

FELIX AZOTES, PETITIONER, VS. MANUEL BLANCO AND JULIAN FIGURA, RESPONDENTS.*G.R. No. L-962. July 28, 1947*

Ponente: MORAN, C.J.

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In the Court of First Instance of Iloilo, judgment was rendered in civil case No. 11396 brought by respondent Julian Figura against petitioner Felix Azotes regarding the title and possession of a parcel of land. Such judgment against petitioner, having become final and executory, was duly executed in 1940 and the property was delivered to respondent Julian Figura. After liberation, the record of the case was duly reconstituted and another writ of execution was issued on June 3, 1946. This writ, however, was later set aside upon motion of petitioner Felix Azotes on the ground that the judgment had already been executed prior to the war. On August 1, 1946, respondent Julian Figura filed a motion for contempt against petitioner Felix Azotes alleging (a) that on March 30, 1942, petitioner was summoned by the Court of First Instance of Iloilo to show cause why he should not be dealt with for contempt for having cut ninety (90) feet of bamboo from the land already delivered to the respondent, but the proceedings for contempt could not be continued because of the Japanese invasion; and (b) that the petitioner is still depriving respondent of the possession of the property and on several occasions took therefrom seven hundred feet of bamboo and other things in utter disregard of the judgment rendered and executed. In virtue of this motion, petitioner was ordered to appear before the court on September 13, 1946 and show cause why he should not be punished for contempt for having entered again into the property formerly delivered to respondent by execution of judgment. On said date, September 13, 1946, petitioner failed to appear before the court and the explanations given by his attorney not being satisfactory, petitioner was ordered arrested to answer the charges for contempt. Hence this petition for prohibition and certiorari against the Court of First instance of Iloilo predicated upon two grounds; namely, (a) that the order declaring the record of the case duly reconstituted is void there having been no notice upon him of the petition and hearing for reconstitution; and (b) that the court has no jurisdiction to punish for contempt a defendant who reentered the land delivered to plaintiff more than five years ago.

With respect to the first ground, it appears from the record that notice of the motion for reconstitution and of its hearing was duly served upon Evidente & Evidente, attorneys for the then defendant Felix Azotes on February 27, 1946, and that a copy of the order declaring the record duly reconstituted was served upon the same attorneys on March 21, 1946.

In this connection, new issues of fact are brought up by petitioner in his memorandum which have never been raised before the respondent court, such, for instance, as that Attorneys Evidente & Evidente have ceased to be his attorneys and have no authority to bind him in the reconstitution proceedings. We cannot, however, take into consideration this new issue of fact not only because the respondent court had no opportunity to pass upon it but because it is unsupported by evidence and it yields to the circumstance that attorney Felix Evidente appeared before the respondent court in behalf of the herein petitioner in the reconstitution proceedings, and by such

appearance the attorney is presumed to have authority of the litigant whose representation he assumed until the contrary is clearly shown.

Furthermore, there seems to be no merit in the objection against the reconstituted record, for petitioner himself, in his opposition to the second motion for execution, admitted that "the judgment sought to be enforced was already complied by the defendant long before the war broke out as evidenced by Exhibit A," thus implying that there was really such judgment and there was such execution. It is true that this admission was made "without waiving our right to challenge the validity of the order of reconstitution * * *." But such reservation cannot destroy the truth of the admission.

As regards the second ground, i. e., that the court has no authority to punish for contempt a defendant who reentered the land delivered to plaintiff more than five years ago, Rule 64, section 3 (h) provides:

"The act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto.

"But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

It is apparent from this provision that there is no limitation as to the time within which reentry constitutes contempt. The reentry may take place more than five years after delivery by execution, and still it is contempt. The five-year period provided in Rule 39, section 6 is the time within which execution of judgment may be asked for by motion. The motion for contempt is not a motion for execution, but a motion to punish a violation of such execution.

Petition dismissed with costs against petitioner.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Padilla, and Tuason, JJ., concur.

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