

**ROBERT DEL MAR REPRESENTED BY ANGELITA A. AUSTRIA,
PETITIONER, VS. REGIONAL TRIAL COURT OF SANTIAGO CITY
(ISABELA), BRANCH 21, NORMA EBERSOLE DEL MAR REPRESENTED
BY GERALD EBERS...**

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari filed by Robert Del Mar, through his attorney-in-fact, Angelita A. Austria, seeking to annul and set aside the orders of the Regional Trial Court of Santiago City, Isabela (RTC) Branch 21 on April 12, 2010[1] and October 11, 2010[2] in Civil Case No. 2373.

The petition stemmed from a case for reconveyance and annulment of titles (Transfer Certificate of Title Nos. T-82258, 82257, T-82260, T-82261, T-82263, T-82264, T-134664, T-117594 and T-116117) filed by the late Norma Ebersola Del Mar (Norma) against her son Robert Del Mar (petitioner) with the RTC docketed as Civil Case No. 2373.[3] The RTC Branch 35 rendered a decision on October 21, 1997 against petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is rendered against defendant and in favor of plaintiff, as follows:

1. Ordering the Register of Deeds at Ilagan Isabela to cancel Titles No. T-82257, T-82261, T-82258, T-82263, T-134664, T-116117 and T-82259;
2. Ordering Robert E. del Mar to reconvey the ownership of properties to the plaintiff and in case of failure on the part of the defendant, the Register of Deeds is directed to execute the necessary deed of reconveyance in favor of the plaintiff;
3. Enjoining permanently the defendant or any person acting for and in his behalf from committing or doing any act of disposition of the properties;
4. Ordering the defendant to pay the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as moral damages to plaintiff;
5. Ordering the defendant to pay the amount of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) as attorney's fees;
6. Cost of the suit;

SO ORDERED.[4]

The decision was appealed to this Court (CA-G.R. CV No. 58804) and to the Supreme Court (in G.R. No. 139008), but the appeals were dismissed on January 13, 1999,[5] and March 13, 2002,[6] respectively, and an entry of judgment was issued.[7] Norma died while the petition was pending in the Supreme Court, however, there was no substitution of parties because the Supreme Court and RTC were not informed of Norma's death. Subsequently, a writ of execution was issued by the RTC to enforce the decision on September 7, 2005[8] and

petitioner's certificates of title were cancelled and new certificates of title in the name Norma were issued on June 8, 2006.[9]

Upon issuance of the new certificates of title in the name of Norma, Gerald and Florence (private respondents) executed an extrajudicial settlement of estate with simultaneous partition of shares,[10] adjudicating these properties to them on August 4, 2006. By virtue of the extrajudicial settlement, new certificates of title in the name of private respondents were issued on November 24, 2006.[11]

On motion of petitioner,[12] the RTC Branch 35 issued an order on July 17, 2007, recalling the writ of execution issued on September 7, 2005 and all the subsequent orders relative to the execution.[13] Thus:

The Court perfectly agrees with the defendant-movant.

When the plaintiff died on October 12, 1999, she lost her judicial and personality, and consequently, she had no more locus standi in this case, including her attorney in fact. Whereupon, all acts done after her death have no force and effect.

The New Civil Code of the Philippines Book I on Persons, Title I, civil personality, particularly Article 37, expressly provides:

"Article 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effects, is acquired and may be lost."

More emphatically, Article 42 of the same code provides:

"Article 42. Civil personality is extinguished by death. The effect of death upon the rights and obligation of the deceased is determined by law, by contract and by will."

When her lawyer filed a motion for execution on September 5, 2005, the motion should have been considered a mere scrap of paper simply because the attorney in fact as well as the counsel who filed the motion had no more authority to do so because their authority had ceased to exist when the plaintiff who was their principal had already died. The Court acted favorably on the motion only in all good faith because it had no knowledge whatsoever about plaintiff's death at that point in time. The execution made thereafter also follows as of no force and effect due to the extinguishment of plaintiff's personality through her death.

