

**JUAN T. DAVID, PETITIONER, VS. THE HONORABLE JUDGE LORENZO C. GARLITOS OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, AND THE TESTATE ESTATE OF VICENTE SOTTO, REPRESENTED BY ITS...**

*G.R. No. L-7142. June 30, 1954*

Ponente: MONTEMAYOR, J.

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**MONTEMAYOR, J.:**

This is a petition for certiorari with mandamus to compel the Judge of the Court of First Instance of Nueva Ecija to issue the corresponding writ of execution of the decision of said court in Civil Case No. 8726, dated December 5, 1941.

The facts involved are as follows:

Kwong Ah Phoy & Co., Inc., a domestic corporation, on July 11, 1939, secured from the Bank of the Philippine Islands an overdraft accommodation for a sum not exceeding P25,000 with interest of 8 per cent per annum. To secure payment, a first mortgage was constituted on a land located in Cabanatuan, Nueva Ecija, covered by Transfer Certificate of Title No. 2970, together with all its buildings and improvements. The corporation made use of and exhausted said overdraft accommodation, and including certain advances made by the Bank the total obligation as of September 30, 1941, amounted to P30,822. For failure to pay said obligation the Bank filed Civil Case No. 8726 of the Court of First Instance of Nueva Ecija to foreclose the mortgage.

In the meantime, in Civil Case No. 5282 of the same court the corporation was declared insolvent as of September 29, 1939. That was the reason why the judgment secured by the Bank on December 5, 1941, in the foreclosure proceedings, Civil Case No. 8726, was against the assignees of the corporation, sentencing them to pay to plaintiff Bank P30,822 at 8 per cent per annum from September 30, 1941, until fully paid, plus the sum of P3,082.20, by way of attorney's fees, and costs, giving said assignees 90 days within which to pay the money judgment, in default of which payment, the property mortgaged would be sold at public auction.

On August 24, 1944, petitioner Juan T. David acquired from the plaintiff Bank all its rights and interests in the aforementioned judgment in Civil Case No. 8726. Later, all the rights and interests of the insolvent corporation were, by assignment, acquired by Atty. Vicente Sotto who assumed all its liabilities and obligations, and he deposited with the court the sum of P106,097.25 in Japanese military notes to pay and settle all approved claims against the insolvent as well as the sum of P42,614.83 to pay Juan T. David who, as already stated, acquired the mortgage credit of the Bank. By order of the court in the insolvency proceedings dated October 9, 1944, the assignment and the deposit were approved. We reproduce said order:

## "ORDER

"The motion of Atty. Vicente Sotto, dated October 2, 1944, having been submitted, and

"(1) Considering that this Court, in the Order under date of September 16, 1944, has approved the assignment and transfer of all the rights and interests of this insolvency in favor of Atty. Vicente Sotto, as had been proposed by the assignees and upon payment of all the Obligation and liabilities of the same by the purchaser;

"(2) Considering that the said purchaser has deposited with the Clerk of this Court the total amount of all the claims and incumbrances against this Insolvency; and

" (3) Considering that no opposition whatever had been filed against the above mentioned motion of the purchaser;

"Therefore, this Court orders as follows:

"(a) The purchaser Vicente Sotto is hereby declared absolute owner of all the property, real and personal rights, interest and accounts receivable of the insolvent Estate of Kwong Ah Phoy & Co. Inc.;

"(b) The clerk of this Court is hereby instructed to deliver to the Assignees of this Insolvency, Messrs. Eufemio Si-Uy and Andrea L. Navallo Sr. the sum of P106,097.25 deposited by the purchaser, in order to pay and settle all the approved claims against this insolvency, as well as the sum of P42,614.83, likewise deposited by the purchaser to Mr. Juan T. David, subrogee of the mortgage credit of the Bank of the Philippine Islands;

"(c) Releasing the surety firms, Far Eastern Surety and Insurance Co. Inc. and the China Surety & Insurance Co. from their liability under the bonds executed by them in favor of Kwong Ah Phoy & Co. Inc.;

"(d) The assignees are, furthermore, instructed to deliver immediately to the purchaser Vicente Sotto all the property, real and personal rights and interests, and accounts receivable, as well as all and whatever funds, books of account, documents, titles, and papers of this Insolvency; and

"(e) This Insolvency is finally, declared definitely closed."

On November 7, 1944, the assignees delivered to Atty. Vicente Sotto possession of the properties of the insolvent Corporation.

