

**VIRGILIA CABRESOS, WELDELINO CABRESOS, RUBYLIN CABRESOS,
LUZVIMINDA CABRESOS, MARILOU CABRESOS, ROQUELITO
CABRESOS AND SYLVIA LUNA CABRESOS, PETITIONERS, VS.
MEYNARDO A. TIRO, I...**

G.R. No. L-46843. October 18, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition seeks to modify the proceedings in the execution stage of the judgment in Civil Case No. 3150 imputing grave abuse of discretion on the part of public respondents in its implementation.

The facts are simple and may be stated briefly as follows:

On September 17, 1968, the private respondents filed against spouses Galicano and Florentina Cabresos a case for recovery of ownership and possession of a portion of a residential-commercial parcel of land situated in the Poblacion of Balingoan, Misamis Oriental. They alleged that since February 24, 1961, the spouses Cabresos have illegally occupied the premises in question and have refused to vacate it despite repeated demands to do so.

The piece of land under litigation is the southern portion of a parcel of residential - commercial land owned by the private respondents and particularly described in the complaint, to wit:

"A portion of the Lot described in Tax. Decl. No. 2266, bounded on the North for 25 m. by the plaintiffs' land; on the East for 46 m. by E. Ebarle and E. Hugo; on the South for 27 m. by Lapinig Creek; and on the West for 46 m. by Divisoria (municipal) Road; containing an area of 1,000 sq. m. more or less, and valued at approximately P5,000.00." (Rollo, p. 50)

The private respondents averred that they are the real owners and actual possessors of the lot in dispute. As an affirmative defense, they alleged prescription.

After trial on the merits, the Court of First Instance of Misamis Oriental, 15th Judicial District, Branch VIII through then District Judge Bernardo Teves rendered judgment in favor of the private respondents. The dispositive part of the lower court's decision reads:

"WHEREFORE, judgment is hereby rendered for plaintiffs:

- Ordering defendants to vacate the land in litigation and to pay therefor in the amount of P20.00 monthly from March 1961 until they shall have vacated the same;
- Declaring the house constructed by defendants on the land in litigation to have been built in bad faith and reserving to plaintiffs the exercise of the three alternative rights granted them by Articles 440 and 450 of the Civil Code; and
- Ordering defendants to pay P500.00 in moral damages, P500.00 as exemplary damages, and P1,000.00 in attorney's fees, plus costs. The counterclaim is dismissed.

SO ORDERED." (pp. 16-17, Rollo)

On appeal, the Court of Appeals affirmed the above judgment. On November 5, 1975, an entry of judgment was made.

On June 26, 1976, the private respondents filed a motion for execution. Consequently, on July 1, 1976, Judge Teves issued a writ of execution worded as follows:

WRIT OF EXECUTION

"TO: The Provincial Sheriff or any of his Deputies

Cagayan de Oro City

G R E E T I N G S :

"YOU ARE HEREBY commanded to order the defendants GALICANO CABRESOS and FLORENTINA DE CABRESOS to vacate the land in litigation described in paragraph 3 of the complaint and deliver the same to plaintiffs and as the plaintiffs exercise the alternative rights granted them by Article 449 of the New Civil Code, you are further commanded to deliver to plaintiffs the two buildings constructed by defendants in bad faith on said land in litigation without right to indemnity. You are still further commanded that of the goods and chattels of the defendants you cause to be made the sum of P3,600.00 as rentals at P20.00 per month from March 1961 up to June, 1976; P500.00 as moral damages; P500.00 as exemplary damages; P1,000.00 as attorney's fees and P120.00 as costs excluding your sheriff's legal fees for the service of this execution. But if sufficient personal properties of the defendants cannot be found to satisfy the abovementioned amounts, then you are further commanded that of the lands and buildings of the defendants you cause to be made the said sum of money in the manner required by the Rules of Court, and to return the original writ of execution within 60 days from receipt hereof with your proceedings endorsed thereon.

"WITNESS the Honorable BERNARDO TEVES, Judge of this Court, Branch VIII, Cagayan de Oro City, this 1st day of July, 1976.

(SGD) SEGUNDO C. ROYO

Deputy Clerk of Court"

(Annex "D", p. 20, Rollo)

The aforequoted writ triggered the filing of the present petition. The petitioners who are the wife and children of one Rodolfo Cabresos, a son of the spouses Galicano and Florentina Cabresos, refused to vacate the second building referred to in the above writ. The records show that at the time Civil Case No. 3150 was filed, there was only one house built on the premises in question. It was only during the pendency of the litigation that the petitioner's building was constructed. Initially, said construction was just a small "camarin" but later on the petitioners made it into a dwelling place.

The petitioners resisted the writ of execution on the grounds that their house was not part of the litigated property and that they were never parties to Civil Case No. 3150.

Upon motion of the private respondents, an alias writ of execution was issued for the ejectment of the petitioners. Meanwhile, on July 14, 1977, the petitioners filed Civil Case No. 5539 for quieting of title and injunction with damages against the private respondents and the respondent sheriff.

