered and the costs of** suit."²

The judgment became executory on October 27, 1971,³ and at Jose Fernandez's instance, a writ of execution was issued on December 27, 1971. The writ could not be enforced however because according to the Sheriffs "Initial Return," "Concepcion de la Rosa had left the premises ** (for) an unknown place ** (although) there was a time that defendant Concepcion ** was seen at the ** (bakery); and the premises were then being occupied by "a certain Porfirio C. Larena ** by way of lease from a certain Ruperta Lopez ***".⁴

What Jose Fernandez did was to move (1) for an attachment of the "Fernandez Bros. Bakery and its assets," and (2) that in aid of execution, "Mr. Flaviano Rosales be appointed and installed as a receiver ** jointly with Mr. Benito Odulio ** to manage the affairs and preserve the existence of the partnership."¹ The Court granted the

motion. Flaviano Rosales was appointed receiver and shortly assumed office. But as it turned out, his management proved a financial disaster for the bakery: after 9 1/2 months, it had suffered a loss of close to P9,000.00, its capitalization had been "transferred to be the capital of the receiver without the knowledge and consent of the plaintiff," it had incurred a loan of P4,000.00 without authority of the Court, and the daily sales amounted only to a measly P61.00 or so. Alleging these facts, Jose Fernandez filed a motion for the relief and discharge of the receiver and that he be installed as such in his stead.² The Court granted his motion, and he took over the management of the bakery, as receiver.

Three years after his appointment as receiver, Jose Fernandez died, and the Court³ ordered his substitution "by his estate represented by his wife, Tarcela Fernandez and their minor children Sheila, Nilo and Jose Jr., all surnamed Fernandez and who are represented by their natural guardian and mother, Tarcela Fernandez."⁴

Jose Fernandez's heirs then asked the Court to issue an alias writ of execution.⁵ This was opposed by Concepcion de la Rosa who finally made an appearance at this point.⁶ She contended that the remedy thus sought was barred by Section 6, Rule 39 of the Rules of Court, concerning execution by motion or by independent action, viz.⁷

**. A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

She argued that since the decision of September 17, 1971 was already executory at least as of November 20, 1971 (the date of plaintiffs motion for execution), as implicitly admitted by the Fernandez Heirs, and the motion for alias writ of execution was filed only on December 20, 1976, execution by motion could no longer be authorized; a separate and independent action had to be maintained for that purpose.¹ The Trial Court nevertheless ordered on January 11, 1977 the issuance of the alias writ prayed for, "it appearing that the original writ ** issued on December 27, 1971 on motion of the plaintiff after the decision dated September 21, 1971 became final and executory was not fully implemented."

Concepcion de la Rosa moved for reconsideration² invoking rulings of this Court declaring void writs of execution issued after five years. The Fernandez Heirs opposed the motion.³

The Court denied the motion for reconsideration.⁴ The Court said that the "peculiar circumstances" of the case justified issuance of the alias writ of execution: Jose Fernandez had "persistently and consistently moved for execution of the judgment in his favor; he had in fact obtained "a writ of execution on December 27, 1971 which was not, however, implemented due to acts attributable to the defendants, particularly defendant Concepcion de la Rosa" (who had absconded, as already mentioned); the bakery thereafter came under custodia legis in virtue of the Court's orders of attachment and receivership until dissolution of the receivership on September 3, 1976, upon the death of Jose Fernandez, who had acted as receiver for some three years. In the Court's view, these circumstances, showing that Jose Fernandez had not slept on his rights, as well as his death on March 5, 1975, had "the effect of staying the five (5) year period within which to execute the judgment by mere motion." His Honor cited a 1963 decision of this Court, *Lancita v Magbanua*, 7 SCRA 42, which cited *Corpus Juris* with approval,⁵ and laid down the rule that -

"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."

Lancita closed with the declaration¹ that there had been no indication that the respondents therein "had ever slept

on their rights to have the judgment executed by mere motions, within the reglementary period ** (and the statute of limitations has not been devised against those who wish to act but cannot do so, for causes beyond their control."

In the case at bar, it is clear that execution was precluded for a time by the departure for parts unknown of Concepcion de la Rosa, her disappearance for about four years, and the death of the judgment creditor, Jose Fernandez. It is clear, too, that in this case as in Lancita, "there has been no indication that ** (said judgment creditor) had ever slept on ** (his) rights to have the judgment executed by mere motions, within the reglementary period." These considerations proscribe any conclusion that in promulgating his Order of March 15, 1977 respondent Trial Court had committed any reversible error, or gravely abused its discretion.

WHEREFORE, the petition for review is DENIED, and the challenged Orders are AFFIRMED. The temporary restraining order issued by this Court on May 24, 1977 is hereby LIFTED AND SET ASIDE. Costs against private respondents.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 Branch V, then presided over by Judge (later Associate Justice of the Court of Appeals and subsequently of the Supreme Court) Pacifico C. de Castro; the action was entitled "Jose Fernandez v. Fernandez Bros. Bakery and Concepcion de la Rosa.

2 Rollo, p.14

1 Id., p. 17

2 Id., pp. 17-18

3 Id., p. 46

4 Id., p. 19

1 Id., pp. 20-22

2 Id., pp. 27-31

3 Now presided over by Hon. Eduardo C. Tutaan, herein public respondent

4 Order, Nov. 4, 1976, Rollo, p. 35

5 Rollo, p. 36

6 Id., pp. 37-38

7 Italics supplied

1 Rollo, pp. 37-38

2 Id., pp. 40-42

3 Id., pp. 43-44

4 Order dated March 15, 1977; Rollo, pp. 45-48

5 At p. 46

1 At pp. 46-47

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