

**MAGDALENA S. JOSON, ASSISTED BY HER HUSBAND DR. RAFAEL JOSON, PETITIONER, VS. FORTUNATO CRISOSTOMO AND IMELDA R. RODRIGUEZ AND THE COURT OF APPEALS, RESPONDENTS.**

*G.R. No. L-30595. July 16, 1982*

Ponente: GUTIERREZ, JR., J.

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**GUTIERREZ, JR., J.:**

Before Us in this petition for review on certiorari is the judgment of the Court of Appeals in CA-G.R. No. 41980-R, an original petition for certiorari with preliminary injunction, filed with the appellate court by spouses Fortunato Crisostomo and Imelda R. Rodriguez against Judge Francisco Geronimo of the Court of First Instance of Manila and Magdalena S. Joson assisted by her husband Dr. Rafael Joson.

The appellate decision dated April 28, 1969 set aside as null and void, the September 14, 1968 and September 21, 1968 orders of Judge Geronimo in Civil Case No. 67385 involving the same parties and the same subject matter.

The certiorari petition with the Court of Appeals and the main case, Civil Case No. 67385 before the Court of First Instance of Manila, originated as Civil Case No. 144074 for recovery of sum of money filed by petitioner Joson with the City Court of Manila.

The October 8, 1966 decision of the city court ordered the Crisostomo spouses, private respondents in the instant petition for review, to pay the Josons the sum of P5 ,000.00 with 12% interests from August 15, 1961, attorney's fees of P500.00, and costs.

This decision was appealed to the Court of First Instance of Manila by the Crisostomos, where it was docketed as Civil Case No. 67385. On August 30, 1968, the Court of First Instance rendered a decision, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment sentencing the defendants to pay the plaintiff jointly and severally the sum of P5 ,333.50 with interest thereon at the stipulated rate of 12% per annum from September 1, 1964, until the full amount is paid, plus 10% of the total amount due as stipulated attorney's fees, plus costs of this action.

On September 1, 1968, the winning party, herein petitioner Magdalena Joson filed two motions: 1) A "Motion For Immediate Execution Pending Appeal" and 2) A "Motion For Correction of Typographical Error."

On September 14, 1968, the court granted both the aforesaid motions.

On September 18, 1968, the Crisostomos filed a Motion for Reconsideration of the September 14, 1968 Order which in effect granted execution pending appeal, if the P8,000.00 supersedeas bond was not filed within ten (10) days from September 14, 1968.

On September 21, 1968 the court issued two separate Orders. The first Order considered the motion for reconsideration abandoned while the second one ordered the issuance of a writ of execution pending appeal upon

the plaintiff's filing a bond in the amount of fifteen thousand (P15,000.00) pesos to be approved by the court.

In view of the court's issuance of the writ of execution pending appeal, the Crisostomos filed in the Court of Appeals a petition for certiorari with preliminary injunction against the Honorable Francisco Geronimo as presiding Judge in Civil Case No. 67385 and plaintiff- appellee Magdalena S. Joson.

As previously stated, in a decision dated April 28, 1969, the Court of Appeals annulled the September 14, 1968 and September 2, 1968 Orders respectively issued in Civil Case. No. 67385. Hence, this petition filed by Magdalena S. Joson assisted by her husband.

The focal issue raised in the instant petition is whether or not the order for the execution of the judgment in Civil Case No. 67385 pending appeal was issued by the Honorable Francisco Geronimo with grave abuse of discretion.

A verification of the status of CA-G.R. No. 42740-R, entitled Magdalena S. Joson, et al., plaintiff- appellees v. Fortunato Crisostomo, et al., defendants-appellants the regular appeal filed in the main case, Civil Case No. 67385, shows that:

1. On January 31, 1977, the Court of Appeals rendered a decision affirming the decision in Civil Case No. 67385, with costs against the defendants-appellants;
2. On March 28, 1977, the appellate court issued a Resolution denying the notion for reconsideration of its January 31, 1977 decision;
3. The decision in the main case became final and executory on March 30, 1977 as reflected in an "ENTRY OF JUDGMENT" issued by the clerk of court of the Court of Appeals; and
4. The records of the case (CA-G.R. No. 42740-R, No. 67385 in the lower Court) were remanded by the Court of Appeals to the Clerk of Court, Court of First Instance, Manila in a transmittal Order dated May 13, 1977.

The remand of records of Civil Case No. 67385 is the last entry in the rollo retained by the Court of Appeals.

Under the circumstances, therefore, the issue as to whether or not the execution pending appeal of the judgment in Civil Case No. 67385 constituted grave abuse of discretion has become moot and academic.

WHEREFORE, the instant petition is hereby DISMISSED for being moot and academic. No costs.

**SO ORDERED.**

Teehankee, Acting C.J., Makasiar, Plana, Vasquez, and Relova, JJ., concur.  
Melencio-Herrera, J., on leave.

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