

**MAXIMO ROMERO SR., AND FLORENCIA DIANETA,
PETITIONERS-APPELLANTS, VS. THE COURT OF APPEALS, HON.
FLORENDO P. AQUINO, PRESIDING JUDGE OF THE COURT OF FIRST
INSTANCE OF NUEVA ECIJ...**

G.R. No. L-29659. July 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review on certiorari of the resolution of the Court of Appeals dismissing the petition in CA-G.R. No. 41455-R, on the ground that appeal from the questioned orders and writs was the proper remedy.

In an amended complaint filed in the Court of First Instance of Nueva Ecija (Civil Case No. 2619), Luisa Afan, Leonila Valino, Getulio Valino, Lourdes Valino, Lorenzo Valino, and Pablo Valino, as registered owners of Lot No. 1261 of the Talavera Cadastre, sought re-covery of possession of a part of said Lot 1261, with an area of 2.6 hectares, from Maximo Romero, Sr. and Florencia Dianeta. The defendants, for their part, also claimed ownership of the said portion of the lot.

After due trial, the court rendered judgment on 14 December 1959, finding that although Florencia Dianeta and Jose G. Romero executed in 1926 a deed of sale purporting to convey to Ciriaca Javate (plaintiffs predecessor-in-interest) the whole of Lot 1261, what was actually sold to the latter was only that portion from the "paligue" or irrigation canal going northward. The court observed that ?

"from and after the execution of the deed of sale, Exhibit S, Florencia Dianeta and Jose Romero remained in possession of the portion of about 2.6 hectares which is south of the irrigation canal or 'paligue'."

The dispositive part of the decision, however, reads:

"WHEREFORE, the plaintiffs are hereby ordered to execute a deed of conveyance, sufficient in form and substance, of Lot 1227 of the Talavera Cadastre in favor of Maximo G. Romero, and the defendants Maximo G. Romero and Florencia Dianeta are hereby likewise ordered to execute a deed of conveyance in favor of the plaintiffs with an area of 1,294 square meters. The parties shall cause a subdivision of Lot 1214, the dividing line being the fence which stands between the two rows of betel nut trees. The cost of subdivision shall be born equally by the parties. Likewise, the plaintiffs are hereby ordered to execute a deed of conveyance, sufficient in form and substance, of that portion of Lot 1261, south of the irrigation canal and to cause the subdivision thereof, the expense to be born equally by the parties. Without pronouncement as to costs." (Underlining supplied.)

On appeal by both parties, the Court of Appeals (in CA-G. R. No. 27135-R) ruled that the registration of the whole lot in the name of Ciriaca Javate, including that portion not covered by the sale, resulted in the creation of a trust in favor of Florencia Dianeta; and the decision of the trial court was affirmed in full.

The decision having become final, Luisa Afan et al. filed in the lower court a motion for execution of judgment;

for an order to allow a duly licensed surveyor contracted by them to enter the land and cause the subdivision thereof, segregating that portion of the lot south of the irrigation canal, to enable their execution of the necessary deed of reconveyance over such portion; and to issue a writ ordering the defendants to vacate and surrender that portion of Lot 1261 north of the irrigation canal and placing the plaintiffs in possession of said property.

The defendants opposed the motion, objecting to the issuance of a writ of execution in the manner prayed for by the plaintiffs. It was their claim that what ought to be segregated in favor of the defendants should be a portion of lot 1261 with an area of 2.6 hectares, the words "south" and "irrigation canal or paligue" mentioned in the decision being merely a general indication of the part of Lot 1261 from where the 2.6 hectares is to be taken.

On 28 April 1967, the court granted plaintiffs' motion and directed the issuance of the corresponding writs of execution and possession in accordance with the decision rendered in the case. This order was reiterated in another order dated 1 December 1967. Luisa Afan, et al., thereupon engaged the services of a surveyor, and caused the subdivision of Lot 1261 into Lot 1261-A, containing an area of 12,486 square meters; Lot 1261-B, with an area of 6,262 square meters; and Lot 1261-C, with an area of 120,493 square meters. On 29 May 1968, the said plaintiffs executed a deed of conveyance in favor of defendants over Lot 1261-A.

On 7 June 1968, on plaintiffs' motion, the court issued another order for execution of the decision. This was amended on 10 June 1968, to include approval of the plan, Exhibit B, which was attached to the plaintiffs' motion. As the Clerk of Court had issued a writ of execution and a writ of possession in favor of the plaintiffs over the area designated as Lot 1261-C, the defendants instituted certiorari proceedings in the Court of Appeals (CA-G. R. No. 41455-R), to declare as null and void and without effect the lower court's orders of 28 April 1967, 1 December 1967, 7 June 1967, and 10 June 1967, allegedly issued with grave abuse of discretion and in excess of jurisdiction.

In its resolution of 31 July 1967, the Court of Appeals dismissed the petition, holding that, as the petitioners were claiming that the disputed orders and writs issued by the respondent Judge varied the terms of the final decision, and that they were not given their day in court when said orders were issued, the proper recourse for the petitioners should have been an appeal. Hence, the filing of the present action.

The Court of Appeals based its dismissal-order on the ruling of this Court in several cases,[1] to the effect that where it is claimed that the questioned order or writ varied the terms of the decision being executed and that the petitioner was deprived of his day in court in its issuance, then, appeal lies from such order or writ. A reading of the aforecited cases, however, will show that the ruling is not meant to constitute the appeal as the sole and exclusive remedy in those instances. By such ruling, what was actually recognized was the existence of a recourse against a writ or order of execution allegedly issued at variance with the terms of the decision, thus providing an exception to the general rule about the absence of appeal from orders of execution to ensure putting an end to a litigation.[2] If appeal was mentioned in the cited decisions at all, it was only because the parties involved therein chose to avail of that remedy. In short, the relief afforded to the parties in the named circumstances may be pursued either by an appeal or by any other proceeding appropriate and allowable under the Rules.