In short, the death of the plaintiff rendered her juridical as well as civil personality lost and extinguished. According to Article 42 above, her rights and interest in the decision of the Court in this case in her favor should now be determined especially by the law on succession. Thus, until and unless a duly appointed administrator representing the estate of the deceased plaintiff in this case, the Court cannot in any way act on the execution of the decision with legal force and effect.

WHEREFORE, the motions are granted. Consequently, the following Orders are hereby reversed, recalled and cancelled, to wit:

- a) Order of September 7, 2005 granting the motion for execution;
- b) Writ of Execution also dated September 7, 2005; and
- c) Resolution dated March 19, 2007 ordering full execution of the decision.

Accordingly, the Register of Deeds is hereby ordered 1) to reinstate the following certificates of titles, namely: T-82260, T-82261, T-82258, T-82264, T-82263, T-82259 and T-134644 back in favor of defendant Robert Del Mar; and 2) to cause the cancellation of these titles namely: TSC-9463, TSC-9464, TSC-9465, TSC-9466,

TSC-9467, TSC-9468, TSC-9469 and TSC-9470 in the name of the deceased plaintiff Norma Ebersole Del Mar, and all derivative titles therefrom.

Finally, the executing sheriff is ordered to defer execution of the decision in this case.

SO ORDERED.[14]

Private respondents assailed the order via petition for certiorari (CA-G.R. SP No. 101768) to this Court, but it was dismissed on March 25, 2008 for failure to comply with this Court's resolution.[15] On petitioner's motion,[16] the RTC Branch 35 issued a writ of execution to enforce the recall order on July 17, 2007.[17] The private respondents sought the annulment of the writ of execution by filing a petition for annulment of order under Rule 47 of the Rules of Court (CA-G.R. SP No. 109639), but it was dismissed on August 26, 2009 for being an improper remedy.[18]

Private respondents then filed motions for (i) the inhibition of the presiding judge of Branch 35,[19] (ii) appointment of executor/ administrator,[20] and (iii) immediate issuance of a writ of execution.[21] The RTC Branch 35 granted the motion for inhibition on October 6, 2009[22] and the case was re-raffled to Branch 21.

The RTC, Branch 21 denied the motion for appointment of administrator, but granted the motion for execution on December 3, 2009.[23] Again, on motion for reconsideration filed by petitioner,[24] the RTC issued an order on April 12, 2010,[25] lifting and setting aside its December 3, 2009 order, viz.:

From the above narration of what transpired after the decision in this case became final and executory, it becomes clear that the decision was in fact executed by the Register of Deeds by cancelling certificates of title of the defendant Robert del Mar. After the certificate of title was reissued in the name of the plaintiff Norma Ebersole del Mar, her heirs executed an extrajudicial settlement of estate and partition which was registered in the office of the Register of Deeds and another set of transfer certificates of title were issued in the name of Gerald del Mar. Whether that extrajudicial settlement is valid or not is a different issue which has still to be resolved in another case. The fact is now clear that the decision was already executed because the certificate of title in the name of Robert del Mar which are the subject of this case were already cancelled by the Register of Deeds in implementation of the writ of execution. The decision in this case cannot be executed again and neither can the July 17, 2007 order of the court be executed because there is already a supervening event that happened particularly the execution of the extrajudicial settlement and cancellation of the certificates of title issued in the name of the plaintiff Norma Ebersole pursuant to the extrajudicial settlement of estate by the heirs.

WHEREFORE, in the light of the foregoing considerations the motion for reconsideration is hereby GRANTED. The order of the court dated December 3, 2009 ordering the issuance of a writ of execution is hereby LIFTED AND SET ASIDE.

SO ORDERED.[26]

Private respondents filed a motion for reconsideration,[27] while petitioner moved for clarification and/or reconsideration.[28] In his motion, petitioner sought the deletion of the RTC pronouncement that "[n]either can the July 17, 2007 order of the court be executed because there is already a supervening event that happened particularly the execution of the extrajudicial settlement and cancellation of the certificates of title issued in the name of the plaintiff Norma Ebersole pursuant to the extrajudicial settlement of estate by the heirs." The RTC denied petitioner's motion for clarification as well as private respondents' motion for reconsideration on October 12, 2010.[29]

Hence, this petition for certiorari.