On November 11, 1944f the two assignees through Atty. Tagakotta Sotto, son of Atty. Vicente Sotto, went to the house of Juan T. David in Manila and delivered to him a cashier's check of the Philippine National Bank in the amount of P42,614.83 representing the accumulated balance of the mortgage credit foreclosed by the Bank and later assigned to David, accompanied by a letter stating that the offer of payment was being made in compliance with the order of the court in the insolvency proceedings, at the same time asking for the delivery of the Torrens Title of the mortgage property and the execution of a Quit-Claim Deed. After reading the letter, Mr. David returned to Tagakotta both letter and check and by his conduct showed that "he refused to allow the redemption of the mortgage with Japanese war notes, according to Tagakotta, but according to David, he returned them to said attorney with the request that he hand them over to his counsel, Mr. Claudio Teehankee, giving his address". Because of this the cashier's check was deposited in court and Atty. Vicente Sotto together with the two assignees in the insolvency proceedings brought an action against David in the Court of First Instance of Nueva Ecija, Civil Case No. 193 to compel him to receive said cashier's check and to execute a deed of cancellation of the mortgage, and for P500,000 damages and costs.

On August 16, 1945, Juan T. David filed a petition in Civil Case No. 8726 (foreclosure proceedings) asking for the sale of the property mortgaged. Atty. Vicente Sotto opposed the petition. In an order dated October 25, 1945, the lower court deferred action said petition until Civil Case No. 193 shall have been finally decided, at the same

time, calling the attention of the parties to the fact that the records of said Civil Case No. 193 were lost during the war and the necessity for their reconstitution. The records were later reconstituted under Civil Case No. 193-9.

Subsequently, Atty. Vicente Sotto died, and the court allowed his son Atty. Tagakotta Sotto, executor of his father's testate estate to be substituted as party-plaintiff in said Civil Case No. 193-J.

On November 3, 1949, judgment was rendered in Civil Case No. 193-J holding that the consignment made by Atty. Vicente Sotto was invalid. The decision gave him 60 days within which to pay David P42,614.83 with interest at 8 per cent per annum from October 1, 1944, and David was given 15 days after payment within which to execute the deed of cancellation of the mortgage debt. On appeal by plaintiffs to Court of Appeals, said Tribunal in a lengthy decision held not valid the tender of payment with the cashier's check for P42,614.83, and declared the consignment of said check in court, as not made in accordance with law, and affirmed the trial court's decision. The petition filed by plaintiffs-appellants before the Supreme Court to review the decision of the Court of Appeals was denied for lack of merit.

Thereafter, David filed a petition dated July 15, 1953, in Civil Case No. 8726 of the Nueva Ecija court (foreclosure proceedings) asking for the sale of the mortgaged property in accordance with the decision of that court of December 5, 1941, in view of the final decision rendered in Civil Case No. 193-J. Atty. Tagakotta Sotto as executor of the testate estate of his father Vicente Sotto opposed the petition on the ground of prescription. The Nueva Ecija court presided over by respondent Judge Lorenzo C. Garlitos, denied the petition for execution saying in part: "Unlucky however, he (David) can no longer take advantage of the decision rendered in this case, because the same has totally lost its legal force and effect for having already prescribed." David's motion for reconsideration of said order of denial was denied by order of September 14, 1953. David has now filed this petition for certiorari with mandamus against respondent Judge and the testate estate of Atty. Vicente Sotto, as already stated, to compel the respondent Judge to issue the corresponding writ of execution of the final decision in Civil Case No. 8726.

The theory of respondents in resisting the present petition for certiorari with mandamus and in maintaining the order of respondent Judge denying the petition for execution in Civil Case No. 8726 is built on Rule 39, section 6, of the Rules of Court which reads as follows—

"Sec. 6. Execution by motion or by independent action.—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

and on the rule of prescription contained in Section 43 of the Code of Civil Procedure and Article 1144 of the new Civil Code, to the effect that an action to enforce a judgment or decree must be brought within 10 years from the time said decree or judgment has become final and executory. Respondent equally maintain that the mere filing of the petition for a writ of execution by David (Annex I) in Civil Case No. 8726 on August 16, 1945 asking for the sale of the property mortgaged in accordance with the decision in said case rendered on December 5, 1941, and even the order of the lower court on October 25, 1945, deferring action upon said petition until Civil Case No. 193-J shall have been finally decided did not suspend the running of the two periods of prescription—the first period of five years within which to execute the judgment and the second period of ten years within which to file an action on the basis of said judgment. In support of this contention they cite the case of *Compania General de Tabacos vs. Martinez*, 17 Phil., 160, and other Philippine cases decided by this Court in accordance with the *Martinez* case, holding that the issuance of an injunction restraining the execution of a judgment does not suspend the running of the period of prescription. They claim that if an injunction restraining an execution does not suspend the running of the period of prescription, with more reason the mere filing of a petition for execution and an order merely deferring action on said petition should not and will not suspend the running of the period of

prescription.

