

ESTATE OF JUSTINA SANTOS Y CANON FAUSTINO, REPRESENTED BY THE EXECUTOR, ANTONIO DE LA FUENTE, PETITIONER, VS. THE HON. JUDGE JESUS DE VEYRA, JUDGE OF THE COURT OF FIRST INSTANCE...

G.R. No. L-30027. July 31, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

During her lifetime Justina Santos made various contracts in, favor of Wong Heng, a Chinaman now deceased, whereby she leased to the latter a large parcel of land on Rizal Avenue, in Manila for a period of 99 years and gave him a 50-year option to purchase the property in the event the lessee obtained Philippine citizenship. In *Philippine Banking Corporation v. Lui She*[1] this Court annulled these contracts as constituting an "insidious pattern" to subvert the Constitutional ban against alien landholding.

Following our decision in that case, the estate of Justina Santos, the petitioner in this case, applied to the lower court for a writ of execution.[2] At the same time it sent the respondent Lui She the following letter:

"February 23, 1968

"MRS. LUI SHE

Hen Wah Restaurant

661 Rizal Avenue

Manila

"Madam:

"As counsel for the Philippine Banking Corporation representing the estate of Justina Santos y Canon Faustino, we quote hereunder the dispositive portion of the decision, of the Supreme Court in G.R. No. L-17587, 'Philippine Banking Corporation vs. Lui She,' as follows:

"'ACCORDINGLY, the contracts in question (Plff Exhs. 3-7) are annulled and set aside; the land subject-matter of the contracts is ordered returned to the estate of Justina Santos as represented by the Philippine Banking Corporation; Wong Heng (as substituted by the defendant-appellant Lui She) is ordered to pay the Philippine Banking Corporation the sum of P56,564.35 with legal interest from the date of the filing of the amended complaint; and the amounts consigned in court by Wong Heng shall be applied to the payment of rental from November 15, 1959 until the premises shall have been vacated by his heirs. Costs against the defendant-appellant.'

"The records will show that the amended complaint in Civil Case No. 41956 was filed on June 9, 1960, and, in accordance with the decision, legal interest due on the amount of P56,564.35 is P3,393.86 every year from June 9, 1960, or approximately P26,302.42 as of March 9, 1968. Please consider this, therefore, as a demand

for the payment of said principal and interest.

"We likewise make demand upon you to turn over the premises to the estate and to vacate the same not later than March 9, 1968.

"Finally please be advised that, as of the time the decision became final and executory, the estate considers as the reasonable monthly rental the amount of P15,000.00, and we will consider you responsible for the payment of this amount for the period during which you continue to illegally occupy the premises and withhold its possession for the estate.

Very truly yours,

(Sgd) EZEQUIEL S. CONSULTA

EZEQUIEL S. CONSULTA"

The respondent did not reply. Instead she sent payment of P3,120 on July 3, 1968, which the petitioner accepted and applied as partial payment of the rental of P15,000 for the month of July.

On July 11 the respondent, through counsel, wrote the following letter:

"July 11, 1968

"Philippine Banking Corporation

Administrator of the Estate of

Justina Santos y Canon

Faustino, Deceased

Port Area, Manila

Security Bank & Trust Company

Escolta, Manila

"Dear Sirs:

Re: Lui She

"We are writing on behalf of Lui She relative to her occupancy of the premises located at 661 Rizal Avenue, Manila. In this connection we invite you to the following:

"1. As you may know, by reason of the action of the Court of First Instance of Manila in Civil Case No. 41956 sustaining the lease for fifty (50) years^[3] in favor of Wong Heng, his widow, Lui She, during the pendency of the appeal in the Supreme Court in good faith entered into a sublease contract with third parties. One of these subleases is for a period of ten (10) years to expire in January, 1977. In view of the decision of the Supreme Court, Lui She is now confronted with the serious problem of terminating this sublease. This is, however, not an easy matter as the sublessee acquired its sublease rights in good faith. The only practical solution would be for Lui She to secure the prolongation of her stay in the premises as long as legally possible and, as a necessary consequence, that of the sublease so as not to ex-pose Lui She to a claim for damages.

"2. By this time you must be already aware of the condition of the leased premises where the improvements are not exactly in first class tenantable condition and whenever it rains the groundfloor area is usually flooded. The rental Lui She has been paying (and during Wong Heng's lifetime that being paid by him) as you know, is for the use of the land. It is my client's view that the present rental of P 3,120.00 monthly is reasonable, but on account of your demand for a readjustment she proposes to have the same increased effective July 1, 1968 to

P5,000.00 monthly. We earnestly plead for your kind and favorable consideration of this proposal considering Lui She's financial predicament and the threatened lawsuit for damages she may face at the hands of the principal sublessees.

