

**ROMEO PAYLAGO AND ROSARIO DIMAANDAL, PETITIONERS, VS.
HON. NICANOR P. NICOLAS, AS PRESIDING JUDGE OF THE CFI OF
ORIENTAL MINDORO, THE PROVINCIAL SHERIFF OF ORIENTAL
MINDORO AND ...**

G.R. No. L-38152. September 20, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and prohibition with preliminary injunction, seeking to set aside the following orders of respondent judge in Civil Case No. R-709: (1) the order of September 15, 1970 approving the subdivision plan (LRC) Psd-121339 with respect to Lots B-1-A-6-G and B-1-A-6-H and ordering the issuance of the corresponding writ of possession; and (2) the order of November 29, 1973 denying petitioners' motion to set aside the order of September 15, 1970 approving the said sub-division plan.

The questioned order of September 15, 1970 states:

"It appearing that the order of this Court dated March 13, 1970 has been complied with, this Court hereby approves subdivision plan (LRC) Psd-121339 only with respect to Lots B-1-A-6-G and R-1-A-G-H.

"The prayer for the issuance of a writ of possession being well-taken, the same is hereby granted and the Clerk of Court is hereby ordered to issue the corresponding writ of possession."

The dispositive portion of the order of November 29, 1973 reads as follows:

"WHEREFORE, for lack of merit, the instant petition is hereby DENIED and this Court reiterates its order dated September 15, 1970."

The antecedents of the case are taken from the decision of this Court in G.R. No. L-20046 (22 SCRA 1247 [1968]), of which the instant case is an offshoot:

"The entire lot involved in this suit was originally covered by Homestead Patent issued on June 7, 1920 under Act No. 926 and later under OCT No. 251 of the Registry of Deeds of Mindoro, issued on June 22, 1920 in the name of Anselmo Lacatan. On May 17, 1948 after the death of Anselmo Lacatan, TCT No. T-728 (which cancelled OCT No. 251.) was issued in the name of his two sons and heirs, Vidal and Florentino Lacatan. Vidal Lacatan died on August 27, 1950.

"On March 23, 1953, Vidal Lacatan's heirs, namely, Maximo, Tomas and Lucia Lacatan, executed a deed of sale (Exh. C) in favor of the spouses Romeo Paylago and Rosario Dimaandal, plaintiffs-petitioners herein, over a portion of the entire lot under TCT No. T-728, which portion is described as follows:

North - Provincial Road;

East - Property of Romeo Paylago;

South - Property of Florentino Lacatan;

West - Provincial Road (Nabuslot-Batingan)

containing an area of 3.9500 hectares.

"On October 6, 1953, Florentino Lacatan also died, leaving as his heirs, his widow and three children, Felipe, Rosita and Florencia Lacatan. On December 31, 1953, the said children of Florentino Lacatan likewise executed a deed of sale, (Exh. D) in favor of the same vendees over another portion of the same lot described as follows:

North - Provincial Road (Calapan-Pinamalayan);

East - Heirs of Sotero Mongo;

South - Aniceta Lolong;

West - Heirs of Vidal Lacatan.

with an area of 2.8408 hectares.

"On March 2, 1954, by virtue of the registration of the two deeds of sale (Exhs. C and D), a new TCT No. T-4208 covering the total area of 6.7908 hectares was issued in favor of plaintiffs-petitioners, the Paylago spouses. A subsequent sub-division survey for the purpose of segregating the two aforementioned portions of land described in the deeds (Exhs. C and D) as well as in the new TCT No. T-4208, however, disclosed that a portion (one half hectare) of the total area purchased by plaintiffs-petitioners and indicated in the sketch Exh. B at a point marked Exh. B-1 was being occupied by defendant-respondent. Hence, the action to recover possession and ownership of the said portion.