Petitioner asserts that the pronouncement by the RTC Branch 21 regarding the execution and implementation of

the order on July 17, 2007 is an obiter dictum; that it was unnecessary because the issue for resolution of the trial court was the issuance of the writ of execution to implement the decision dated October 21, 1997; that the writ of execution to enforce the recall order on July 17, 2007, which according to RTC Branch 21 cannot be executed, had already attained finality and its validity had already been sustained even on appeal, hence, the RTC Branch 21 acted whimsically for making said pronouncement.

An obiter dictum has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[30]

The order on April 12, 2010 resolved the motion for clarification and/or reconsideration[31] of the petitioner. This Court notes that in the said motion, petitioner invoked the order of the RTC on July 17, 2007 as basis of his opposition to and the lifting of, the writ of execution in favor of private respondents, and as justification for the reconsideration of the order dated December 3, 2009. Certainly, the pronouncement made by the trial court on the implementation of the order of July 17, 2007 is not an obiter dictum or an opinion uttered "by the way," but a direct ruling on an issue expressly raised by the petitioner. It was not unnecessary to make that ruling, but it was absolutely essential for the resolution of the issue he raised.

In any event, jurisprudence is trite with pronouncements that the failure of counsel to inform the court of the death of his client and the non-substitution of a party to a case will not invalidate the proceedings of the court and the judgment thereon.[32] Thus, the writ of execution issued by RTC Branch 35 on September 7, 2005 is valid, hence, no further writ of execution is necessary for the implementation of the decision. Therefore, the trial court acted well within its discretion in lifting the writ of execution and in denying petitioner's motion for clarification and/or reconsideration.

In fine, for a petition for certiorari to prosper, petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.[33] In this case, petitioner failed to show that the pronouncement made by the RTC in its order on April 12, 2010 was grave abuse of discretion amounting to jurisdictional error that would warrant striking it down through a petition for certiorari.

WHEREFORE, the petition for certiorari is DISMISSED. The orders of the Regional Trial Court of Santiago City, Branch 21 on April 12, 2010 and October 11, 2010 in Civil Case No. 2373 are AFFIRMED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 24-30..

[2] Id. at

[3] Id. at 183-191.

[4] Supra note 3 at 196-197.

[5] Id. at 198.

[6] Id. at 202-215.

[7] Id. at 216.

[8] See Writ of Execution dated February 7, 2008, id. at 218-219.

[9] See transfer certificate of title nos. TSC-9463, TSC-9464, TSC-9465, TSC-9466, TSC-9467, TSC-9468, TSC-9469, TSC-9470 id. at 225-232.

[10] Id. at 234-239.

[11] TSC-11723, TSC-11723, TSC-11724, TSC-11725, TSC-11726, TSC-11727, TSC-11728, TSC-11729 and TSC-11730, id.at 241-248.

[12] Id. at 253-256.

[13] Id. at 283-286.

[14] Id. at 284-286.

[15] Id. at 300-302.

[16] Id. at 308-311.

[17] Order dated February 7, 2008, id. at 317-319

[18] Id. at 367-371.

[19] Id. at 350-352.

[20] Id. at 343-347.

[21] Id. at 339-342,

[22] Id. at 353-355.

[23] Id. at 356-359.

[24] Id. at 360-366.

[25] Supra note 1.

[26] Id. at 29-30.

[27] Id. at 379

[28] Id. at 32-39.

[29] Supra note 2.

[30] Villanueva v. Court of Appeals, G.R. No. 142947, March 19, 2002.

[31] Supra note 28.

[32] Nudo v. Hon. Caguioa, G.R. No. 176906, August 4, 2009; Limabauan v. Acosta, G.R. No. 148606, June 30, 2008; Riviera Filipina, Inc. v. Court of Appeals, G.R. No. 117355, April 5, 2002.

[33] See Malayang Manggagawa ng Stayfast Phils. v. National Labor Relations Commission, G.R. No. 155306, August 28, 2013.

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