"3. We also wish to point out that actually Lui She is not occupying the entire land area involved in Civil Case No. 41956. We, therefore, feel that her proposal to pay P5,000.00 monthly for the portion still in her possession is reasonable considering all circumstances.

"4. As to the money judgment we suggest that the matter be left to the competent courts for final disposition.[4]

"5. May we point out that actually Lui She is the victim of misfortune not of her own making. We ask that you treat her problem with sympathy. It is unfortunate enough that she lost her husband; this misfortune was aggravated by the unprecedented forfeiture of lease-hold rights which the Court of First Instance of Manila considered valid at least for fifty (50) years.

"In the light of the foregoing, we request that Lui She be permitted to pay rental at the rate of P5,000.00 monthly starting July 1, 1968.

"We look forward to hearing from you soon.

Very truly your

DOMINGO E. DE LARA & ASSOCIATES

By:

(Sgd.) DOMINGO E. DE LARA"

In reply the petitioner, through its special administrator, wrote:

"July 17, 1968

"Atty. Domingo E. de Lara

305 Madrigal Building

Escolta, Manila

Re: Your Letter dated July 11, 1968

"Dear Sir:

"With regard to the proposal of your client to pay a rent of P 5,000.00, please note that our original demand was for a rent of P15,000.00, which we subsequently reduced to P9,000.00.

"As to the money judgment, which we are requiring your client to pay as a condition to withholding enforcement of the ejectment order you will please note that it is a final and executory judgment of the Supreme Court so that the question of liability for the amount had been finally settled and resort to procedural technicalities may only serve to indicate dilatoriness.

"We understand the predicament of your client, but you are perhaps aware that our duty as special administrator -- to preserve and maintain the estate in the most beneficial manner - constrains us to take the steps we have taken. It would have been more prudence [sic] and certainly more in keeping with good faith if your client had not entered into sublease contracts, considering that her occupancy was then being litigated.

"Unless approved by the probate court, the foregoing proposals are tentative and are not to be taken as novating the judgment against your client.

Very truly yours,

(Sgd) Carlos J. Paras

CARLOS J. PARAS

Trust Officer"

In turn the respondent wrote the following letter:

"August 5, 1968

"Security Bank and Trust Company

Manila

"Gentlemen:

"Referring to the proposal of our client, Lui She, contained in our letter of July 11, 1968 to the Philippine Banking Corporation, we are tendering herewith Continental Bank check RAB-A 128724 dated August 2, 1968 for P5,000.00 payable to you representing the monthly rental for August, 1968 which we reiterate you accept as the adjusted rent monthly.

"In Philip pine Banking Corporation's letter of July 17, 1968, a photostat copy of which we enclose, we note that approval by the probate court of any proposal is contemplated. In this connection, we call attention to the recitals in our letter of July 11, 1968 on the basis of which we believe that a monthly rental of P5,000.00 is reasonable under the circumstances. We feel confident that, if called upon, we can convince the probate court of the reasonableness of this rental.

"We also take this opportunity to remind you that the frontage of the leased property on Rizal Avenue actually belongs to the City of Manila and that the property of Doña Justina does not in fact abut on Rizal Avenue. For this reason, to enable our client to have an outlet on Rizal Avenue, since about 1959 her husband has been paying rentals to the City of Manila for the account of Doña Justina. If you will therefore consider this fact, we think that our client's proposal for a P5,000.00 monthly rental is well justified. For your information, our client is paying over P1,000.00 annually to the City of Manila in order to keep this frontage on Rizal Avenue.

Very truly yours,

(Sgd) DOMINGO E. DE LARA

Counsel for Lui She"

In accordance with this letter she paid P5,000 for the month of August and for each of the succeeding months thereafter. For its part the petitioner accepted the payments and issued receipts therefor, showing that the monthly payments were applied to the satisfaction of the sum of P15,000 which the petitioner was demanding as monthly rental, until December 1968 when it refused to accept further payments from the respondent.

