

ESTEFANIA VDA. DE MIRANDA, SOLEDAD MIRANDA, PERFECTA MIRANDA, ET AL., PETITIONERS, VS. THE HON. MACAPANTON ABBAS, PRE-SIDING JUDGE, COURT OF FIRST INSTANCE OF DAVAO; THE PROVIN...

G.R. No. L-20570. January 27, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

Suit was commenced on October 15, 1956 by Marcelina, Salinangan, Moyang, Senduyan, Cellona, Abayon and Juaning, all surnamed Manoba, heirs of Campa-an (Manobo), against Sebastian Miranda in the Court of First Instance of Davao (civil case 2127). The plaintiffs sought to recover from the defendant the ownership and possession of a parcel of land of a little more than 9 hectares in area, situated in Malita, Davao, and covered by OCT 1652 issued on January 19, 1937 in the name of the Heirs of Campa-an (Manobo), together with all the improvements standing thereon, plus damages, actual and exemplary, attorney's fees and costs. The complaint alleges in essence that they are the absolute co-owners of the land, and that the defendant, through gross misrepresentations and deceit, succeeded in 1936 in obtaining from the plaintiff Salinangan all the papers and documents appertaining thereto, and thereafter securing a certificate of title in his name without their knowledge and consent. In his answer with counterclaim, Miranda averred that he took possession of the land sometime in 1938, after acquiring it in an auction sale conducted by the provincial treasurer of Davao on May 13, 1938, and that since then he had been in continuous ownership and possession thereof.

After 17 postponements covering a period of almost four years, the case was finally set for hearing on September 30, 1960, counsel of both parties being duly notified thereof.

On the said date, the counsel for the plaintiffs appeared in court, but neither the defendant nor his counsel was present. The plaintiffs thereupon prayed the court to allow them to pre-sent their evidence ex parte. This prayer was granted, but only after the trial judge had verified that the counsel of the defendant had been duly notified of the hearing, and after waiting for about two hours for him to put in his appearance.

On December 21, 1960, the trial court rendered judgment for the plaintiffs, ordering the defendant Miranda to vacate the land and deliver possession thereof together with all the improvements thereon to the plaintiffs, and to pay the latter P5,000 in damages with legal interest thereon from the date of the filing of the complaint, plus costs.

A copy of this decision was received by the defendant's counsel on January 20, 1961. On the following February 3, he filed a motion for reconsideration. This motion was denied on May 26, 1961. Notice of denial was received by the defendant's counsel on June 6, 1961. On July 17, 1961 the court ordered the issuance of a writ of execution. On July 26, 1961 the defendant's counsel, in a written manifestation, informed the court that the defendant Miranda had died in the meanwhile on February 21, 1961, leaving his wife Estefania de Miranda and children as heirs, and that he is in receipt of a copy of the plaintiff's motion for the issuance of a writ of execution, and stated that "we submit to the discretion of the Honorable Court on the above-entitled case". On August 11, 1961, a writ

of execution was issued against the defendant Miranda, but was served on his wife "who refused to sign but received copy." On August 16, 1961 entry of judgment was made.

The record further shows that on August 30, 1961 the court promulgated an order stating that "since the defendant had died after the rendition of the judgment the writ of execution already issued against defendant may be enforced against his successor-in-interest (the heirs) (Rule 39, sec. 7, Rules of Court)", and further that "The petition for relief from judgment is hereby denied for lack of merits." The defendant's subsequent motion for reconsideration was denied on September 11, 1961.

No appeal was taken by the heirs of the defendant. Instead, on April 3, 1962, almost 7 months later, they filed the present petition with this Court, praying that all the proceedings had in the court below be annulled. They tender for resolution two issues, namely, (1) did the respondent judge incur in grave abuse of discretion amounting to lack of jurisdiction in allowing the plaintiffs to introduce their evidence ex parte at the hearing on September 30, 1960, without reserving to the defendant Miranda the right to present evidence at a later date? (2) having in view the provisions of section 7 of Rule 39, was the order of July 17, 1961 directing the issuance of a writ of execution proper and legal although entry of judgment was made long after the death of the defendant Miranda?