"Vis-a-vis the foregoing undisputed facts, the trial court and the Court of Appeals found that a portion of land in question which is described as follows:

North - Provincial Road;

East - Apolonio Lacatan;

South - Anselmo Lacatan;

West - Valentin Lastica;

and with an area of one half hectare is indicated the sketch of subdivision plan marked Exh. B-1 of Exh. B; that on November 27, 1938, the said portion of land was purchased by Hilario Jarabe, late husband of defendant-respondent, from one Apolonio Lacatan, which sale is evidenced by an unregistered deed of sale (Exh. 6); that Apolonio Lacatan, in turn, bought the same in 1936 from Anselmo Lacatan, the original registered owner in whose favor OCT No. 251 and later TCT No. T-4208 were issued; that the first deed of sale, also unregistered, executed by Anselmo Lacatan in favor of Apolonio Lacatan was lost during the Japanese occupation; that the herein defendant-respondent has been in possession of the said portion continuously, publicly, peacefully and adversely as owner thereof from 1938 up to the present; and, that the herein plaintiffs-petitioners knew, nay, admitted in a deed of lease, paragraph 3 (Exh. 4), that defendant-respondent has been in possession of the premises since 1945.

"After trial, the lower court held that plaintiffs-petitioners were not purchasers in good faith and, accordingly, rendered judgment in favor of respondent-defendant, declaring the latter as owner of the land in question with right to retain possession of the same. The decision was affirmed in toto by the Court of Appeals." (at pp. 1249-1251)

The decision of the Court of Appeals was appealed to this Court by certiorari in G.R. No. L-20046. Finding the appealed decision supported by the facts and the law, the Court affirmed the same in its decision promulgated on March 27, 1968.

The decision of the Court having become final and executory, the defendant in Civil Case No. R-709, private respondent herein, filed with respondent Court a motion for issuance of writ of possession and for approval of survey plan of subject property, dated September 22, 1969. Plaintiffs, petitioners herein, opposed the motion, nevertheless the motion was granted by respondent court in its questioned order dated September 15, 1970.

On March 30, 1971, petitioners herein filed with respondent court a petition to set aside order of approval of subdivision plan (LRC) PSD-121339 dated September 15, 1970 and the corresponding writ of possession dated February 23, 1971 on the ground: (1) that said survey plan is not in accordance with the decision of respondent Court rendered in Civil Case No. R-709; and (2) that necessarily, the writ of possession issued by respondent court dated February 23, 1971 together with the corresponding levy and execution by the sheriff based on said survey plan approved by respondent court is also void and should also likewise be set aside (Rollo, p. 37).

On November 29, 1973, respondent court issued its second questioned order denying the motion to set aside its order of September 15, 1970, reiterating its approval of subdivision plan (LRC) PSD-121339.

On January 31, 1974, petitioners filed with this Court the instant petition for certiorari and prohibition with preliminary injunction (Rollo, p. 3). On February 5, 1974, the Court resolved without giving due course to the petition to require the respondents to comment thereon (Rollo, p. 48).

On May 15, 1974, the Court resolved without giving due course to the petition: (1) to require private respondent Ines Pastrana Jarabe to clarify within ten (10) days from notice thereof, whether or not the house of the petitioners which she desires to be removed, is within the lot (indicated in the sketch of subdivision plan marked Exh. B-1 of Exh. B), which this Court declared to be owned by her and the possession of which she is entitled, to the exclusion of petitioners, it appearing from the record of G.R. No. L-20046 of which judicial notice may be taken, that, precisely her counterclaim for the recovery of possession of the land on which the said house of petitioners is located was dismissed in said previous action decided by this Court, for which reason, there seems to be no basis for any affirmative relief in her favor; and (2) to issue a restraining order enjoining the respondents from implementing in any manner the questioned orders of the respondent court of September 15, 1970 and November 29, 1973, as well as the writ of possession dated February 23, 1971 issued by virtue of the said first orders (Rollo, p. 49). The restraining order was issued on May 2, 1974 (Rollo, p. 51).

Private respondent Ines Pastrana Jarabe, having failed to comply with the aforesaid resolution of May 15, 1974 within the required period, the Court resolved on July 29, 1974, to require aforesaid respondent to explain her failure to file the afore-mentioned clarification and to file the same, both within ten (10) days from notice (Rollo, p. 52). On September 13, 1974, respondent Ines Pastrana Jarabe filed the required explanation with manifestation which was noted by the Court in its resolution of September 20, 1974 (Rollo, p. 57).

