

**LUCIANO M. DAVID, PETITIONER, VS. HON. BIENVENIDO EJERCITO,
AND SPOUSES HORACIO A. GOMEZ AND GLORIA S. GOMEZ,
RESPONDENTS.**

G.R. No. L-41334. June 18, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

Petition for review on certiorari of the order of the respondent Court of First Instance of Pampanga and Angeles City[1] disapproving and dismissing the appeal of the petitioner from an order of the City Court of Angeles in Civil Case No. C-686 which denied his motion to recall an order of demolition of his residential house on the lot of the private respondents.

On November 25, 1968, spouses Horacio Gomez and Gloria S. Gomez, the private respondents, filed in the City Court of Angeles City a complaint for ejectment against Luciano M. David, the petitioner, from Lot No. 285-B situated in Sto. Rosario Street, Angeles City.

Upon his failure to answer the complaint, the petitioner was declared in default by City Court of Angeles City in its order dated April 7, 1969. On May 12, 1969 a decision was rendered against petitioner ordering him to vacate the premises in question, to pay private respondents the sum of P300.00 as reasonable rentals and P300.00 as attorney's fees.

On September 22, 1969, the private respondents filed a motion for the execution of the decision and two days thereafter, or on September 24, 1969, the corresponding writ of execution was issued. There was a return made of the writ of execution on November 6, 1969 by the Deputy Clerk of Court, Avelina Santiago, and attached to said return was an affidavit of Buenaventura Liwanag. As petitioner did not want to comply with the writ of execution, the private respondents filed on March 11, 1970 a motion for demolition of the residential house of petitioner on the lot of the private respondents. In due time the City Court issued the order of demolition. As the Office of the Chief of Police could not carry out the order of demolition as shown in the return of Francisco Tanjuakio dated November 19, 1974, the private respondents filed a motion for the issuance of an alias writ of execution. An alias writ of execution was issued on November 21, 1974. On January 13, 1975 the City Sheriff made a return of the alias writ of execution with the information that the petitioner refused to comply with it and insisted in occupying the premises involved in the litigation. The private respondents filed another motion for demolition. On January 25, 1975 the City Court of Angeles City issued the corresponding order of demolition but on February 25, 1975 when the City Sheriff of Angeles City tried to implement the order of demolition, he was constrained to stop because of the promise of petitioner to remove the residential house in question within thirty (30) days from the execution of the agreement he entered with the City Sheriff and private respondent Horacio Gomez before the City Fiscal of Angeles City which reads as follows:

"That the parties-defendants hereby affirm and confirm the right of the party-plaintiff to have the house demolished in accordance with lawful orders of the court:

That the parties-defendants are pleading and asking from the party-plaintiff to give them a final grace period within which to vacate the premises for a period of THIRTY (30) DAYS to be counted, from the signing of this Agreement, it being understood that no further extension shall be granted through an Agreement or by any petition to be filed in court (Annex "A", pars. 2 and 3)."

On April 11, 1975, the petitioner filed a motion to recall the order of demolition on the ground that under Section 6, Rule 39 of the Rules of Court, a judgment can only be enforced by action after the lapse of five (5) years from the date it became final and executory. Said motion to recall the order of demolition was denied on May 27, 1975. A motion to reconsider said order denying the motion to recall the order of demolition was likewise denied.

On July 3, 1975, the petitioner appealed the order of the City Court of Angeles City denying his motion to recall order of demolition and its order denying his motion for reconsideration to the respondent Court, which appeal was docketed as Civil Case No. 2239. On July 16, 1975, private respondents filed with the City Court of Angeles City an opposition to the petitioner's notice of appeal on the ground that the judgment of the City Court has already become final and executory and cannot be appealed and on the further ground that the petitioner cannot appeal in default judgment.

On July 28, 1975, petitioner filed with the respondent Court a reply to the opposition to private respondents to his notice of appeal alleging that he was not appealing from the judgment of the City Court of Angeles City of May 12, 1969 but from its Order denying his motion to recall the order of demolition and the Order denying his motion for reconsideration and that although he was declared in default, he has regained his standing before the City Court of Angeles when he was furnished copies of the motion for demolition and the order of demolition.

