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9. EXECUTION OF JUDGMENTS AND FINAL ORDERS (Rule 39)

1. Basic Concepts and Doctrines

1. Execution is a legal remedy for the enforcement of a judgment.²³⁹

2. Kinds of Execution

There are two (2) kinds of execution: discretionary execution and ministerial execution. Discretionary execution, which is also called execution pending appeal, is the execution of a judgment or final order before it attains finality. The court which rendered the decision can grant an execution pending appeal if it still retains jurisdiction over the case and is in possession of the records at the time of the filing of the motion; otherwise, the motion shall be acted upon by the appellate court.²⁴⁰ To be valid, there should be a good reason to justify the execution of the judgment pending appeal, the same to be stated in the order granting it.²⁴¹

On the other hand, execution as a matter of right or ministerial execution is execution of a final judgment or final order which has attained finality. When a judgment or order has become final, the court cannot refuse to issue a writ of execution except:

(1) When subsequent facts and circumstances transpire which render such execution unjust, or impossible, such as a supervening cause like the act of the Commissioner of Civil Service finding the plaintiff administratively guilty and which constituted a bar to his reinstatement as ordered by the trial court in a civil case;²⁴² or where the defendant bank was placed under receivership;²⁴³

(2) On equitable grounds, as when there has been a change in the situation of the parties which makes execution inequitable;²⁴⁴

(3) Where the judgment has been novated by the parties;²⁴⁵

(4) When a petition for relief or an action to enjoin the judgment is filed and a preliminary injunction is prayed for and granted;²⁴⁶

(5) Where the judgment has become dormant, the five (5) year period under Rule 39, Section 6 having expired without the judgment having been revived;²⁴⁷ or

(6) Where the judgment turns out to be incomplete²⁴⁸ or is conditional¹⁴⁹ since, as a matter of law, such judgment cannot become final.

3. When writ of execution may be quashed

(1) when it was improvidently issued;

(2) when it is defective in substance;

- (3) when it is issued against the wrong party;
- (4) where the judgment was already satisfied;
- (5) when it was issued without authority;
- (6) when a change in the situation of the parties renders execution inequitable; and
- (7) when the controversy was never validly submitted to the court.²⁵⁰

4. Execution of final judgments and orders

There are two (2) ways of securing execution of final judgments and orders: execution by motion and execution by action. Execution by motion is an execution obtained through a motion for execution filed within five (5) years from the date of its entry.²⁵¹ Execution by action is obtained through the substitution of an action to enforce a judgment or order after the lapse of five (5) years from its entry and before it is barred by the statute of limitations.²⁵²

5. Specific Rules

1. Execution of judgment can only be issued against a party to the action²⁵³ and their privies who are those between whom an action is deemed binding although they are not literally parties to the said action²⁵⁴ or to an intervenor.²⁵⁵

2. A judgment becomes final and executory by operation of law, not by judicial declaration. The prevailing party is entitled as a matter of right to a writ of execution, and the issuance thereof is a ministerial duty and compellable by mandamus.²⁵⁶ There must, however, be a motion.²⁵⁷

3. Rule on execution in case of the death of a party

If the judgment debtor dies after entry of judgment, execution depends upon the nature of the judgment. Thus: (a) For recovery of real or personal property or the enforcement of a lien thereon, execution may be done against executor, administrator or successor-in-interest; (b) For money judgments, the judgment should be presented as claim for payment against the estate in a special proceeding. Such a claim need no longer be proved, since the judgment itself is conclusive.²⁵⁸

4. When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.²⁵⁹

The special order of demolition may be granted only upon petition of the plaintiff after due hearing, and upon the defeated party's failure to remove the improvements, within reasonable time given him by the court.²⁶⁰

The notice required before demolition of the improvements on the property subject of the execution is notice to the judgment debtor, and not to a stranger or third party to the case.²⁶¹ The order of demolition is not appealable.²⁶²

The sheriff and the issuing party should carry out the demolition of the improvement of the defeated party on the premises in dispute in a manner consistent with justice and good faith.²⁶³

Where the premises was padlocked and no one was therein at the time execution was carried into effect, there was no need for the sheriffs and the plaintiff to secure a 'break-open' order inasmuch as the character of the writ in their hands authorized them to break open the said premises if they could not otherwise execute its command.²⁶⁴

6. Levy and Garnishment

Levy is the seizure of property, personal and/or real, belonging to the judgment debtor for subsequent execution sale to satisfy judgment. Garnishment is the process of notifying a third person called the garnishee to retain and attach the property he has in his possession or under his control belonging to the judgment debtor, to make disclosure to the court concerning the same, and to dispose of the same as the court shall direct to satisfy the judgment.²⁶⁵