On November 12, 1968 the petitioner filed a motion for the issuance of an alias writ of execution. It appears that the writ of execution issued on March 19, 1968 was returned unsatisfied on August 27, 1968 for failure of the sheriff to serve it on the respondent within the 60-day limit provided in the Rules of Court.[5] On November 16, 1968 an alias writ of execution was issued, commanding the sheriff "to cause the defendant Lui She and all persons claim-ing possession under her to vacate the land belonging to the estate of the deceased Justina Santos y Canon Faustino, represented by Mr. Antonio de la Fuente." However, on motion of the respondent, who claimed that the writ was not in accord with the decision of this Court and that at any rate the respondent's occupancy of the land did not derive from the contracts annulled by this Court but from a new lease contract, the lower, court

quashed the writ of execution. In its order dated December 9, 1968, the court said:

"The decision of our Supreme Court nullifying the 50-year lease was promulgated on September 27, 1967. Lui She and her sublessees had plenty of time to take steps for the protection of their interests. The Special Administrator, on the other hand, having won the case, demanded a monthly rental of P15,000.00. Lui She countered with an offer of P5,000.00 and made these payments but the Special Administrator issued receipts applying these payments of P5,000 as partial payments to the monthly rental of P15,000.00 demanded. It should be noted that the monthly rental on the voided lease contract was P3,020.[6] It is claim-ed that there was no approval by the Probate Court of this new charge of rental. Being month to month, there was no need of approval by the Probate Court as being within the regular powers of the Special Administrator. The demand for increase in rental is an obvious offer for a lease contract on month to month basis - for if there was a desire to regain the premises, the Special Administrator should have demanded the return of the premises and charged the rental theretofore agreed upon. The increase in rental impliedly gives rise to a desire to continue lessor-lessee relations should the lessee agree to the payment. The acceptance by Lui She of the receipts making application of payment was an implied acceptance of this offer to lease on month to month basis. This being so, in order to properly evict Lui She and her sublessees, there will be need of new illegal de-tainer cases for the possession of Lui She has been legalized (Cruz v Atencio GR No. L-11276, February 28, 1959)."

The petitioner asked for reconsideration and, failing, filed this petition for mandamus. It contends that the respondent judge acted "arbitrarily, capriciously and whimsically" in holding that the parties had in effect entered into a new lease contract when the fact was that the minds of the parties never met on the amount of rent to be paid for the premises.

On the other hand, the respondent defends the correctness of the disputed order of the lower court and, as a preliminary question, challenges the jurisdiction of this Court to entertain the instant petition for mandamus. The respondent's point is that under section 17 of the Judiciary Act, as recently amended by Republic Act 5440,[7] this Court's jurisdiction extends only to "petitions for issuance of writs of certiorari, prohibition and mandamus against the Court of Appeals."

It is obvious that the respondent has overlooked the second paragraph of the same provision which gives the Supreme Court "original and concurrent jurisdiction with Courts of First Instance ... [over] petitions for the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus" This was found in the said section 17 even before its amendment by Republic Act 5440. It is from this provision that this Court's jurisdiction to entertain petitions for mandamus, as well as other special civil actions, against lower courts is derived. Nor is there merit in the contention that at all events the petitioner's remedy should be by appeal. It is by now part of conventional wisdom that an order denying execution, as an order granting one, is not appealable, otherwise a case would never end.[8]

Coming now to the substantive issue, it is claimed that the decision of this Court, in so far as it directed the return of the land, was in effect novated because the parties had agreed on a new lease contract covering the same property. Thus the respondent argues that there was a tacit renewal of the lease contract[9] when, instead of pressing for the enforcement of the writ of execution, the petitioner allowed it to lapse, forcing the sheriff to return it to the court unsatisfied.

There is nothing in the record to indicate that the failure to serve the writ on the respondent was due to the intervention of the petitioner. This is what the sheriff said in his return:

"I hereby certify that after several attempts to serve a copy of the writ of execution issued in the above-entitled case on March 19, 1968 upon the defendant LUI SHE, etc. the same was served upon her personally on August 11, 1968; that by virtue of said writ, I caused her to surrender possession of the premises object of the writ to the estate of Justina Santos as represented by the Philippine Banking Corporation.

"That the sixty (60) day period having expired already and that no more proceeding shall be undertaking [sic] thereon, I now return the writ of execution to the court of origin, duly served."

The sheriff's return, it is true, does not explain why he was unable to serve the writ on the respondent earlier, but if the petitioner really stopped the sheriff to allow the negotiations on a new lease to continue unhampered, we are at a loss why the sheriff did persist in serving it on the respondent until he succeeded in doing so on August 11, 1968 - and only the fact that by then the life of the writ had expired made him desist from enforcing it. On the other hand the respondent's claim that it was the petitioner which allowed the writ to lapse is belied by her other claim, contained in paragraph 3 of her answer to the present petition for mandamus, that -

"respondent Lui She, through her representatives, called the attention of the Deputy Sheriff to Lui She's negotiation and/or agreement with the Philippine Banking Corporation, as special administrator of the Testate Estate of Justina Santos y Canon Faustino, and the Security Bank and Trust Company, as administrator of the Estate of Lo-renza Santos y Canon Faustino. Respondent Lui She took it that her explanation was accepted by the Deputy Sheriff and on that account the latter returned the writ without further proceedings." [10]

It would appear therefore that if execution of the judgment has not been carried out it was because the respondent persuaded the sheriff that there was no longer need for enforcing the writ, the parties having reached a new agreement for the lease of the premises, and not because the petitioner did not press for its enforcement.