Due to the petitioners' firm stand against their ejectment, the private respondent filed a motion for contempt and prayed for a writ of demolition against the petitioners.

On August 12, 1977, the respondent judge who succeeded Judge Teves after his retirement, dismissed the motion for contempt and demolition in view of the written promise made by petitioner Virgilia to remove their house on the land in dispute.

On September 2, 1977, the respondent judge, dismissed Civil Case No. 5539 with prejudice giving as his reason the written promise signed by petitioner Virgilia on August 12, 1977 to remove her house within thirty (30) days.

On September 7, 1977, this petition was filed praying for a restraining order on the allegations that the respondent judge had threatened to issue the writ of demolition on September 12, 1977 despite the variance in the decision and the writ of execution and that the respondent sheriff notified the petitioners of his intention to demolish their house on the same date. In support of their claim, the petitioners invoke section 17, Rule 39 of the Revised Rules of Court which partly provides that:

"SEC. 17. Proceedings where property claimed by third person. - If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

"The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action."" (Rule 39, sec. 17)

It is important to determine whether the above rule applies to the petitioners. The key word in the said rule is "third party." By "third party" is meant a person who is not a party to the action under consideration. We agree with the private respondents that the petitioners are privies to the case for recovery of ownership and possession filed by the former against the latter's predecessors-in-interest, the latter being the daughter-in-law and grandchildren of the losing party in Civil Case No. 3150. By the term "privies" is meant those between whom an action is deemed binding although they are not literally parties to the said action. There is no doubt that the assailed decision is binding on the petitioners. The house they constructed while the case was pending started out only as a "camarin" which was converted into a house.

With respect to the contention of the petitioners that there exists a variance between the dispositive portion of the questioned decision and the writ of execution subject of this petition, the said contention is untenable. The order to vacate the litigated premises extends to those considered as privies to the action for recovery of ownership and possession. The fact that the petitioners' house is not strictly speaking the same structure referred to in the dispositive portion of the said civil action does not bring them outside the ambit of the order to vacate. What the rule prohibits is for the writ of execution to be different from or to exceed the terms of the judgment. (see Rule 39, section 8, Revised Rules of Court; *Mutual Security Insurance Corporation v. Court of Appeals*, 153 SCRA 678; *Villoria v. Piccio*, 95 Phil. 802). The judgment in Civil Case No. 3150 accords recovery of ownership and possession to the private respondents. There can be no recovery if the ejected tenants keep on building a new house alongside the old one everytime they sense a judgment against them. Notwithstanding the inclusion of the second house in the writ of execution issued to enforce it, that judgment remains unaltered or unmodified considering that the alleged owners of said house are the successors-in-interest of the petitioners.

The records further show that the defeated party did not oppose the motion for execution which incorporated a

manifestation that the private respondents "elects (sic) x x x to appropriate the 2 buildings built by the defendants on the land in litigation without right to indemnity." (Annexes "B" and "C" of Petition; pp. 18-19, Rollo) Moreover, the petitioners, themselves, through Virgilia, made a written promise dated August 12, 1977 before the respondent judge with the following tenor:

PROMISE

"Thirty (30) days from today, that is September 11, 1977, I hereby promise to transfer my house from the land of Ramon Quiz which is involved in the above case. Should I fail to remove my house on said date, then I have no more objection to the demolition by Mr. Ramon Quiz.

I hereby promise also to dismiss the Civil Case No. 5539 on Quieting of Title entitled Virgilia Cabresos, et al. versus Ramon Quiz filed before the Court of First Instance of Misamis Oriental.

City of Cagayan de Oro, August 12, 1977.

S/T VIRGILIA CABRESOS

Assisted by:

S/T CELSO LADERA

Counsel for Virgilia Cabresos"

(Rollo, p. 52)

What more is necessary when there is a voluntary assent or conformity by the petitioners as evidenced by the above-mentioned promise in order that the decision in Civil Case No. 3150 could be fully executed?

Once again we hold that:

"In light of this case a doctrine long recognized in this jurisdiction must once more come into application, and it is 'that the party who voluntarily executes, either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies either partially or in toto, the execution of such judgment, is not permitted to appeal from it.' (Philippine Virginia Tobacco Administration (PVTa) v. Delos Angeles, 61 SCRA 489 citing Verches v. Rios, 48 Phil. 16; Desbarats v. de Vera, 83 Phil. 382; Asian Surety & Insurance Company, Inc. v. Relucio, L-32442, October 23, 1972, 47 SCRA 225, 237-238)

The claim of petitioner Virgilia that her written promise was made without the assistance of counsel is belied by the fact that her substitute counsel, Atty. Celso Ladera, who is a cousin of hers, even signed below her signature after the words: "Assisted by." That she executed an affidavit renouncing or repudiating her written promise later on is no longer significant in the absence of fraud, intimidation or any procedural infirmities at the time it was executed. Voluntary acquiescence in the execution of a judgment puts an end to legal processes, otherwise, the prevailing party in a given controversy remains to enjoy an empty victory.

WHEREFORE, this petition is, hereby, DISMISSED. The restraining order previously issued is DISSOLVED. This decision is immediately executory.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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