In this case, certiorari would not have been inappropriate. For here, the court a quo approved plaintiffs' execution of the deed of reconveyance to the defendants of Lot 1261-A, containing an area of 12,486 square meters, considering it as in satisfaction of, or in conformity with, the judgment in Civil Case No. 2619 being executed. Defendants, however, maintained that the judgment adjudicated to them a portion of Lot 1261 with an area of 2.6 hectares and not only 12,486 square meters as approved by the court. It was their claim that as the lower court's orders and writs of execution were only for a lot of 12,486 square meters, then said orders varied the terms of the decision, and, therefore, were issued in grave abuse of discretion and without jurisdiction. Clearly, the

allegations of the petition make out a case for certiorari, which could have been passed upon by the appellate court. In fact, considering that a writ of possession in favor of the plaintiffs over Lot 1261-C, which includes part of the 2.6 hectare-area being claimed by the defendants to have been adjudged to them in the decision, had already been issued and, perhaps, enforced, an appeal from the questioned orders could have been inadequate and ineffectual. The situation, even in the existence of an appeal in the case, would have justified the allowing of a certiorari proceeding.[3]

On the merits[4], however, We have to affirm the disputed orders of execution of the court a quo.

Allegedly following the final decision of the court, the plaintiffs caused the survey and subdivision of Lot 1261; the area of the irrigation canal was designated as Lot 1261-A; the canal, as Lot 1261-B; and the area north thereof, as Lot 1261-C. Then, the plaintiffs conveyed in favor of the herein petitioners Lot 1261-A, which turned out to have 12,486 square meters. In assailing the court orders approving the subdivision and execution of the deed of conveyance, petitioners claimed that what was adjudicated to them was a portion of Lot 1261 with an area of 2.6 hectares and not one with a smaller area.

It is true that in the complaint filed in the lower court, the plaintiffs sought recovery from the defendants of possession of a part of Lot 1261 with an area of about 2.6 hectares; that in their answers thereto, the defendants claimed ownership of that 2.6 hectare-area. In the body of the decision itself, it was mentioned that even after the execution of the deed of sale, Florencia Dianeta and Jose Romero retained possession of that portion of about 2.6 hectares "which is south of the irrigation canal or 'paligue'". But it may be pointed out that in concluding that the deed of sale did not cover the whole of Lot 1261, the court considered the fact that Ciriaca Javate was told by Jose Romero that the portion (of Lot 1261) she was buying was "from the 'paligue' or canal going northward". In short, what was controlling in the agreement was the place or location of the portion excluded from the sale, not the actual area of that portion. Thus, in the dispositive part of the decision of the lower court subject of execution, the plaintiffs were ordered to convey to the herein petitioners an unspecified "portion of Lot 1261, south of the irrigation canal".

That upon actual survey the area south of the canal turned out to be less than 2.6 hectares can hardly be blamed on the plaintiffs, nor can it be called a deviation from the decision. There is no showing here that the portion of the lot intended by the signatories thereto to be excludible from the deed of sale has an area of 2.6 hectares, or that other records or previous surveys indicate that the area south of the canal really contained 2.6 hectares. In the absence of evidence of error or bad faith in its execution, We have no alternative but to place reliance on the technical description and measurement resulting from the survey, and sustain the conveyance of Lot 1261-A, even if it contains only 12,486 square meters, as being in conformity with the judgment in Civil Case No. 2619.

Considering the well entrenched rules (a) that in the identification of land well defined boundaries will prevail over area, and, in case of conflict, the former control the latter[5]; and (b) that for the purpose of res judicata or execution the dispositive part of a judgment controls expressions made in the body of the opinion[6], it is clear that the petitioners herein can only claim whatever portion of Lot 1261 lies south of the "paligue" or irrigation canal, whether such portion be of an area greater or lesser than 2.6 hectares.

WHEREFORE, the petition is hereby dismissed, and the orders of the court a quo affirmed. Petitioners are directed to share with the plaintiffs the costs of the subdivision and segregation of Lot 1261-A from the bigger parcel of land. Costs against the petitioners.

Concepcion, C.J., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.
Dizon and Ruiz Castro, JJ., did not take part.

[1] Castro vs. Surtida, 87 Phil. 166; Manaois-Salonga vs. Natividad, 107 Phil. 263; Socco vs. Vda. de Leary, L-19461, 21 October 1964, 12 SCRA 326.

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

[3] Bothelho Shipping Corp. vs. Leuterio, L-20420, 20 May 1963; Santos vs. Pecson, 79 Phil. 261; Vda. de Saludes vs. Pajarillo, 78 Phil. 757; General vs. De Venecia, 78 Phil. 780; Leung Ben vs. O'Brian, 38 Phil. 182.

[4] The Court has considered it more to the interest of the parties to pass upon the merits of this case, the original action having been commenced way back in 1958.

[5] Centenera vs. Director of Lands, 82 Phil. 85; Buiser vs. Cabrera, 81 Phil. 669.

[6] Frimm vs. Atok Big Wedge Mining Co., L-11887, 29 December 1959; Neri vs. Arce, 52 Off. Gaz. 2537; Siari Valley Estates vs. Lucasan, 102 Phil. 390; Contreras vs. Felix, 78 Phil. 570; Government vs. Ramon y Vasquez, 73 Phil. 669.

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