

**AMPARO D. SANTOS, PETITIONER, VS. HON. ANGEL H. MOJICA,
EMMA R. GENIZA, AURELIO GENIZA, CATALINA CARREON-RIVERA,
ZACARIAS RIVERA, LORENZO RIVERA, THE SHERIFF OF MANILA
AND THE S...**

G.R. No. L-24266. January 24, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action for certiorari to annul an order of execution of the decision in Civil Case No. 2043-P of the Court of First Instance of Rizal, entitled "Emma R. Geniza, et al. vs. Roque M. Garcia, et al." and the writ of execution issued in pursuance of said order, as well as to restrain the enforcement of both, during the pendency of this case.

Petitioner, Amparo D. Santos, - hereinafter referred to as Mrs. Santos, although she is, also, Mrs. Moreno - was one of the defendants in said Civil Case No. 2043-P. Her co-defendants therein were Roque M. Garcia and her husband by second marriage, Miguel Moreno. The three (3) of them are hereinafter referred to collectively as the defendants. The plaintiffs in said case - private respondents herein - were Emma R. Geniza, her husband, Aurelio Geniza, her brother, Zacarias Rivera, the latter's wife, Catalina Carreon-Rivera, and Lorenzo Rivera, father of Emma R. Geniza and Zacarias Rivera. All of them are hereinafter referred to collectively as the plaintiffs.

On April 30, 1964, decision was rendered in said case sentencing the defendants to pay, jointly and severally, to the plaintiffs:

"(1) P100,000.00, plus 12% interest thereon from July 9, 1959, up to the date of payment;

"(2) P97,000.00 as compensatory damage to Aurelio Geniza and Lorenzo Rivera, and P195,000.00 as compensatory damage to Catalina Carreon;

"(3) P30,000.00 as moral damage;

"(4) P10,000.00 as exemplary damage;

"(5) P25,000.00 as attorney's fees and costs of the suit."

From said decision the defendants appealed to this Court, in which the case is docketed as G.R. No. L-24071. Owing to the failure of Garcia and Moreno to file their briefs on time, their respective appeals were dismissed on February 7, 1966, thereby leaving Mrs. Santos as the only appellant in that case.

Pending the perfection of defendants' appeal, or on November 6, 1964, the plaintiffs filed, with the lower court a motion for the immediate execution of its decision, upon the ground that the appeal taken therefrom was dilatory in nature. Despite defendants' opposition thereto, said court, then presided over by Honorable Angel A. Mojica, Judge, now Associate Justice of the Court of Appeals, issued an order, dated November 19, 1964 - or before the

approval of defendants' record on appeal, on December 23, 1964 - granting said motion, "unless defendants file a supersedeas bond in the amount of the judgment within ten (10) days from receipt" of said order. No such bond having been filed, the corresponding writ of execution was issued on January 12, 1965. Acting in pursuance thereof, the Sheriffs of Quezon City and Manila levied upon various properties as follows:

"1. On January 16, 1965 - certain movables belonging to petitioner and her husband, and issued notice that said movables would be sold at public auction on January 26, 1965 (Annex "H");

"2. On January 18, 1965 - the rights, title, interest or participation which petitioner Amparo D. Santos may have on the real properties and improvements thereon covered by TCT No. 22744, Quezon City, and issued notice that said properties would be sold at public auction on February 16, 1965 (Annex "I");

"3. On February 2, 1965 - the Pampanga Sugar Mills, Marilag Bldg., Ayala Blvd., Makati, Rizal, was served notice of Garnishment (Annex "K") of all goods, effects, etc., and specifically the salaries, bonuses, per diems, and allowances of herein petitioner in the possession or under the control of, or receivable from, said company; and

"4. On February 3, 1965 - the Pasumil Planters, Inc., 2930 Sta. Mesa Blvd., Manila, was served notice of Garnishment (Annex "L") of 8,010 shares therein registered in the name of herein petitioner evidenced by Stock Certificates Nos. 430, 474 and 566."

The projected sheriffs' sales mentioned in paragraphs (1) and (2) were, however, suspended on account of a third party claim filed by Luis D. Santos and other heirs of Demetrio Santos, and an order, issued in an action, filed by the third party claimants, with the Court of First Instance of Quezon City, directing the preservation of the status quo, pending final determination of said action.

Upon the other hand, Mrs. Santos had moved to lift the garnishment referred to in paragraphs (3) and (4), insofar as it affected her salary and per diems as treasurer of the Pampanga Sugar Mills -hereinafter referred to as the PASUMIL - upon the ground that they are necessary for her support and that of her children by her first husband, the late Demetrio Santos. Moreover, these children filed a third party claim with respect to the shares of stock described in said paragraph (4).

On March 4, 1965, Mrs. Santos commenced the present action for certiorari with preliminary injunction, against the plaintiffs in the main case and Judge Mojica, as well as the Sheriffs of Manila and Quezon City. Upon the filing of a bond in the sum of P5,000, this Court issued said writ of preliminary injunction, on March 11, 1965.

Mrs. Santos maintains that Judge Mojica had gravely abused his discretion in ordering the execution of the decision in the main case because, in the language of *Aguilos vs. Barrios*:^[1]

"x x x If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the provision contained in Rule 39, sec. 2, requires a statement of those circumstances as a security for their existence."