1. Decisional Rules on Levy

1.1 A valid levy is essential to the validity of an execution sale, and levy is invalid if the notice of levy of real property is not filed with the office of the register of deeds, the purpose of which is to notify third parties who may be affected in their dealings with respect to such property.²⁶⁶ Where a parcel of land levied upon execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.²⁶⁷

1.2 To effect a levy upon real property, the sheriff is required to do two specific things:

- (a) file with the register of deeds, a copy of the order and description of the attached property and notice of attachment; and
- (b) leave with the occupant of the property a copy of the same order, description and notice.²⁶⁸

Note that notice to the owner who is not the occupant does not constitute compliance with the statute.²⁶⁹

1.3 Real property, stocks, shares, debts, credits and other personal property, may be levied on in like manner and with like effect as under a writ of attachment.²⁷⁰

1.4 The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens and encumbrances then existing.²⁷¹

1.5 Levy or attachment over properties themselves is superior than levy on the vendor's equity of redemption over said properties.²⁷²

2 Decisional Rules on Garnishment

2.1 The garnishment of property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the jurisdiction of the court issuing the writ. It is brought into custodia legis, under the sole control of such court.²⁷³ It is also known as attachment execution.

2.2 Money judgments are enforceable only against property unquestionably belonging to the judgment debtor. One man's goods shall not be sold for another man's debts, as the saying goes.²⁷⁴

2.3 The prohibition against examination or an inquiry into a bank deposit under Rep. Act No. 1405 does not preclude its being garnished to insure satisfaction of judgment.²⁷⁵

2.4 Government-owned-and-controlled corporations have a personality of their own, separate and distinct from the government; their funds, therefore, although considered to be public in character, are not exempt from garnishment.²⁷⁶

7. Rules on redemption

1. Who may redeem

1.1 Judgment debtor;

1.2 Successor-in-interest such as a person to whom the debtor has conveyed his interest in the property; person to whom a statutory right of redemption has been transferred; person who succeeds to the interest of the debtor by operation of law; one or more joint owners of the property; wife as regards her husband's homestead; and attorney who agreed to divide the property in litigation;²⁷⁷ and

1.3 Redemptioner, which is a creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold.²⁷⁸

2. Amounts to be paid in case of redemption

2.1 Purchase price with 1% per month interest;

2.2 Assessments or taxes paid with 1% interest:

2.3 Amount of prior lien if also a creditor having a prior lien to that of redemption other than the judgment under which purchase was made with interest. Note that the foregoing does not apply if the one who redeems is the judgment debtor unless he redeems from a redemptioner in which case, he must make the same payments as redemptioner.²⁷⁹

8. Rules in deed of possession

1. After the deed of sale has been executed, the vendee therein is entitled to a writ of possession but the same shall issue only where it is the judgment debtor or his successors-in-interest who are in possession of the premises. Where the land is occupied by a third party, the court should order a hearing to determine the nature of his adverse possession.²⁸⁰ The writ shall issue when the period of redemption has expired.

2. A writ of possession may be issued only in a land registration proceeding, in extrajudicial foreclosure of a real estate mortgage and in judicial foreclosure if the debtor is in possession and no third person, not a party to the suit, had intervened.²⁸¹ It has been held, however, that a writ of possession is a complement of the writ of execution. Hence, if under a final judgment the prevailing party acquires absolute ownership over the real property involved, the writ may be issued for him to obtain possession without the need of filing a separate action against the possessor.²⁸² A writ of possession may also be sought from and issued by the court unless a third party is holding the property adversely to the judgment debtor.²⁸³

239 *Pelejo v. Court of Appeals*, No. L-60800, August 31, 1982, 116 SCRA 406.

240 Rules of Court, Rule 39, Sec. 2.

241 *Ibid.*

242 *The City of Butuan v. Ortiz*, 113 Phil. 636 [1961].

243 *Lipana v. Development Bank of Rizal*, G. R. No. 73884, September 24, 1987, 154 SCRA 257.

244 *Vda. de Albar v. De Carandang*, 116 Phil. 516 [1962]; *Heirs of Guminpin v. Court of Appeals*, No. L-34220, February 21, 1983, 120 SCRA 687; *Luna v. Intermediate Appellate Court*, G. R. No. 68374, June 18, 1985, 137 SCRA 7.

