

GAMBOA & S INCORPORATED, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE NICASIO YATCO, THE HONORABLE DAMIAN JIMENEZ, THE PROGRESSIVE DEVELOPMENT CORPORATION, MR. ...

G.R. No. L-23634. July 29, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner herein seeks the review on certiorari of a decision of the Court of Appeals.

The general facts of the case are not in dispute.

Respondent Progressive Development Corporation was the owner of the offices located at 878-F, G and H, Aurora Boulevard, Quezon City. These offices were leased to petitioner at the agreed rental of P850.00 a month, payable in advance within the first five days of each month. Consequently, respondent Progressive Development Corporation instituted Civil Case No. 9586 to eject the petitioner and to recover overdue rentals with the City Court of Quezon City, Branch III, presided over by respondent City Judge Damian Jimenez, now deceased.

At the hearing, the parties entered into a stipulation of facts. On April 25, 1962, judgment was rendered as follows:

"At the hearing today, the defense counsel appeared and in answer to plaintiff's complaint admitted all the allegations embodied in the complaint, acknowledging the fact that his client is in arrears of back rentals in the amount of P7,740.00 as of March 21, 1962 and proposes that his client be permitted to pay the back rentals in the following manners, to wit;

"(1) That the defendant will pay the plaintiff beginning May, 1962 the sum of P1,700.00 instead of P850.00 only, the P850.00 of which to be applied to the back rentals amounting to P8,590.00 up to and including April, 1962 until fully paid;

"(2) That the plaintiff's counsel waives the right to collect attorney's fee;

"(3) That in case of failure on the part of the defendant to pay one [1] installment due, an immediate execution shall issue upon motion of the plaintiff's counsel; and

"(4) That the defendant will pay the costs of this action:

"WHEREFORE, this Court hereby renders judgment based on the above-stated stipulations ordering the parties to comply strictly with the same.

"SO ORDERED." (Pp. 33-34, rec.).

As of July 12, 1962, the petitioner had paid only the sum of P1,000.00, in violation of the terms of the judgment. Upon application by the respondent Progressive Development Corporation, respondent City Judge Damian

Jimenez, issued a writ directing the ejectment of the petitioner from the premises (p. 36, rec.). This writ of execution, however, remained unenforced due to repeated requests from the attorney of respondent Progressive Development Corporation, and was returned unsatisfied by the respondent City Sheriff to the court of origin on December 11, 1963 (p. 132, rec.).

Petitioner continued in possession of the premises and paid the accrued rentals in installment so that by November 20, 1963, the rentals in arrears under the judgment were fully paid (p. 37, rec.), receipt of which was acknowledged by the counsel of respondent Progressive Development Corporation in its memorandum dated November 20, 1963 requesting the withdrawal of the security guard from the premises "as full payment of their unpaid rental has been made already" (Annex E to petition).

On December 5, 1963, respondent Progressive Development Corporation sold the premises to respondent Francisco M. Villanueva.

On December 12, 1963, the respondent Progressive Development Corporation applied for an alias writ of execution, which application was granted by respondent City Judge Damian Jimenez (Annex F of the Petition). The alias writ of execution specifically directed respondent City Sheriff to cause the ejectment of petitioner and to levy upon the personal properties of the latter to satisfy the amount of Seven Thousand Seven Hundred-Fourty Pesos (P7,740.00) representing the unpaid rentals due from petitioner under the judgment of April 25, 1962.

Later on, respondent City Judge Jimenez restrained the respondent City Sheriff from executing the decision, which restraint was however lifted on January 8, 1964.

On January 10, 1964, by virtue of the alias writ of execution, respondent City Sheriff turned over the possession of the premises to the respondent Progressive Development Corporation, which in turn transferred its possession to respondent Francisco Villanueva.

The next day, petitioner herein filed a petition for certiorari and preliminary injunction and prohibitory injunction before respondent Judge Nicasio Yatco of the Court of First Instance of Quezon City and secured a preliminary injunction (p. 38, rec.).

On January 16, 1964, respondent Progressive Development Corporation moved to quash the preliminary injunction thus issued.

On February 8 of the same year, respondent Judge Nicasio Yatco lifted the preliminary injunction (p. 49, rec.).

On February 11, 1964, respondent City Sheriff of Quezon City levied upon the personal properties of petitioner. Accordingly, respondent City Sheriff issued a "Second Notice of Sheriff's Sale," stating that the properties belonging to petitioner and enumerated in the said notice would be sold at auction (p. 51, rec.).

