

**PASTOR D. AGO, PETITIONER, VS. THE HON. COURT OF APPEALS,
HON. MONTANO A. ORTIZ, JUDGE OF THE COURT OF FIRST
INSTANCE OF AGUSAN, THE PROVINCIAL SHERIFF OF SURIGAO AND
GRACE PARK...**

G. R. No. L-17898. October 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal by certiorari to review the decision of respondent Court of Appeals in CA-G.R. No. 26723-R entitled "Pastor D. Ago. vs. The Provincial Sheriff of Surigao, et al." which in part reads:

"In this case for certiorari and prohibition with preliminary injunction, it appears from the records that the respondent Judge of the Court of First Instance of Agusan rendered judgment (Annex 'A') in open court on January 28, 1959, basing said judgment on a compromise agreement between the parties.

"On August 15, 1959, upon petition, the Court of First Instance issued a writ of execution.

"Petitioner's motion for reconsideration dated October 12, 1959 alleges that he, or his counsel, did not receive a formal and valid notice of said decision, which motion for reconsideration was denied by the court below in the order of November 14, 1959.

"Petitioner now contends that the respondent Judge exceeded in his jurisdiction in ordering the execution without valid and formal notice of the decision.

"A compromise agreement is binding between the parties and becomes the law between them. (Gonzales vs. Gonzales, G.R. No. L-1254, May 21, 1948, 81 Phil. 38; Martin vs. Martin, 105 Phil., 750; 57 Off. Gaz. [9] 1589).

"It is a general rule in this jurisdiction that a judgment based on a compromise agreement is not appealable and is immediately executory, unless a motion is filed on the ground of fraud, mistake or duress. (De los Reyes vs. Ugarte, 75 Phil. 505; Lapena vs. Morfe, 101 Phil., 997; 54 Off. Gaz. [10] 3207)

"Petitioner's claim that he was not notified or served notice of the decision is untenable. The judgment on the compromise agreement rendered by the court below dated January 28, 1959 was given in open court. This alone is a substantial compliance as to notice. (De los Reyes vs. Ugarte, supra)

"In view thereof, we believe that the lower court did not exceed nor abuse its jurisdiction in ordering the execution of the judgment. The petition for certiorari is hereby dismissed and the writ of preliminary injunction heretofore dissolved, with costs against the petitioner.

"IT IS SO ORDERED."

The facts of the case may be briefly stated as follows: In 1957, petitioner Pastor D. Ago bought sawmill machineries and equipments from respondent Grace Park Engineering, Inc., executing a chattel mortgage over

said machineries and equipments to secure the payment of a balance of the price remaining unpaid of P32,000.00, which petitioner agreed to pay on installment basis.

Petitioner Ago defaulted in his payments and so, in 1958, respondent Grace Park Engineering, Inc. instituted extrajudicial foreclosure proceedings of the mortgage. To enjoin said foreclosure, petitioner herein instituted Special Civil Case No. 53 in the Court of First Instance of Agusan. The parties to the case arrived at a compromise agreement and submitted the same in court in writing, signed by Pastor D. Ago and the Grace Park Engineering, Inc. The Hon. Montano A. Ortiz, Judge of the Court of First Instance of Agusan, then presiding dictated a decision in open court on January 28, 1959.

Petitioner continued to default in his payments as provided in the judgment by compromise, so Grace Park Engineering, Inc. filed with the lower court a motion for execution, which was granted by the court on August 15, 1959. A writ of execution, dated September 23, 1959, later followed.

The herein respondent Provincial Sheriff of Surigao, acting upon the writ of execution issued by the lower court, levied upon and ordered the sale of the sawmill machineries and equipments in question. These machineries and equipments had been taken to and installed in a sawmill building located in Lianga, Surigao del Sur, and owned by the Golden Pacific Sawmill, Inc., to whom, petitioner alleges, he had sold them on February 16, 1959 (a date after the decision of the lower court but before levy by the sheriff).

Having been advised by the sheriff that the public auction sale was set for December 4, 1959, petitioner, on December 1, 1959, filed the petition for certiorari and prohibition with preliminary injunction with respondent Court of Appeals, alleging that a copy of the aforementioned judgment given in open court on January 28, 1959 was served upon counsel of petitioner only on September 25, 1959 (writ of execution is dated September 23, 1959); that the order and writ of execution having been issued by the lower court before counsel for petitioner received a copy of the judgment, its resultant last order that the "sheriff may now proceed With the sale of the properties levied," constituted a grave abuse of discretion and was in excess of its jurisdiction; and that the respondent Provincial Sheriff of Surigao was acting illegally upon the allegedly void writ of execution by levying the same upon the sawmill machineries and equipments which have become real properties of the Golden Pacific Sawmill, Inc., and is about to proceed in selling the same without prior publication of the notice of sale thereof in some newspaper of general circulation as required by the Rules of Court.

The Court of Appeals on December 8, 1959, issued a writ of preliminary injunction against the sheriff but it turned out that the latter had already sold at public auction the machineries in question, on December 4, 1959, as scheduled. The respondent Grace Park Engineering, Inc. was the only bidder for P15,000.00, although the certificate of sale was not yet executed. The Court of Appeals instructed the sheriff to suspend the issuance of a certificate of sale of the said sawmill machineries and equipments sold by him on December 4, 1959 until the final decision of the case. On November 9, 1960 the Court of Appeals rendered the afore-quoted decision.

Before this Court, petitioner alleges that the Court of Appeals erred (1) in holding that the rendition of the judgment on compromise in open court on January 29, 1959 was a sufficient notice; and (2) in not resolving the other issues raised before it, namely, (a) the legality of the public auction sale made by the sheriff, and (b) the nature of the machineries in question, whether they are movables or immovables.