It is further urged, on behalf of Mrs. Santos, that her participation in and liability for the fraud allegedly practiced upon private respondents herein is a matter divorced from the participation and liability of Garcia and Moreno inasmuch as: the proof linking her to said fraud is not of the same nature or weight as that introduced against her co-defendants in the main case; the decision therein rendered was based upon allegedly spurious and non-existent preponderance of evidence; her motion for new trial in the main case had been unjustly and erroneously denied; and excessive damages and damages not suffered have been awarded. Needless to say, however, these arguments deal with the merits of the decision in the main case, which is the subject-matter of G. R. No. L-24071 and cannot

be passed upon in the present action for certiorari, in which the issue is whether or not Judge Mojica had exceeded his jurisdiction in authorizing the execution of said decision.

Upon a review of the record, we are fully satisfied that petitioner has not made out a case against respondents herein. Indeed, it is well-settled that the question whether or not a decision should be executed pending appeal is mainly addressed to the sound discretion of the court, which appears to have properly exercised it, for:

(1) The co-defendants of Mrs. Santos do not seemingly have any property upon which the judgment against them may be satisfied. Upon the other hand, Mrs. Santos has a house and lot in Quezon City with a total assessed value of P136,150. This property is, however, subject to a mortgage for P150,000, in favor of the Philippine Trust Company. Besides, due to non-payment of interest, the mortgage debt aggregated, as of October 12, 1964, to P191,863, which has probably increased owing to the interest accruing subsequently thereto. In other words, petitioner is in imminent danger of insolvency.[2]

(2) No other property appears to be available for the satisfaction of said judgment. The movables described in the aforementioned paragraph (1) are the object of a third party claim of Luis D. Santos and other alleged heirs of the late Demetrio Santos. The shares of stock above referred to are the object of a similar claim, filed by the children begotten by Mrs. Santos to her first husband. Then again Mrs. Santos maintains that her salary and bonuses as treasurer of the PASUMIL are needed for her support and that of her children.

(3) Mrs. Santos had a plain, speedy and adequate remedy in the ordinary course of law to forestall execution of the decision against her. She could have filed a supersedeas bond. In fact, the order complained of conditioned the issuance of the writ of execution upon the absence of said bond, which she did not file within the period given in said order, or at any time thereafter. We have repeatedly held that failure to avail of such remedy is sufficient ground to deny a writ of certiorari against an order authorizing the execution of a decision pending appeal.[3]

(4) The suit against the defendants in the main case was for the recovery of damages resulting from fraud allegedly committed by them against the plaintiffs therein. The latter alleged and the lower court found that, by fraudulently inducing them to believe that a barter license for P16,000,000 in favor of Southern Luzon Coconut Producers Association, Inc. - whom the defendants claimed to represent - had been approved and would be released within two (2) weeks after payment of P100,000 as license fee, and that Emma R. Geniza would get a commission of P480,000 if she found a buyer of said license - which in fact had never been approved - the defendants succeeded in persuading her, her husband and her father to mortgage several parcels of land to one Henry Sy for P50,000, as well as in inducing Catalina Carreon-Rivera and her husband to mortgage another parcel of land to the Asia Mercantile Corporation for another P50,000, both sums payable within 40 days, and to deliver to the defendants, in the house of Mrs. Santos and her second husband, Miguel Moreno, the aggregate sum of P100,000 thus borrowed, under promise on defendants' part to pay it back within the same period of time, which promise they did not fulfill, in view of which the mortgaged properties - with an aggregate market value of P292,000[4] - were foreclosed and title thereto eventually consolidated in the respective mortgagees.

Mrs. Santos denied having performed the acts imputed to her by the plaintiffs, as well as the genuineness of the signature purporting to be hers on the promissory note allegedly signed by her when said sum of P100,000 was delivered, as above stated, to the defendants. Considering, however, the evidence for the plaintiffs, including the testimony of a handwriting expert, on the genuineness of the aforementioned signature of Mrs. Santos, and the other circumstances surrounding the case, respondent Judge - after comparing the questioned signature with standard signatures of Mrs. Santos - found the evidence for the defendants unworthy of credence, and concluded that their appeal had been "taken for the purpose of delay." The record before us does not warrant our disturbing this conclusion, which, in turn, is sufficient ground to justify execution pending appeal.[5]

WHEREFORE, the petition herein is dismissed and the writ of preliminary injunction issued by this Court on March 11, 1965, hereby dissolved, with costs against petitioner Amparo D. Santos. Writ denied.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] 72 Phil., 285, 287.

[2] Baldissimo v. CFI, L-22261, Sept. 29, 1967; Lao v. Men-cias, L-23554, Nov. 25, 1967.

[3] Javellana v. Querubin, L-26166, July 30, 1966, citing Claudio v. Zanduetta, 64 Phil., 812; Haw Pia v. San Jose, 78 Phil., 238; Santos v. Court of Appeals, 95 Phil., 360, 364; David v. Miranda, L-6215, Sept. 28, 1954; Dans v. Court of Appeals, 49 O. G. 2753; Daus v. Elcosida, L-15950, April 20, 1961; Paringit v. Masakayan, 58 O.G. 8239.

[4] P97,000 for the property of Emma R. Geniza, Aurelio Geniza and Lorenzo Rivera, and P195,000 for the property of Catalina Carreon-Rivera and Zacarias Rivera.

[5] Iloilo Trading Center & Exchange vs. Rodas, 73 Phil., 327, 328, 329; Presbitero vs. Rodas, 73 Phil., 300, 303; Rodriguez vs. Court of Appeals, L-12534, May 23, 1959; Javellana v. Querubin, L-26166, July 30, 1966.

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