

SPS. SOFRONIO GARMAY AND AMELIA GARMAY AND CELITA GERANDOY, PETITIONERS- APPELLANTS, VS. ANGELITA GONZAGA, SHERIFF ARNIEL APOSTOL AND JUDGE ELEANOR C. KWONG, PRESIDING JUDGE, MT...

Ponente: BARRIOS, J.

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BARRIOS, J.:

The respondent Angelita Gonzaga (or hereafter Gonzaga) sued the petitioners spouses Sofronio and Amelia Garmay (or the Garmays) and Celita Gerandoy (or Gerandoy) separately for Ejectment before the Metropolitan Trial Court of Caloocan City (or MeTC). The cases were docketed as Civil Case Nos. 21812 and 21813.

A Joint Decision favorable to Gonzaga was rendered in these cases, decreeing that:

From all these legal context plaintiff had proven by more than mere preponderance of evidence her cause of action against the defendants. Accordingly, judgment is hereby rendered against all named defendants and all persons claiming rights under them, as follows:

- To vacate the premises in question and to surrender peaceful possession thereof to plaintiff.
- To pay plaintiff by way of reasonable attorney's fees in the amount of P2,000.00 each as well as P500.00 per counsel's court appearance.
- To pay P600.00 a month as reasonable monthly rental for the use and enjoyment of the property reckoned from January 18, 1994 and each month thereafter until the premises have been vacated and surrendered to the plaintiff; and
- To pay the cost of suit.

SO ORDERED. (vide: Decision in CA-G. R. SP. No. 43787, pp. 52-53, record)

which was affirmed by the Regional Trial Court (or RTC) of the same place and by this Court in CA-G.R. SP. No. 43787. The Decision attained finality on April 17, 2000.

Gonzaga moved for the execution of the judgment and this was granted by the MeTC. The Garmays and Gerandoy however sought to quash the writ of execution on the ground that there has been a change in the circumstances which makes the execution inequitable. They averred that in 1997 while the case was on trial, the real owner of the subject property through the agency of Lagman Realty offered it for sale on installment. They accepted the offer and started to pay the agreed monthly installments. A Contract To Sell was executed by Lagman Realty in their favor after they have paid a considerable amount. Clearly, Gonzaga has lost any right to ask for their eviction.

Gonzaga disputed this arguing that the Decision had already attained finality and the issuance of a writ of execution had become ministerial on the part of the trial court. Also, she moved for the issuance of a writ of

demolition.

On July 26, 2001, Hon. Judge Eleanor Kwong issued an Order resolving that:

WHEREFORE, the Motion to Quash Writ of Execution is denied.

With respect to the motion for Demolition filed by the plaintiff, it appearing that despite the services of the Writ of Execution and Notice to Vacate, Remove or Demolish all structures in the premises, the defendants failed to do so, named defendants are directed to demolish, remove, and put away their structures within thirty (30) days from receipt of this order.

After the lapse of the aforesaid period, without the order being complied with, this court will be constrained to issue the corresponding writ of demolition which shall be implemented immediately with the full force and effect of the law.

SO ORDERED. (p. 7, record)

The Garmays sought relief with the RTC of the same place by petition for certiorari with prayer for the issuance of a preliminary injunction. This was docketed as Civil Case C-684.

On September 2, 2002, the RTC rendered a Decision on this decreeing that:

WHEREFORE, the Petition for Certiorari is DISMISSED for lack of merit.

Let the original records of this case be returned to the court a quo.

SO ORDERED. (p. 67, record)

Hence this appeal with the Garmays and Gerandoy positing this issue for Our resolution:

Whether or not there is sufficient legal ground for the quashal of the writ of execution issued by the court a quo. (p. 94, rollo)

Generally, the execution of a final judgment is a matter of right on the part of the prevailing party. The ministerial and mandatory duty of the trial court is to enforce its own judgment once it becomes final and executory. It may happen, however, that new facts and circumstances may develop or occur after judgment had been rendered and circumstances may develop or occur after judgment had been rendered and while an appeal therefrom is pending; or new matters had developed after the appeal has been dismissed and the appealed judgment become final and executory, which the parties were not aware of prior to or during the trial or during the appeal, as they were not yet in existence at that time. In the first situation, any attempt to frustrate or put off the enforcement of an executory decision must fail. Once the judgment has become final and executory, the only remedy left for material attention thereof is that provided for in Rule 38 of the Rules of Court, as amended. There is no other mode of thwarting the execution of judgment on equitable grounds predicated on facts occurring before the finality of judgment. In the second situation, the execution may be stayed, notwithstanding the affirmance of the appealed judgment by this Court. It is required, however, that the supervening facts and circumstances must either have a direct effect upon the matter already litigated and settled or create substantial change in the rights or relations of the parties therein which would render the execution of a final judgment unjust, impossible or inequitable or when it becomes imperative in the interest of justice. The interested party may file a motion to quash a writ of execution issued by the trial court, or ask the court to modify or alter the judgment to harmonize the same with justice and further supervening facts (*Serrano vs. Court of Appeals*, G. R. No. 133883, December 10, 2003, 417 SCRA 415).

Asseverating that they already acquired the property subject of the ejectment suit and there was a change in the

situation of the parties, the Garmays and Gerandoy moved to quash the writ of execution. However, the new facts or circumstances that would justify a modification or non-enforcement of a final and executory judgment, as said, refer to those matters which developed after the judgment acquired finality and which were not in existence prior to or during the trial and while an appeal therefrom is pending.

Here, the alleged offer to sell in favor of the Garmays and Gerandoy was made in 1997 and since then they were allegedly paying the installments for the property. The circumstance therefore that allegedly changed the status of the parties took place in 1997. But mark that the Decision of this Court attained finality only on April 17, 2000. Therefore, the alleged offer to sell and sale in their favor is not a supervening event that would warrant the stay of the execution of the decision of the trial court. Clearly, the present case does not fall under the exception relied upon by the Garmays.

Indeed there are in fact cases which hold that while parties are given a remedy from a denial of a motion to quash or recall writ of execution, it is equally settled that a writ will not be recalled by reason of any defense which could have been made at the time of the trial of the case. Rules of fair play, justice and due process dictate that parties cannot for the first time on appeal from the denial of a Motion to Quash a Writ of Execution raise issues which they could have raised but never did during the trial and even on appeal from the decision of the trial court (*Reburiano vs. Court of Appeals*, G. R. No. 102965, January 21, 1999, 301 SCRA 342). The MeTC therefore correctly denied the Garmays' Motion to Quash.

As the assailed MeTC Order was not issued with grave abuse of discretion, there was therefore no cause and basis for the issuance of the writ of certiorari prayed for by the Garmays. The RTC thus acted correctly in denying due course to the Garmays petition for certiorari.

WHEREFORE, finding no reversible error, the appealed Decision is **AFFIRMED** and the appeal is **DISMISSED**.

SO ORDERED.

Guariña, III and Romilla-Lontok, JJ., concur.

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