The Court of Appeals held that as a judgment was entered by the court below in open court upon the submission of the compromise agreement, the parties may be considered as having been notified of said judgment and this fact constitutes due notice of said judgment. This raises the following legal question: Is the order dictated in open court the judgment of the court, and is the fact that the petitioner herein was present in open court when the judgment was dictated, sufficient notice thereof? The provisions of the Rules of Court decree otherwise. Section 1

of Rule 35 describes the manner in which judgments shall be rendered, thus:

"SECTION 1. How judgment rendered.—All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, and signed by him, stating clearly and distinctly the facts and the law on which it is based, and filed with the clerk of the court."

The court of first instance being a court of record, in order that a judgment may be considered as rendered it must not only be in writing, signed by the judge, but it must also be filed with the clerk of court. The mere pronouncement of the judgment in open court with the stenographer taking note thereof does not, therefore, constitute a rendition of the judgment. It is the filing of the signed decision with the clerk of court that constitutes rendition. While it is to be presumed that the judgment that was dictated in open court will be the judgment of the court, the court may still modify said order as the same is being put into writing. And even if the order or judgment has already been put into writing and signed, while it has not yet been delivered to the clerk for filing, it is still subject to amendment or change by the judge. It is only when the judgment signed by the judge is actually filed with the clerk of court that it becomes a valid and binding judgment. Prior thereto, it could still be subject to amendment and change and may not, therefore, constitute the real judgment of the court.

Regarding the notice of judgment, the mere fact that a party heard the judge dictating the judgment in open court, is not a valid notice of said judgment. If rendition thereof is constituted by the filing with the clerk of court of a signed copy (of the judgment), It is evident that the fact that a party or an attorney heard the order or judgment being dictated in court cannot be considered as notice of the real judgment. No judgment can be notified to the parties unless it has previously been rendered. The notice, therefore, that a party has of a judgment that was being dictated is of no effect because at that time no judgment has as yet been signed by the judge and filed with the clerk.

Besides, the Rules expressly require that final orders or judgments be served personally or by registered mail. Section 7 of Rule 27 provides as follows:

"SEC. 7. Service of final orders or judgments.—Final orders or judgments shall be served either personally or by registered mail."

In accordance with this provision, a party is not considered as having been served with the judgment merely because he heard the judge dictating the said judgment in open court; it is necessary that he be served with a copy of the signed judgment that has been filed with the clerk in order that he may legally be considered as having been served with the judgment.

For all the foregoing, the fact that the petitioner herein heard the trial judge dictating the judgment in open court, is not sufficient to constitute the service of judgment as required by the above-quoted section 7 of Rule 27; the signed judgment not having been served upon the petitioner, said judgment could not be effective upon him (petitioner) who had not received it. It follows as a consequence that the issuance of the writ of execution was null and void, having been issued before petitioner herein was served, personally or by registered mail, a copy of the decision.

The second question raised in this appeal, which has not been passed upon by the Court of Appeals, concerns the validity of the proceedings of the sheriff in selling the sawmill machineries and equipments at public auction without a notice of the sale having been previously published.

The record shows that after petitioner herein Pastor D. Ago had purchased the sawmill machineries and equipments, he assigned the same to the Golden Pacific Sawmill, Inc. in payment of his subscription to the shares of stock of said corporation. Thereafter the sawmill machineries and equipments were installed in a building and

permanently attached to the ground. By reason of such installment in a building, the said sawmill machineries and equipments became real estate properties in accordance with the provision of Art. 415(5) of the Civil Code, thus:

"ART. 415. The following are immovable property:

* * * * *

"(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;"

This Court in interpreting a similar question raised before it in the case of *Berkenkotter vs. Cu Unjieng e Hijos*, 61 Phil. 683, held that the installation of the machinery and equipment in the central of the Mabalacat Sugar Co., Inc. for use in connection with the industry carried by that company, converted the said machinery and equipment into real estate by reason of their purpose. Paraphrasing the language of said decision we hold that by the installation of the sawmill machineries in the building of the Golden Pacific Sawmill, Inc., for use in the sawing of logs carried on in said building, the same became a necessary and permanent part of the building or real estate on which the same was constructed, converting the said machineries and equipments into real estate within the meaning of Article 415(5) above-quoted of the Civil Code of the Philippines.

Considering that the machineries and equipments in question valued at more than P15,000.00 appear to have been sold without the necessary advertisement of sale by publication in a newspaper, as required in Sec. 16 of Rule 39 of the Rules of Court, which is as follows:

"SEC. 16. Notice of sale of property on execution.— Before the sale of property or execution, notice thereof must given as follows:

* * * * *

"(c) In case of real property, by posting a similar notice particularly describing the property for twenty days in three public places in the municipality or city where the property is situated, and also where the property is to be sold, and, if the assessed value of the property exceeds four hundred pesos, by publishing a copy of the notice once a week, for the same period, in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language."

the sale made by the sheriff must be declared null and void.

Wherefore, the decision of the Court of Appeals sought to be reviewed is hereby set aside and We declare that the issuance of the writ of execution in this case against the sawmill machineries and equipments purchased by petitioner Pastor D. Ago from the Qrace Park Engineering, Inc., as well as the sale of the same by the Sheriff of Surigao, are null and void. Costs shall be against the respondent Grace Park Engineering, Inc.

Bengzon, C. J., Bautista Angelo, Conception, Reyes, J. B. L., Barrera, Paredez, Dizon, Regala and Makalintal, JJ., concur.

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