

**MATIAS RANILLO, JR., PETITIONER, VS. PERSHING TAN QUETO,
ANTONIO YAP HOCKUN, COURT OF FIRST INSTANCE OF OZAMIS
OCCIDENTAL, OZAMIS CITY BRANCH, AND THE SHERIFF OF
QUEZON CITY, RE...**

G.R. No. L-24065. June 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This is a petition for certiorari, with pre-liminary injunction, which seeks to annul the order of the Court of First Instance of Misamis Occidental, Ozamis City Branch, granting an alias writ of execu-tion on a judgment allegedly more than five years after its entry.

It appears that on April 29, 1957, a decision was rendered in Civil Case No. 1828 of the Court of First Instance of Misamis Occidental, entitled Per-shing Tan Queto, et al., versus Bonifacio Sevilla, et al., in favor of the plaintiffs, Herein private respondents, dispositive portion of which decision reads:

"CONSEQUENTLY, judgment is hereby rendered sentencing the defendants to pay jointly and severally to the plaintiffs the amounts of P3,000.00 in con-cept of actual and moral damages plus P1,000.00 as attorney's fees which amounts may be made effective on the bond posted by the defendants in the amount of P40,000.00 to avoid the com-pliance of the writ of preliminary man-datory injunction, plus the costs of the proceedings."

From this judgment, the defendants interposed an appeal but the same was dismissed on July 9, 1958 for failure of the defendants to submit an amended record on appeal. The defendants then filed a motion for reconsideration of the order of dismissal but which motion was denied on August 29, 1958. Not satisfied, the defendants filed with this Court a petition for mandamus to compel the lower court to give due course to their appeal. Again, the petition had failed for on October 16, 1958, it was dismissed for lack of merit.[1]

On November 19, 1958, the prevailing parties were able to secure a writ of execution of the judgment but because it was returned unsatisfied, an alias writ of execution was issued on January 22, 1959, which was like-wise returned unsatisfied.

On June 9, 1959, the plaintiffs took steps to claim satisfaction of the judgment upon defendants' bond and for the issuance of a writ of execution thereof. This motion having been granted, the sureties or bondsmen filed with this Court a petition for certiorari and pro-hibition with preliminary injunction which was granted on June 29, 1962, the Court annulling the order of the lower court which held the counterbond liable to answer for and satisfy the judgment, on the ground that the sureties were not parties to he action nor were they notified of the proceedings.[2]

Later, after the plaintiffs had learned upon in-quiry from the City Assessor of Quezon City that Matias Ranillo, Jr., one of the defendants (herein petitioner), and his wife have properties in Quezon City, they filed a motion for the issuance of an alias writ of execution of the April 29, 1957 judgment. This was granted by the lower court in

its order of July 27, 1964. Against this order, Ranillo filed with the Court of Appeals a petition for writ of certiorari with preliminary mandatory injunction. Although the said court, at the beginning, had issued a writ of preliminary mandatory injunction enjoining the respondents from proceeding with the execution of the alias writ of execution and to release whatever property belonging to the herein petitioner which the sheriff had levied upon, it finally dismissed the petition, on the ground that the issue raised therein is one of law, in which case it has no jurisdiction over the case.

Hence, this petition, which is but a reproduction of petitioner's case before the Court of Appeals, ex-cept for a prayer to review the said court's dismissal of his petition.

The first reason advanced for the granting of the writ of certiorari now applied for is that the respondent Court of First Instance acted beyond its jurisdiction when on July 27, 1964, it issued the order granting an alias writ of execution upon a mere motion, after the lapse of five (5) years from the entry of the judgment in question, contrary to section 6, Rule 39 of the Rules of Court, which reads:

"Execution by motion or by independent action. - A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

Dispute has arisen as to from which date the five-year period should be counted. The petitioner argues that the period of five years should start from "the date of its (judgment's) entry or from the date it becomes final and executory," while the respondents contend that that period should begin from October 16, 1965 because that was the date when the Supreme Court dismissed in a minute resolution the petition for mandamus.

As already stated, the decision in Civil Case 1828, execution of which is now at issue, was rendered on April 29, 1957. A notice of appeal was filed, but the appeal was dismissed on July 9, 1958. Whether the five-year period is counted from July 9, 1957, allegedly to be the thirtieth day after the defendant had received a copy of the decision, or from July 9, 1958, when the appeal was dismissed by the Court of First Instance, more than five years had elapsed when on July 27, 1964, the lower court issued its order granting the alias writ of execution.

It is of no consequence to consider the claim of the respondent that the five-year period should be reckoned from October 16, 1958, when petitioner's action for mandamus to compel the giving due course to his appeal was dismissed by this Court, since from October 16, 1958 to July 27, 1964 is also a period of more than five years.

In the light of the foregoing, the remedy of the plaintiffs in the aforesaid Civil Case 1828 of the court below, is a new action to revive the judgment. After the lapse of the five-year period stated in the above quoted section of Rule 39, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form.[3]

The above conclusion renders it unnecessary for Us to go into the other issues raised in the petition.

In view hereof, the order dated July 27, 1964 of the Court of First Instance of Misamis Occidental, in Civil Case No. 1828, is hereby annulled for having been issued without jurisdiction. The writ is granted, with costs against the private respondents Pershing Tan Queto and Antonio Yap Hockun.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro and Fernando, JJ., concur.

[1] The G.R. number is not indicated.

[2] Emilio Sy, et al. vs. Judge Ceniza, et al., G.R. No. L-16961, June 29, 1962.

[3] Azotes vs. Blanco, 85 Phil. 90; Torrefranca, et al. vs. Albiso, 102 Phil. 732; Primo vs. Fernandez, et al., G.R. No. L-18738, June 29, 1962.

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