On August 25, 1975, the Court, considering the explanation of private respondent Ines Pastrana Jarabe, resolved to require petitioners to comment on the aforesaid manifestation within ten (10) days from notice. Petitioners filed the required comment on October 11, 1975 (Rollo, p. 74).

For failure of respondent Ines Pastrana Jarabe to file her comment on the petition for certiorari and prohibition with preliminary injunction as required by the Court in its resolution of February 5, 1974 within the period which expired on February 26, 1974, the Court resolved on May 14, 1976 to require said private respondent: (a) to show cause why disciplinary action should not be taken against her for such failure; and (b) to comply with the

aforesaid resolution, both within ten (10) days from notice (Rollo, p. 79).

On June 25, 1976, respondent Ines Pastrana Jarabe filed her "Paliwanag" and then on August 13, 1976, the Court resolved to require respondent to file an answer to the petition which respondent filed on October 4, 1976.

Petitioners filed their Reply on November 18, 1976.

In the resolution of December 1, 1976, the case was set for hearing on January 28, 1977, but on manifestation of both parties praying that the hearing be cancelled and the case deemed submitted for decision, the Court resolved on January 26, 1977 to grant the aforesaid prayer and to consider the case submitted for decision as of that date (Rollo, p. 105).

Considering the length of time that the case has been pending and to determine whether supervening events may have rendered the case moot and academic, the Court resolved on February 29, 1988 to require the parties to MOVE IN THE PREMISES within thirty (30) days from notice, stating that in case the parties fail to make the proper manifestation within the required period, the case shall be considered terminated and closed and the entry of judgment shall be accordingly made thereon. On April 6, 1988, petitioners filed a motion for resolution, manifesting that no supervening events have rendered the case academic and that under the restraining order issued by the Court on May 14, 1974, petitioners have continued their possession, up to now, of the house and lot indicated in Exh. B-1 and subject matter of the assailed order of respondent court.

The sole issue in this case is whether or not the lots embraced in subdivision plan (LRC) Psd-121339 approved by respondent Court with respect to Lots B-1-A-6-G and B-1-A-6-H are included in the portion of land indicated as Exh. B-1, which was adjudicated in favor of private respondent in the decision of this Court in G.R. No. L-20046 promulgated on March 27, 1968.

A party in whose favor the judgment is given may have a writ of execution issued for its enforcement and that if the judgment be for delivery of possession of real or personal property, it must require the sheriff to deliver the possession of the same to him; which, otherwise stated, means the issuance of a writ of possession (*Agreda v. Rodriguez*, 16 SCRA 772 [1966]). A writ of possession is complementary to a writ of execution (*Vda. de Bogacki v. Inserto*, 111 SCRA 356 [1982]; *Cometa v. Intermediate Appellate Court*, 151 SCRA 563 [1987]). The writ of execution, as a general principle, must conform substantially to every essential particular of the judgment issued. Execution not in harmony with the judgment has no validity (*Philippine Virginia Tobacco Administration v. Gonzales*, 92 SCRA 172 [1979]; *Gabaya v. Mendoza*, 113 SCRA 400 [1982]; *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, 143 SCRA 311 [1986]). It must conform more particularly to that ordained or decreed in the dispositive portion of the decision (*Laingco v. Camilo*, 130 SCRA 144 [1984]) as the only portion of the decision that becomes the subject of execution (*Pelejo v. Court of Appeals*, 116 SCRA 406 [1982]; *Cruz v. Dalisay*, 152, SCRA 482 [1987]).

The dispositive portion of the decision of respondent court which was affirmed in toto by the Court of Appeals and by this Court in G.R. No. L-20046, reads as follows:

"WHEREFORE, this Court hereby renders judgment in favor of the defendant and against the plaintiffs, declaring that the defendant is the real owner of the land in question and, therefore, has the right to retain the possession thereof and absolving her from the complaint with costs, and dismissing the counter-claim of the defendant for lack of sufficient evidence to sustain the same."