The later case of *Demetriou and Madrid vs. Lesaca and Chunaco*, promulgated on March 31, 1936, published in 63 Phil., 112, however, qualified the doctrine laid down in the cases cited by the respondent, particularly the case of *Compania General de Tabacos vs. Martinez*, in the sense that the statute of limitations is not suspended where an injunction suit brought by a judgment debtor is only to restrain sale of his home place but not asking for an order restraining the issuance of an execution. The facts in the *Demetriou* case briefly stated are the following. Chunaco obtained a final judgment against Demetriou for a sum of money with interest and costs. A writ of execution was issued but was returned unsatisfied; a second writ of execution by virtue of which a levy was made on certain properties claimed by Aurea A. Madrid, wife of Demetriou was issued. Aurea filed a complaint in intervention claiming those properties as paraphernal, and she obtained a writ of preliminary injunction enjoining Chunaco and the Sheriff from selling at public auction said properties claimed by her. Subsequently, judgment was rendered on her complaint in intervention, declaring said properties to be paraphernal of Aurea. A third writ of execution was issued on October 10, 1934, more than five years from the time the judgment in the original case between Chunaco and Demetriou became final. This Court held that the third writ was invalid because issued beyond the 5-year period, for the reason that as already stated, the injunction obtained by Aurea did not prohibit the execution of the judgment and so did not suspend the running of the 5-year period. Explaining its stand and the reason for qualifying the doctrine laid down in the case of *Compania General de Tabacos vs. Martinez*, this Court said:

"The decision of the states of the Union are conflicting on this point. Those of California, where sections 443 and 447 of our Procedural Law were taken hold that the five-year period within which a judgment may be enforced is not suspended by the issuance of an injunction restraining the execution of the judgment. ( *Solomon vs. Maguire*, 29 Cal., 227, 237; *Rogers vs. Druffel*, 46 Cal., 654; *Cortez vs. Superior Court*, 86 Cal., 274, 278; *Buell vs. Buell*, 92 Cal., 393, cited with approval in *Compania General de Tabacos vs. Martinez*, 17 Phil., 160; *Arambulo vs. Court of First Instance of Laguna and Municipality of Santa Rosa*, 53 Phil., 302). The contrary view prevails, however, in Mississippi (*Work vs. Harper*, 31 Miss., 107, 109); Georgia (*Rogers vs. Smith*, 98, Ga., 788, 789); and New York (*Underwood vs. Green*, 56 N. Y., 247, 248). In our opinion the better rule is that announced in 21 A.L.R., 1059, citing *Series vs. Cromer* (88 Va., 426), a case similar to the present, where it was said:

'An injunction suit brought by a judgment debtor to restrain the sale of his home place, but not asking for an order restraining the issuance of execution, is not such a legal proceeding as to suspend the statute of limitations under a statute providing that any time during which the right to sue out execution on a judgment is suspended by the terms thereof or by legal proceedings shall be omitted in computing the period of limitations prescribed.'

"It appears from the record that the injunction issued in civil case No. 4997 was not to enjoin the execution of the judgment, but only to have the creditor Ciriaco Chunaco and the sheriff Max. M. Romero 'abstain from selling at public auction the properties described in the complaint \* \* \* during the pendency of this case and until further order of the court/ It is manifest that the issuance of said injunction at no time prevented Ciriaco Chunaco from executing his judgment otherwise than by making a public sale of the properties claimed by Aurea A. Madrid. \* \* \* ."

Applying the legal principle enunciated in the *Demetriou* case, we agree with petitioner David that his petition for execution filed on August 16, 1945, and the order of the trial court deferring action upon it until Civil Case No. 193-J shall have been finally decided, suspended the running of the period of prescription. As he correctly claims, prescription can only operate when there is a right that is enforceable; or in the case of a final judgment, when there is no legal impediment to its execution; but when the enforceability of a final decision is suspended by court

order or becomes conditional and uncertain, prescription may not operate. In his case (Civil Case No. 8726) although he had a final judgment in his favor, despite his efforts he failed to secure execution thereof not only because of the refusal of the trial court to grant it, but also because the suit filed by Atty. Vicente Sotto, Civil Case No. 193-J, based on his alleged tender of payment and the subsequent consignment in court of the cashier's check in an amount calculated to satisfy the final judgment, rendered the execution of said final judgment conditional and uncertain. If Atty. Sotto in his suit obtained final favorable judgment declaring his tender of payment and his consignment of the cashier's check, valid, then the final judgment in favor of David will have been immaterial and of no avail. That was the very reason why the trial court deferred action on David's petition for execution dated August 16, 1945, and surely, failure to execute said judgment may not properly be laid at anyone's door, much less at that of David. It was only after the final judgment in the case of Atty. Vicente Sotto against David (Civil Case No. 193-J) that the judgment in Civil Case No. 8726 regained its finality and executory character. On this basis, and considering the suspension of the running of the period of prescription, we find that David filed his petition for execution on July 15, 1953, within the five-year period as provided for in Rule 39, section 6, Rules of Court, and that respondent Judge improperly and unlawfully denied the same on the ground of prescription.

In view of the foregoing, the petition is hereby granted; the order of respondent Judge denying the petition for execution is hereby set aside and he is hereby directed to issue the corresponding writ of execution, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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