On February 18, 1964, petitioner filed a petition for certiorari and preliminary mandatory and prohibitory injunction with respondent Court of Appeals, and on February 20, 1964, respondent Court of Appeals issued the summons and writs prayed for (p. 60, rec.).

On July 24, 1964, respondent Court of Appeals rendered its decision, the dispositive portion of which reads:

"Accordingly, the petition is dismissed, and the preliminary injunction heretofore issued is dissolved. Costs against the petitioner" (p. 78, rec.).

Hence, this appeal by certiorari.

In praying for the issuance of the writs of preliminary and mandatory injunction, petitioner claims that the judgment upon which the alias writ of execution of December 12, 1963 was issued, has been fully paid and

completely satisfied in fact. Therefore, petitioner argues, there is no more judgment to speak and nothing else to execute.

WE find merit in petitioner's contention.

A writ of execution must conform with the judgment and if it is different from or exceeds the terms of the judgment, it is a nullity (*Villoria vs. Piccio*, 95 Phil. 802). The judgment, upon which the alias writ of execution in question was issued, simply states that "in case of failure on the part of the defendant (petitioner herein) to pay one installment due, an immediate execution shall issue upon motion of the plaintiff's (respondent Progressive Development Corporation herein) counsel." (Underscoring supplied). The installment referred to is the amount of P1,700.00 every month from May, 1962 until the total unpaid rentals of P8,500.00 "up to and including April, 1962" is fully paid. There is nothing in the judgment of April 25, 1962 which orders execution in the event petitioner defaults in the payment of future rentals at P850.00 a month after April, 1962. Even if it did, the same would be of doubtful validity, as will be discussed later.

There is no doubt at all that the rentals under the judgment were fully paid by petitioner as early as November 20, 1963. Payment thereof was acknowledged by respondent Progressive Development Corporation when it issued a memorandum (Annex E of the Petition) signed by its counsel requesting the withdrawal of its security guard detailed at petitioner's offices, "as full payment of the unpaid rental has been made already." Even respondent Court of Appeals explicitly stated in its decision now under review, that the petitioner " * * paid the accrued rentals in installments so that by November 20, 1963, the accrued rentals under the judgment was fully paid." If the judgment has been completely satisfied, as indeed it has been, then, respondent Judge Damian Jimenez clearly exceeded his authority when he issued the alias writ of execution of December 12, 1963.

Respondent Court of Appeals, in justifying the issuance of the alias writ of execution, holds the view that, "While it may be true that the accrued rentals under the judgment have been fully paid, still the levy on execution should be maintained for the reason that the rentals accruing from December 1, 1963 to the time petitioner was ousted from the premises, that is, January 10, 1964, as well as the expenses of the suit and sheriff's fees, have not been paid" (p. 78, rec.).

WE find no legal basis to uphold such conclusion of respondent Court of Appeals. As heretofore stated, there is nothing in the judgment which entitles respondent Progressive Development Corporation to a writ of execution or an alias writ for that matter, in case of petitioner's failure to pay future rentals, expenses of the suit and sheriff's fees. The failure to pay "one (1) installment due" as stated in paragraph 3 of the decision of the City Court, refers to the monthly installment of P1,700.00 mentioned in paragraph 1 thereof (pp. 33-34, rec.).

To sustain respondent Court of Appeals in this regard, would be tolerating a situation where the landlord may turn the scales of justice into a sword of Damocles over the tenant's head and convert the courts into his regular collecting agency, which is entirely incompatible with the dignity of the courts (*Vda. de Dimayuga vs. Raymundo and Nable*, 76 Phil. 143). Each time a tenant fails to pay future rentals even when justified — like non-compliance by the landlord with his obligation — an alias writ of execution can legally be issued even when the judgment like the one in question does not expressly or clearly cover such future rentals. In effect, one single judgment for prior arrearages becomes a continuing one for future arrearages without need of filing another suit therefor. This is not the tenor of the judgment in question.

A judgment can be enforced by a writ of execution only within ten (10) years from the finality. Thereafter, a new complaint based thereon must be instituted. Under the theory of respondents, the life of a judgment is eternal or is not subject to prescription.

