

HONORATA DE LUNA, PETITIONER, VS. THE HONORABLE UNION C. KAYANAN, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON, BRANCH IV, AND ANTONIO MARASIGAN, RESPONDENTS.*G.R. No. L-29477. November 13, 1974*

Ponente: ANTONIO, J.

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Original action of certiorari to annul the Order of respondent Judge of the Court of First Instance of Quezon (Gumaca Branch) in Civil Case No. 304-G, dated May 28, 1968, suspending the hearing for contempt of respondent Antonio Marasigan, and mandamus to direct respondent Judge to proceed with the contempt proceeding against respondent Marasigan and to compel said respondent Judge to enforce the writ of execution issued in the forcible entry case.

On October 10, 1967, Gerardo Ocampo, husband of herein petitioner Honorata de Luna, filed an action of forcible entry against Cenon Onabia with the Justice of the Peace Court (now Municipal Court) of Guinayangan, Quezon, claiming that although he was the owner and possessor of Lots Nos. 749, 762, 763 and 772 of the Guinayangan Cadastre since 1939, on September 25, 1957, said defendant and his men wrested from him the possession of said properties. Cenon Onabia denied that he was in possession of Lots 749 and 763, but averred that he was the owner and lawful possessor of Lots Nos. 762 and 772. After trial, judgment was rendered in favor of the plaintiff. Defendant Onabia appealed to the Court of First Instance of Quezon at Gumaca, where the case was docketed as Civil Case No. 304-G and tried de novo. The court rendered judgment in favor of the defendant. Plaintiff Ocampo appealed to the Court of Appeals, which in a decision dated November 12, 1964, found that plaintiff Ocampo had established prior possession over the said properties and consequently reversed the judgment of the court of first instance and directed "the defendant, his successors, lessees and privies to deliver possession of the aforementioned lots to the herein plaintiff."

No appeal having been made from the judgment of the Court of Appeals, the said judgment became final and executory, and the record of the case was remanded to the court of origin. Ocampo accordingly applied for writ of execution. Plaintiff Ocampo thereafter died, thereupon his surviving spouse, Honorata de Luna, was substituted in his place. The sheriff returned the writ unsatisfied insofar as Lot No. 772 was concerned, for it turned out that the said lot was in the possession of herein private respondent Antonio Marasigan. Petitioner de Luna obtained an alias writ of execution against respondent Marasigan, upon whom was served on April 20, 1967. But Marasigan refused to vacate the premises, alleging that defendant Onabia obtained title over the lot on October 4, 1961 and was issued OCT No. 0-10145 pursuant to Decree No. N-84397 in LRC Cad. Case No. 701, Cad. Case No. 34 of the same court; that the said title was transferred by defendant Onabia to respondent Marasigan and his wife Matilde Castillo by means of a deed of sale, on November 28, 1961, free from any lien or encumbrance; that from the date of said purchase he and his wife have been in actual, continuous and peaceful possession of said property as absolute owners, and it was only on April 20, 1967 that they learned of petitioner Luna's claim of possession over the lot.

On July 5, 1967, respondent Marasigan filed with the court a petition to lift the alias writ of execution. On September 6, 1967, the court, then presided over by Judge Amado del Rosario, denied Marasigan's aforesaid petition. Marasigan moved for reconsideration of the court's denial order claiming that he was not a privy to the defendant, but his motion was denied by respondent Judge Union C. Kayanan in an Order of October 23, 1967, on the ground "that petitioner is included or embraced by said decision being a successor or privy to the defendant in this case x x x" Marasigan then, on November 21, 1967, came to the Supreme Court on certiorari, prohibition and mandamus in G.R. No. L-28331, claiming that Judge Kayanan committed grave abuse of discretion and acted in excess of jurisdiction when he ordered the issuance of an alias writ of execution and denied the petition to lift the said writ, for, according to Marasigan, he was thereby deprived of property without due process of law, because the action by virtue of which the alias writ was issued was in personam, to which he was not a party, and he acquired the property as a purchaser in good faith, there being no notice of lis pendens on the title. On January 12, 1968, this Court issued a minute resolution denying the petition on the ground that its allegations were "clearly insufficient to show a grave abuse of discretion."

Owing to Marasigan's refusal to surrender the possession of the property, petitioner de Luna filed on January 22, 1968 a petition to declare him in contempt of court. In an Order dated February 2, 1968, the court gave Marasigan five days from receipt thereof within which to explain why he should not be held in contempt of court for disobedience of a lawful order. On February 14, 1968, Marasigan filed an answer to the petition for contempt, alleging that "the order of execution is null and void being contrary to law and facts, said property being adjudicated and titled in the name of the defendant predecessor of the respondent and said decision having been already final and executory," and that "respondent cannot be held in constructive contempt of court, not being within the jurisdiction of the court, the action being an action in personam and not an action in rem." On February 26, 1968, Honorata de Luna moved the court to resolve the petition for contempt on the basis of the pleadings, claiming that Marasigan's answer failed to tender an issue and impliedly admitted the material allegations of the petition for contempt for failure to deny the same. De Luna prayed the court to order Marasigan's imprisonment until he complied with the writ of execution.