What is more, to speak of an implied new lease (*tacita reconduccion*) is, first of all, to assume a fact: the expiration of a former contract. But the lease contract in this case did not expire; it was declared void for being repugnant to the Constitution, having been found to be part of an elaborate scheme to circumvent the prohibition against the acquisition by aliens of lands in the Philippines. Secondly, such a lease would be a revival of the former one, albeit not of its period. Can there be a revival of a void contract? Thirdly, if the terms (except the period) of the old contract are revived, Why were there long negotiations over the amount of the rent?

On the other hand, the trial court, in its disputed order of December 9, 1968, said there was a new lease contract and that as a matter of fact the respondent had been paying and the petitioner had been issuing receipts for the payments. Hence, to evict the respondent the petitioner would have to institute a wholly new action for unlawful detainer.

To begin with, the letter of February 23, 1968 shows that the petitioner demanded the return of the land with the threat that for any delay it would demand from the respondent the payment of P15,000 a month in rent. But the respondent apparently took the threat as an offer on the part of the petitioner to lease the premises, and indeed the subsequent correspondence of the parties, set out in full at the beginning of this opinion, tends to show that what began as a threat to exact payment of an amount as compensation for the illegal occupancy of the premises became an offer and the subject of bargaining. The position of the petitioner became so equivocal that after its letter of July 17, 1968 it was not entirely improbable that the petitioner was willing to lease the premises if the respondent would pay the reduced amount of P9,000 as monthly rental, and that the petitioner was dangling the threat of execution of the judgment as a means of inducing the respondent to agree to the new rental. But even if this were so, still we cannot hold, as the lower court did, that a new lease contract was thereby celebrated. To be sure, the parties could not agree on the rental, and while the monthly payments of P 5,000 made by the respondent were accepted by the petitioner it did so with a reservation, and in fact all the payments were applied to the satisfaction of the sum of P15,000 which the petitioner was demanding as monthly rental.

In sum, there could not in law be any implied renewal of the void lease contract, and the correspondence between the parties clearly shows that there was no new lease contract entered into over the premises in question.

In thus refusing to execute the judgment in L-17587 the lower court disregarded the duty which clearly and

inescapably devolved upon it.

As to the petitioner's claim for P 40,000 in damages, consequent to the illegal occupancy on the premises by the respondent, this Court is of the view that this matter may be litigated in a separate action.

ACCORDINGLY, the petition for mandamus is granted, and the respondent judge is commanded to issue a writ of execution in L-17587, conformably with the above pronouncements. Costs against the private respondent.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Zaldivar, J., is on official leave.

[1] L-17587, Sept. 12, 1967, 21 SCRA 52.

[2] The dispositive portion of the decision of this Court in L-17587 reads:

"ACCORDINGLY, the contracts in question (Plff Exhs. 3-7) are annulled and set aside; the land subject-matter of the contracts is ordered returned to the estate of Justina Santos as represented by the Philippine Banking Corporation; Wong Heng (as substituted by the defendant-appellant Lui She) is ordered to pay the Philippine Banking Corporation the sum of P56,564.35, with legal interest from the date of the filing of the amended complaint; and the amounts consigned in court by Wong Heng shall be applied to the payment of rental from November 15, 1959 until the premises shall have been vacated by his heirs. Costs against the defendant-appellant."

In its order dated March 19, 1968 the Court of First Instance of Manila granted execution for the recovery of the land but denied recovery of the money judgment on the ground that the claim was barred, no contingent claim having been filed against the Estate of Wong Heng within the time limited in the notice of the probate court. See Rule 86, sec. 5

[3] The lease contract was originally for 50 years but a subsequent contract extended the period to 99 years. The Court of First Instance of Manila upheld the validity of the contract providing for a 50-year lease but declared the rest of the contracts (including the one extending the period of the lease to 99 years) void for lack of consent and of consideration. On appeal the Supreme Court invalidated all the contracts "as a scheme to circumvent the Constitutional prohibition against the transfer of lands to aliens." See 21 SC RA at 62-65.

[4] The reference here is to the judgment for money as to which the lower court denied execution. *Supra*, note 2.

[5] Rule 39, sec. 11.

[6] The correct amount is P3,120.

[7] Effective Sept. 9, 1968.

[8] Cf. 2 M. Moran, *Comments on the Rules of Court* 259 (6th ed. 1963).

[9] Civ. Code art. 1670.

[10] Emphasis added.

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