On August 1, 1975, the respondent Judge issued an order disapproving and dismissing petitioner's appeal which reads:

"Considering the opposition to the Notice of Appeal dated July 14, 1975 and the Reply thereto dated July 25, 1975, and finding that under the ruling of the Supreme Court in the case of Strachan vs. Court of Appeals, L-23455, January 29, 1975, 62 SCRA 109, that a party declared in default in the Municipal Court cannot appeal, the Court is constrained to grant the prayer of the opposition.

WHEREFORE, the appeal in this case is disapproved and dismissed with costs against the defendant, and the records ordered return to the City Court of Angeles City, Branch II.

SO ORDERED."

From the order of August 1, 1975 of the respondent Court, the petitioner has come to this Court on a writ of certiorari to review the aforesaid order.

Petitioner's contention that the respondent Court erred in not holding that he may appeal from the order of the City Court denying his motion to recall the order of demolition of his residential house on the lot of private respondents and from the order denying his motion for reconsideration, has no merit. It is a settled rule that ordinarily an order of execution is not appealable because otherwise a case would never end, for so often as an order for execution of judgment is made, it could be objected to and the case be brought for review.[2] If the order of execution cannot be appealed, neither can the order of demolition issued in pursuance thereof be appealable. Obviously, the respondent Court was correct in dismissing and disapproving the appeal of the petitioner from the order denying his motion to recall the order of demolition in question and denial of reconsideration. His proper recourse, if any, would have been through a special civil action of certiorari or prohibition if valid grounds existed to assail the trial court's orders for lack of jurisdiction or grave abuse of discretion.

But it is insisted by petitioner that the alias writ of execution of November 21, 1974 and the order of demolition of

January 6, 1975 were null and void because they were issued after the five-year limitation within which a decision may be revived by mere motion in violation of Section 6, Rule 39 of the Rules of Court.[3] This pretense is untenable. The record shows that petitioner was at fault and himself caused the delay in the execution of the judgment for almost eight (8) years from the time it became final and executory in 1969, although as early as September 20, 1969, private respondents had moved for execution of the judgment, but petitioner refused to abide by the writ of execution. Accordingly, respondents moved for an order of demolition of petitioner's residential house which was issued on March 13, 1970 but again for one reason or another could not be carried out.

Finally, after the city court had issued still another order for demolition on January 25, 1975, petitioner succeeded in having the sheriff desist in enforcing the same by executing a formal written agreement affirming and recognizing respondents' right to have the house demolished and obtaining therein "a final grace period of thirty (30) days" within which to vacate the same, with the express understanding "that no further extension shall be granted through an agreement or by any petition to be filed in court". (Supra, at pages 2 - 3 hereof) Petitioner is therefore estopped from questioning the order of demolition or from reneging on his express undertaking to vacate the premises after the final 30-day grace period secured by him. Nevertheless, petitioner still tried futilely to get around his express undertaking to return the premises by having his brothers and sisters file in vain a petition for preliminary injunction although they are not parties to the case.

But prescinding from petitioners' estoppel and even granting for the sake of argument that the motion for execution filed on November 19, 1974 and the subsequent motion for alias writ of execution and the motion for demolition in which petitioner was heard, were beyond the five-year limitation within which a judgment may be executed by mere motion, still under the circumstances prevailing wherein all the delay in the execution of the judgment lasting for almost eight (8) years is due to petitioner's own act, this Court for reasons of equity is constrained to treat the motion for execution filed on November 19, 1974 and the subsequent motion for alias writ of execution and motion for demolition as constituting in effect an action to revive the judgment in question under Section 6, Rule 39 of the Rules of Court and a substantial compliance therewith. The parties were fully heard as in an independent action and there could be no other outcome than to order the execution of the subsisting judgment. It would be an idle ceremony to insist on the filing of a separate action that would only unduly prolong petitioner's unlawful retention of the premises which he has through all devious means unjustly withheld from respondents all these years. Accordingly, the issuance of the writ of execution on November 21, 1974 and the order of demolition of January 25, 1975 are hereby upheld.

IN VIEW OF THE FOREGOING, the instant petition is hereby dismissed with costs against petitioner. In view of the length of time that this case has been pending due to petitioner's dilatory tactics, this judgment shall be immediately executory upon promulgation. SO ORDERED.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Which this Court treats as special civil action pursuant to Resolution dated October 24, 1975.

[2] Cf. *Molina vs. De la Riva*, 8 Phil. 571.

[3] Section 6, Rule 39, Rules of Court. Execution by motion or by independent action. - A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

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