On April 15, 1968, Antonio Marasigan filed with the same court of first instance (Civil Case No. C-319) against de Luna, an action to quiet title over Lots Nos. 772 and 749. Marasigan and his wife alleged, inter alia, in said complaint that they are the registered owners and possessors of Lots No. 772 and No. 749, as evidenced by TCT No. T-44940 and TCT No. 49620, respectively, which properties they purchased in good faith and for valuable considerations from the actual and registered owners and possessors thereof in 1961 and 1962; that the defendant Honorata de Luna, well aware that they are the owners and, therefore, entitled to possession of the lots, tried to wrest the possession thereof from them by filing against them a petition for contempt of court, asserting that the Court of Appeals had awarded the said possession in favor of de Luna's husband; and that assuming arguendo that the Court of Appeals awarded the possession de facto of the lots to de Luna's deceased husband, such decision is not valid and binding against them, for they were never aware of, nor made parties to the case. Plaintiffs Marasigan, et al. prayed, among others, for the issuance of a writ of preliminary mandatory injunction, and, after trial, for judgment "confirming and recognizing their absolute rights of ownership and possession thereof," and making final the writ of preliminary mandatory injunction.

On May 28, 1968, respondent Judge issued in Civil Case No. 304-G an Order suspending the previous Order to cite Marasigan in contempt of court "in view of the fact that a civil action by both parties was given due course which refers to the ownership of the property in question." On June 3, 1968, petitioner de Luna filed a motion for reconsideration of the aforesaid Order, but this was denied by the court a quo in its Order of July 30, 1968. The court held that on equitable ground execution of the judgment must be held in abeyance, and the Order of October 23, 1967 must, therefore, be superseded. Hence this petition.

The settled rule is that once a judgment has become final and executory, the prevailing party is entitled as a matter of right to a writ of execution,[1] and issuance thereof is the court's ministerial duty, compellable by mandamus.[2] This rule is, however, subject to exceptions, as when, after a judgment has become final and executory, facts and circumstances transpire which render its execution impossible or unjust, in which case the interested party may ask the court to stay its execution or prevent its enforcement.[3]

In the case at bar, there are circumstances which bring it within the purview of the exceptions to the general rule governing execution of judgments. Foremost is the presence of title to the property in the name of respondent spouses Antonio Marasigan and Matilde Castillo, as evidenced by TCT No. T-44940, covering Lots Nos. 772 and 764. This Transfer Certificate of Title was issued to said spouses on November 28, 1961 upon the cancellation of Original Certificate of Title No. 0-10145 in the name of Cenon Onabia, which original certificate was issued pursuant to Decree No. N-84397, in L.R.C. Cad. Rec. No. 701, Cad. Case No. 34 (Annex "1"). There cannot be any question that after the registration of a parcel of land is decreed in favor of the applicant, the latter, as well as any subsequent purchaser of the property, has the right to the title and possession thereof, and to that end he may ask the proper court for the issuance of a writ of possession, provided the same has not been issued before.[4] As long as the Torrens title of the Marasigan spouses to the property is not cancelled or annulled, it would be inequitable to deprive them of their possession over the property. It must be noted that no notice of lis pendens was ever annotated on the title, and it is not disputed that said private respondents are purchasers of the property in good faith. In the premises, at the moment it would be unjust for the court to allow execution of the judgment, with the consequent ejectment of respondent Marasigan spouses from the premises pending determination of Civil Case No. C-319. True it is that, as claimed by petitioner, an ejectment proceeding may prosper even against the owner of property, but the principle that upholds this theory is founded upon the fact that the owner of the property had, by his own volition, previously divested himself of the right of occupancy over the property in favor of another. This is not the situation in the instant case.

WHEREFORE, the petition is denied, without pronouncement as to costs.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] Sec. 1. Rule 39, Revised Rules of Court; *De Fiesta, et al. vs. Llorente, etc., et al.*, 25 Phil. 554, 565; *Lim vs. Singian, et al.*, 37 Phil., 817, 820; *Philippine Trust Co. vs. Santamaria, etc., et al.*, 53 Phil., 463, 467; *Ebero, et al. vs. Canizares, etc., et al.*, 79 Phil., 152, 155; *Manansala vs. Narvasa, etc., et al.*, 101 Phil., 1260, 1261; *De los Angeles vs. Victoriano*, L-13632, July 27, 1960.

[2] *Hidalgo vs. Crossfield, et al.*, 17 Phil., 466, 469-470; *Amor vs. Jugo, etc., et al.*, 77 Phil., 703, 706-707; *Buenaventura vs. Garcia, etc., et al.*, 78 Phil., 759, 762.

[3] *De la Costa, etc., et al. vs. Cleofas*, 67 Phil., 686, 692; *Ocampo vs. Sanchez, etc., et al.*, 97 Phil., 472, 479; *Nazal vs. Belmonte, etc., et al.*, L-24410, May 23, 1968, 23 SCRA 700, 703, citing *Ocampo vs. Sanchez*, 97 Phil., 473; *City of Butuan vs. Ortiz, etc. et al.*, L-18054, December 22, 1961.

[4] *Manlapas and Tolentino vs. Llorente*, 48 Phil., 298.

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