245 *Fua Cam Lu v. Yap Fauco*, 74 Phil. 287 [1943]; *Zapanta v. De Rotaeché*, 21 Phil. 154 [1912]; *Salvante v. Cruz*, 88 Phil. 236 [1951].

246 Refer to Rules of Court, Rule 38, Sec. 5.

- 247 Cunanan v. Court of Appeals, No. L-25511, September 28, 1968, 25 SCRA 263.
- 248 Del Rosario v. Villegas, 49 Phil. 634 [1926]; Ignacio v. Hilario, 76 Phil. 605 [1946].
- 149 Cu Unjieng e Hijos v. Mabalacat Sugar Co., 70 Phil. 380 [1940].
- 250 Cobb-Perez v. Lantin, G. R. No. 22320, May 22, 1968, 23 SCRA 637; Sandico, Sr. v. Piguing, No. L-26115, November 29, 1971, 42 SCRA 322.
- 251 Rules of Court, Rule 39, Sec. 6.
- 252 Ibid.
- 253 St. Dominic Corporation v. Intermediate Appellate Court, No. L-70623, June 30, 1987, 151 SCRA 577.
- 254 Cabresos v. Tiro, No. L-46843, October 18, 1988, 166 SCRA 400.
- 255 Lising v. Plan, No. L-50107, November 14, 1984, 133 SCRA 194.
- 256 Munez v. Court of Appeals, G.R. No. 46010, July 23, 1987, 152 SCRA 197; City of Manila v. Court of Appeals, G.R. No. 100626 November 29, 1991, 204 SCRA 362.
- 257 Rules of Court, Rule 39, Sec. 1; Soco v. Court of Appeals, G. R. No. 116013, October 21, 1996, 263 SCRA 449.
- 258 Evangelista v. La Proveedora, Inc., No. L-32824, March 31, 1971, 38 SCRA 379.
- 259 Rules of Court, Rule 39, Sec. 14; Rom v. Cobadora, No. L-24764, July 17, 1969, 28 SCRA 758.
- 260 Fuentes v. Leviste, No. L-47363, October 28, 1982, 117 SCRA 958.
- 261 Lorenzana v. Cayetano, No. L-37051, August 31, 1977, 78 SCRA 485.
- 262 David v. Ejercito, No. L-41334, June 18, 1976, 71 SCRA 484, Cua v. Lecaros, No. L-71909, May 24, 1988, 161 SCRA 480.
- 263 Albeltz Investments, Inc. v. Court of Appeals, No. L-32570, February 28, 1977, 75 SCRA 310.
- 264 Arcadio v. Ylagan, A. C. No. 2734, July 30, 1986, 43 SCRA 168.
- 265 Rules of Court, Rule 39, Sec. 9.
- 266 Valenzuela v. De Aguilar, No. L-18083-84, May 31, 1963, 8 SCRA 212.
- 267 Guevara v. Ramos, No. L-24358, March 31, 1971, 38 SCRA 194.
- 268 Delta Motors Corporation v. Court of Appeals, No. L-78012, November 29, 1988, 168 SCRA 206.
- 269 Philippine Surety and Insurance Co., Inc. v. Zabal, No. L-21556, October 31, 1967, 21 SCRA 682.
- 270 Rules of Court, Rule 39, Sec. 15.
- 271 Ibid., Sec. 12.
- 272 Top Rate International Services, Inc. v. Intermediate Appellate Court, No. L-674996, July 7, 1986, 142 SCRA 467.
- 273 De Leon v. Salvador, No. L-30871, December 28, 1970, 36 SCRA 567.

274 Ong v. Tating, No. L-61042, April 15, 1987, 149 SCRA 265.

275 China Banking Corporation v. Ortega, No. L-34964, January 31, 1973, 49 SCRA 355.

276 Philippine National Bank v. Pabalan, No. L-33112, June 15, 1978, 83 SCRA 595.

277 Magno v. Viola, 61 Phil. 80 [1934]; Palicte v. Ramolete, No. L-55076, September 21, 1987, 154 SCRA 132.

278 Sec. 27 (b).

279 2 Moran 329 [1979].

280 Guevara v. Ramos, No. L-24358, March 31, 1971, 38 SCRA 194; Unchuan v. Court of Appeals (Fifth Division), No. L-78775, May 31, 1988, 161 SCRA 710.

281 Gatchalian v. Arlegui, No. L-35615, February 17, 1977, 75 SCRA 234.

282 Olego v. Rebuena, No. L-39350, October 29, 1975, 67 SCRA 446.

283 Roxas v. Buan, No. L-53798, November 8, 1988, 167 SCRA 43.

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