

**CRISPULO F. ARNALDO AND JULITA SARAYBA DE ARNALDO,
PETITIONERS, VS. THE HON. JOSE BERNABE, AS JUDGE OF THE
COURT OF FIRST INSTANCE OF CAVITE, BENIGNO T. SARAYBA,
AMPARO SARAYBA,...**

G. R. No. L-4702. July 27, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari, mandamus and prohibition wherein petitioners pray this Court to review the order of the Court of First Instance of Cavite dated February 1, 1951 denying their motion for execution of its decision of July 19, 1944 and setting for hearing respondents' petition for reconstitution of an alleged motion for reconsideration; to order the execution of that part of the decision of July 19, 1944 favorable to petitioners; and to prohibit said Court of First Instance of Cavite from further proceeding with the case.

Sometime in 1936, petitioners filed an action against respondents in the Court of First Instance of Cavite for the recovery of certain sums of money. After trial of the case on the merits, the court rendered judgment on July 19, 1944, partly in favor of petitioners and partly in favor of respondents. Both parties filed a motion for reconsideration of the decision, but before they could be acted upon, war broke out. The record of the case having been destroyed, on November 28, 1946, petitioners took steps for its reconstitution.

On November 23, 1946, respondents filed a petition for the execution of the judgment rendered on July 19, 1944, which was opposed by petitioners on the ground that the same was not yet final because they had then a pending motion for reconsideration. On September 11, 1947, the court ordered petitioners to have said motion for reconsideration reconstituted, and this was done.

On October 23, 1947, respondents renewed their petition for a writ of execution alleging that petitioners' motion for reconsideration as reconstituted was pro-forma. This petition was denied because of the operation of the Moratorium Law. On October 14, 1948, respondents filed a motion "to give due course to petition for issuance of writ of execution" on the ground that the Moratorium Law under which the proceedings of the case were suspended had been lifted by Republic Act No. 342. This motion was later amended by another which respondents called "An Alias Motion for the Issuance of a Writ of Execution."

On March 17, 1949, the court entered an order granting the motion for execution. Petitioners moved for a reconsideration of said order, and the motion having been denied, they filed with the Supreme Court a petition for a writ of certiorari and prohibition with a view to restraining the respondent court from carrying out the writ of execution.

On September 22, 1949, the Supreme Court rendered its decision declaring that the judgment of the respondent court dated July 19, 1944 was already final and could have been executed were it not for the operation of the new Moratorium Law, Republic Act No. 342.

On November 7, 1950, petitioners in turn filed a motion for the execution of the same decision dated July 19, 1944 in so far as it may be favorable to them on the ground that the portion of the decision sought to be enforced concerns the return of definite objects and, therefore, is not covered by the Moratorium Law, and as to that portion which involves the payment of certain amount of money, the Moratorium Law cannot be invoked because respondents are not war damage claimants.

This petition was set for hearing on November 13, 1950 but was not held on said date upon urgent petition for postponement by counsel for respondents. This petition was set for hearing three or four times in view of the motions for postponements put up by same counsel, until it finally came up for hearing on December 11, 1950 when respondents, through the same counsel, interposed an opposition to the execution of the judgment alleging for the first time that they had a pending motion for reconsideration of said decision and, therefore, the same was not yet final in so far as that portion which is favorable to them is concerned, and because their motion for reconsideration was destroyed, they asked for its reconstitution in a motion filed on December 4, 1950. To this motion for reconstitution petitioners filed a vigorous opposition contending that as said decision had already become final in toto, respondent court was without jurisdiction to grant the motion for reconstitution.

On February 1, 1951, respondent Judge, Hon. Jose Bernabe, denied petitioners' motion for a writ of execution but set for hearing respondents' petition for reconstitution of the alleged motion for reconsideration. And their motion for reconsideration having been denied, petitioners filed the present petition for certiorari, mandamus and prohibition contending that respondent Judge acted with great abuse of discretion, if not in excess of his jurisdiction, in entering his order of February 1, 1951.

Petitioners' claim that respondent Judge acted with abuse of discretion and/or in excess of his jurisdiction is based on the following grounds: (a) that the decision of the Supreme Court in G. R. No. L-2995 [*] promulgated on September 22, 1950, unqualifiedly declared the decision of respondent court dated July 19, 1944 final and executory; and (b) that granting *arguendo* that respondents really filed a motion for reconsideration, their actuations in the prosecution of the main case constitute waiver or abandonment on their part of said motion for reconsideration.

These two grounds are now disputed by respondents who claim that, while at first they asked the respondent court for the execution of the judgment dated July 19, 1944, without reservation, it was merely due to the wrong assumption that none of the parties had perfected an appeal from said judgment, and this error of fact was committed by an assistant of counsel for respondents in view of the total destruction of the records of the case as regards the proceedings taken after said judgment was rendered by the court. This error, however, was rectified when, on October 16, 1948, respondents limited their petition for execution to such portion of the judgment as were favorable to said respondents, and this allegation can be verified from an examination of the pleadings and orders entered in the case in connection with the incident relative to the partial execution of the aforesaid judgment.

An examination of the pleadings above referred to will really disclose that the respondents' avowal that they never intended to ask for the execution of the whole judgment of July 19, 1944 in their original petition for execution is correct. Thus, while respondents admitted that they asked for the execution of said judgment in their motions of November 23, 1946, October 23, 1947 and October 14, 1948, wherein they insistently urged that the execution of said judgment be given due course, it appears from the record that, subsequently, they modified the tenor of their original petitions by filing in the case a subsequent pleading entitled *Alias Motion for the Issuance of a writ of Execution* dated October 16, 1948 wherein, among other things, they prayed that an order be issued "for the immediate execution of its decision of July 19, 1944 on all points therein contained in favor of the plaintiff and against the defendant, Julita Sarayba de Arnaldo." This last motion had the effect of superseding all previous

motions concerning the execution of the aforesaid judgment.

The claim that respondents, when the incident relative to the execution of the judgment in question was brought before this Court for the first time by way of certiorari and prohibition (G. R. No. L-2995), appeared and argued vehemently for the execution of the whole judgment without any reservation, is not also borne out by the pleadings, for in the answer interposed by said respondents dated June 25, 1949, they never argued for the execution of the whole judgment, nor emphasized the finality of the whole, but rather they contended that as petitioners' motion for reconsideration was pro-forma "the decision had become final and executory as regards Julita S. de Arnaldo." Nor does the decision of this Court in said certiorari case emphatically declare, as now pretended, that the decision in question had become final and executory even as against respondents herein. That decision only concerned the effectivity of the judgment as affected by the motion for reconsideration allegedly filed by petitioners, and this Court held that said motion was merely pro-forma and it did not stop the running of the period for appeal, thereby concluding that the judgment became final and executory only in so far as defendant Julita S. de Arnaldo is concerned. That decision cannot therefore affect the effectivity of the judgment in so far as the plaintiff therein is concerned because that was never put in issue either in the pleadings as well as in the arguments of both parties.

Premises considered, we are of the opinion that respondents cannot be deemed to have waived their right to press for their motion for reconsideration, nor can they be declared in estoppel in their move to reconstitute said motion for reconsideration, if they really did file one, in an effort to prevent the effectivity of the writ of execution prayed for by petitioners of that part of the decision dated July 19, 1944, which is unfavorable to the herein respondents. Consequently, we are of the opinion that the respondent Judge did not commit any abuse of discretion in giving due course to the motion for reconstitution filed by respondents in connection with said motion for reconsideration.

Wherefore, petition is hereby denied, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

[*] 48 Off. Gaz. 120; 87 Phil. 379.

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