Upon the first issue, the petitioners contend that the trial court gravely abused its discretion in not reserving to the defendant Miranda the right to present evidence at a later date, arguing that the plaintiff had been granted ten postponements, while the defendant had been granted only one postponement. This contention is without merit.

Although it is true, as the petitioners aver, that trial had been postponed ten times at the instance of the plaintiffs and only once at the instance of the defendant, it is nonetheless also true that trial had also been postponed six times at the instance of the counsel of both parties. In other words, 17 postponements, all told, were granted without objection from the parties. The record does not reveal the ground or grounds relied upon for each postponement granted, but we must assume that the trial court correctly exercised its discretion in the matter of every postponement granted by it, in the absence of any evidence to the contrary.

Focusing now our attention upon the incidents that transpired anent the hearing on September 30, 1960, we note that it is not disputed by the petitioners that the counsel of the defendant Miranda not only was duly notified of the said hearing but as will that he did not ask for a postponement thereof. The judge waited for two hours on that day for the defendant's counsel to appear, and only after the latter had failed to appear and after the trial judge had verified from the record that the defendant's counsel had duly received notice of the hearing did he allow the plaintiffs to introduce their evidence ex parte. We are not persuaded that in so doing the trial judge incurred in grave abuse of discretion. The matter of continuances is ever addressed to the sound discretion of the court, and its action thereon will not be disturbed on review, save upon a patent and manifest abuse of discretion, which is not shown here.

The petitioners nevertheless argue that the court should have reserved to the defendant his right to present his evidence at a later date instead of declaring him in default. The fact of the matter is that the court did not declare the defendant in default, but proceeded to render judgment on the evidence presented by the plaintiffs. And as to the alleged right of the defendant to present his evidence at a later date, this Court has held that the "failure of defendant to be present at the hearing" has the "effect of depriving him of his right to present evidence" (*San-tiago vs. Conde*, 105 Phil. 299).

Upon the second issue, the petitioners argue that because section 7 of Rule 39 of the old Rules of Court provides that "where a party dies after the entry of judgment or order, execution thereon may issue, or one already issued may be enforced * * * against his executor or administrator or successor-in-interest if the judgment be for recovery of real property * * * the writ of execution of August 11, 1961 was void as the defendant had died en

the previous February 21, and entry of judgment was made only on August 16, 1961. The syllogism of the petitioners runs thus: the defendant died before, not after, the entry of judgment, therefore the writ of execution issued is void.

We cannot accept this argument. The provision (section 7 of Rule 39) relied upon by the petitioners cannot be so construed as to invalidate the writ of execution already issued in so far as service thereof upon the heirs or successors-in-interest of the defendant is concerned. It merely indicates against whom a writ of execution is to be enforced when the losing party dies after the entry of judgment or order. Nothing therein, nor in the entire Rule 39, to our mind, even as much as intimates that a writ of execution issued after a party dies, which death occurs before entry of judgment, is a nullity. The writ may yet be enforced against his executor or administrator, if there be any, or his successor-in-interest. In the case at bar, judgment was rendered on December 21, 1960, two months before the death of the defendant. Since neither the defendant, nor his heirs after his death, appealed from the judgment, the writ of execution issued as a matter of course. The matter of the death of the defendant was communicated to the trial court for the first time on July 26, 1961, after the decision had become final. And in its order of August 30, 1961, the court clearly commanded that the writ of execution already issued be enforced against the deceased defendant's successor-in-interest, and this because the record does not at all show that there has been an executor or administrator appointed for the estate of the deceased.

That the writ of execution was issued on August 11, 1961, or five days before entry of judgment was physically made, is a non-prejudicial error.

Upon the foregoing considerations, the present petition is patently without merit.

ACCORDINGLY, the petition is denied. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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