The defendant-respondent herein is declared the owner of a piece of land described only in the decision as "the land in question" and as owner, has the right to retain possession thereof. Taken by itself, the phrase "the land in question" is indeed ambiguous. Petitioners would want it interpreted in accordance with their allegations in their

complaint filed in Civil Case No. R-709 which in that case comprise only the portion occupied by respondents. However, it is not the complaint filed by petitioners that must be used as point of reference, but the body of the decision itself that must be consulted in case of ambiguity in the dispositive portion of the decision (*Pastor, Jr. v. Court of Appeals*, 122 SCRA 885 [1983]).

Respondent court approved subdivision plan (LRC) Psd-121339 with respect to lots B-1-A-6-G and B-1-A-6-H for which the corresponding writ of possession was issued in favor of respondents. Lots B-1-A-6-G and B-1-A-6-H correspond to the area occupied by the house of petitioners as lessee pursuant to the deed of lease executed between the parties in 1953 (Rollo, p. 31). As mentioned in the decision of this Court in L-20046 (par. 3, p. 2), it is, however, undisputed that a portion of the land covered by TCT No. T-4208 indicated in the sketch of the subdivision plan marked Exh. B-1 of Exh. B was purchased by Hilario Jarabe, late husband of respondent from one Apolonio Lacatan, who, in turn, bought the same in 1936 from Anselmo Lacatan, the original registered owner under OCT No. 251. Respondent had been in possession of that portion of the land marked Exh. B-1 of Exh. B continuously, publicly, peacefully and adversely as owner thereof, from 1938 to the present which possession is personally known by petitioner and admitted by him in a deed of lease (Exh. 4) to the effect that respondent had been in possession thereof since 1945.

In the same decision (3rd par., p. 4), this Court further said:

"Considering that the boundaries of the lands that petitioners Paylago purchased in 1953 and 1954 were well defined, they must have known that the portion occupied by defendant-respondent under claim of ownership and leased to them by the latter was included in the description. And coupled with their knowledge that defendant-respondent purchased the same from Apolonio Lacatan, plaintiffs-petitioners should have inquired and made an investigation as to the possible defects of the title of the Lacatan heirs over the entire lot sold to them, granting that the latter's certificate of title was not clear. This they failed to do. They cannot now claim complete ignorance of defendant-respondent's claim over the property. As was well stated in one case, 'a purchaser who has knowledge of facts which should put him upon inquiry and investigation as to possible defects of the title of the vendor and fails to make such inquiry and investigation, cannot claim that he is a purchaser in good faith and had acquired a valid title thereto.'"

It is clear that the portion occupied by petitioners, under a deed of lease and which they continued to occupy forms part of the area of land indicated as Exh. B-1 of Exh. B which has been adjudicated to respondent by virtue of the decision of the Court in G.R. No. L-20046. The whole area of the portions of the land adjudicated to respondent consisting of a total area of 5,392 square meters or a little more than 5,000 square meters (1/2 hectare) is embraced in Psd-121339, subdivided into five (5) lots, namely Lot B-1-A-6-A, B-1-A-6-B, B-1-A-6-F, B-1-A-6-G and B-1-A-6-H approved by the Commissioner of Land Registration on May 12, 1970.

The Court required respondent in its resolution of May 15, 1974, to clarify whether or not the house of petitioners which she desired to be removed is within the lot and indicated in the sketch of subdivision plan marked Exh. B-1 of Exh. B which the Court declared to be owned by her and to the possession of which she is entitled (Rollo, p. 49). In their motion for resolution filed with the Court on April 6, 1988, petitioners categorically admitted that their house is within the lot indicated in the sketch of subdivision plan marked Exh. B-1 of Exh. B (par. 2 of the motion).

Where the Court adjudicated ownership of a parcel of land in favor of a party, said court may order the defeated party in possession of the land to vacate the same if no right to continue possession, as lessee, for example, may be appreciated in the latter's favor (*Mabala v. Apalisok*, 88 SCRA 234 [1979]).

WHEREFORE, the petition is Dismissed for lack of merit and the temporary restraining order issued by the Court on May 2, 1974 is lifted permanently.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

Fernan, C.J., (Chairman) on leave.

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