Furthermore, the unpaid rentals of December, 1963 up to January 10, 1964, was not the basis of the suit filed on April 6, 1962 by respondent Progressive Development Corporation; otherwise, the same would have been dismissed outright for lack of cause of action. The default of petitioner in the payment of its rental obligations in December, 1963, merely entitled respondent Progressive Development Corporation to a new cause of action which should have been ventilated by means of a new and separate complaint and petitioners should be heard thereon, in obedience to the constitutional requirement of due process. This was so ruled in the case of *Larena vs. Villanueva* (53 Phil. 923), where the Supreme Court, speaking through Mr. Justice Ostrand, held that "Where a contract is to be performed periodically as by installments, each failure to pay an installment constitutes a cause of action and can be the subject of a separate suit as the installment falls due * * *."

The accrued rentals from December, 1963 to January 10, 1964 were never litigated in the judgment of April 25, 1962 in the ejectment suit which was filed on April 6, 1962 by reason of the failure of petitioner to pay the monthly rentals up to April, 1962. The reason is pretty obvious. Hence, it was not susceptible of a right for the consequent execution and cannot be executed by virtue of an alias writ of execution that runs counter to the language of such judgment. As Chief Justice Moran opined, "The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law" (Moran, *Comments on the Rules of Court*, Vol. I, 1952, Ed., p. 809; cited in *Villoria vs. Piccio*, supra).

There is no denying the fact that petitioner continued to possess and enjoy the leased offices for almost two years from April 25, 1962, up to the time it was illegally thrown out of the premises in January, 1964. This circumstance of continued possession would have entitled petitioner to an implied new lease, if petitioner was not, on four occasions, namely, on March 31, 1962, November 15, 1963, December 2, 1963 and December 5, 1963, served with notices to vacate the leased offices by respondent Progressive Development Corporation (pp. 135, 136, 139, 140, rec.).

Hence, the fact that the lessee continued enjoying the premises for more than fifteen days did not amount to an implied renewal as this renewal is predicated on the condition that no notice to vacate has previously been given. The notice to vacate obviated non-renewal, for the latter is merged in the former (*Gonzaga vs. Balone and San Pedro*, 43 OG 2164). The peaceful enjoyment of petitioner was arrested by the notices to vacate the premises, for respondent Progressive Development Corporation has unequivocally expressed its decision of terminating the contract of lease.

Because there was no implied renewal of the lease contract, as heretofore stated, petitioner is not entitled to recover possession of the premises. Respondent Progressive Development Corporation may institute a separate action for the recovery of the alleged unpaid rentals during the period when the petitioner was in possession of the premises until it was ousted from the premises on January 10, 1964.

Petitioner's claim that it spent no less than P25,000.00 for improvements on the leased premises and that the present value of the goodwill in such area over the property is at least P30,000.00 and the pretension of respondent Francisco Villanueva that he acquired the premises in question by way of absolute sale from respondent Progressive Development Corporation, "without any knowledge, actual or constructive, that said property is under litigation," were never ventilated before respondent City Court and the Court of Appeals. Hence, resolution of such issues cannot be legally made in the instant case. The said issues should be raised in a separate action.

ACCORDINGLY , THE DECISION APPEALED FROM IS HEREBY MODIFIED IN THE SENSE THAT THE ALIAS WRIT OF EXECUTION ISSUED BY THE RE-SPONDENT CITY COURT IS HEREBY SET ASIDE AS A NULLITY INsofar AS IT SEEKS TO LEVY ON THE PERSONAL PROPERTIES OF PETITIONER TO SATISFY THE AMOUNT OF P7,740.00, THE UNPAID RENTALS UNDER THE JUDGMENT OF APRIL 25, 1962 OF THE TRIAL COURT. THIS IS WITHOUT PREJUDICE TO SUCH ACTION AS MAY BE FILED (A) BY RE-SPONDENT PROGRESSIVE DEVELOPMENT CORPO-RATION FOR THE RECOVERY OF THE ALLEGED UNPAID RENTALS NOT COVERED BY THE SAID JUDGMENT OF THE TRIAL COURT OF APRIL 25, 1962, AND (B) BY PETITIONER WITH RESPECT TO THE ALLEGED IMPROVEMENTS IT INTRODUCED IN THE PREMISES, IT BEING UNDERSTOOD THAT THE ADVERSE PARTIES MAY INTERPOSE ALL AVAIL-ABLE DEFENSES IN EITHER CASE.

WITH COSTS AGAINST PETITIONER AND RESPONDENT PROGRESSIVE DEVELOPMENT COR-PORATION.

Teehankee, (Chairman), Muñoz Palma, and Martin, JJ., concur.

Aquino, J., was designated to sit in the First Division.

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