

FRANCISCO A. FUENTES, JOHNNY DAYANG AND SILVERIO DELA TORRE, PETITIONERS, VS. JUDGE OSCAR LEVISTE, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ, BRANCH II, AND CIRILO BACANT...

G.R. No. L-47363. October 28, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review by certiorari of an order of the respondent Judge of the Court of First Instance of Capiz, Branch II, Roxas City, dismissing Special Civil Action No. V-3909 for contempt of court.

In a judgment rendered on August 26, 1959 by the municipal court of Pilar, Capiz for unlawful detainer, where petitioner Fuentes was the plaintiff and Emilio Bacanto the defendant, the latter was ordered to pay the former a sum of money. Emilio Bacanto failed to appeal. After the judgment became final, the municipal court issued a writ of execution on September 30, 1959. On December 23, 1959, the Provincial Sheriff of Capiz levied on all rights and titles of defendant Emilio Bacanto over five parcels of land, known as Lots 1619, 1652, 1653, 1655 and 1657 situated in Pilar, Capiz. After due proceedings, the lots were sold by the Sheriff to petitioner Fuentes as highest bidder, and the corresponding certificate of sale was issued. When the one year period for redemption expired without any redemption, the Sheriff executed a final deed of sale to Fuentes on February 18, 1975, which deed was registered in the Office of the Register of Deeds of Capiz on February 20, 1975.

On February 25, 1975, pursuant to Section 35 of Rule 39 of the Rules of Court and after notice to the defendant, the Deputy Provincial Sheriff went to the disputed parcels of land to deliver the physical pos-session to Fuentes through his representatives. The petitioner contends that Emilio Bacanto and his brother-in-law, Antonio Edaño, as well as his children Salvador, Herminio and Cirilo Bacanto, refused to vacate or remove their houses from the premises. One Arnaldo Vasquez who claimed to be a lessee on four of the lots also refused to vacate the area occupied by him.

On February 25, 1976, Mr. Fuentes and his overseers, Johnny Dayang and Silverio dela Torre, filed "Special Civil Action No. V-3909 (For Contempt of Court)" before the respondent court against Emilio Bacanto, Salvador Bacanto, Herminio Bacanto, Cirilo Bacanto, Antonio Edaño and Arnaldo Vasquez, alleging among others, that the acts of the defendants consti-tute:

“a. A blatant and open defiance of and unlawful interference with the writ of execution duly issued by the Municipal Court of Pilar and of the legal processes duly issued by the Provincial Sheriff of Capiz in the above-entitled Civil Case No. 72 of the said Court;

“b. Disturb the peaceful and lawful possession and enjoyment of plaintiff Francisco A. Fuentes, as owner thereof, and his agents and re-presentatives over the five parcels of land named-above, to his damage and prejudice; and

“c. Directly impede, obstruct and degrade the administration of justice, which acts constitute a clear case of criminal contempt, as defined by and clearly punishable under Rule 71, Sections 3 and 6 of the New Rules of Court, which acts of defendants, if not forthwith stopped and punished, will expose our Courts of justice to open ridicule and disrespect;”

The petitioners prayed for the issuance of an order:

“1. Declaring each of the above-named defendants guilty of indirect contempt of court and imposing upon each the penalty established in Rule 71, Sections 6 and 7 of the New Rules of Court;

“2. Ordering the said defendants and their agents or privies to remove their respective houses or structure of any kind from the five parcels of land described above;

“3. Ordering and restraining the said defendants and their agents or privies from gathering any fruits from any of the coconut trees, cutting and gathering any bamboos, and/or disfoiling (sic), cutting or taking away any plant or tree of economic value from the five lots mentioned above;

“4. Ordering defendant Arnaldo Vasquez to pay plaintiff Francisco A. Fuentes, by way of rentals, a rental of P500.00 per hectare for the 10 hectares at present planted by him to sugarcane on Lots Nos. 1652, 1653, 1655 and 1657 for the agricultural years 1975 and 1976, and after harvesting the present standing sugar crop, to desist and refrain from continuing with or making any further plantations, without the written consent of plaintiff Francisco A. Fuentes;

“5. Ordering each of the above-named defendants from doing or committing any such acts as will disturb the plaintiffs or their authorized representatives in the peaceful possession and enjoyment of the above-parcels of land mentioned above;

“6. Ordering the above-named defendants jointly and severally to pay plaintiff Francisco A. Fuentes the sum of Two Thousand Pesos (P2,000.00) by way of attorneys fees and liquidated damages in this instance, the cost of this suit, and granting to plaintiffs such other relief and remedy as may be warranted in the premises.”

Respondent Cirilo Bacanto received summons on March 23, 1976. On April 6, 1976, all defendants through counsel moved for an extension of time to file an answer. The motion was granted by the court. On May 8, 1976, defendant Antonio Edaño filed his answer. Not one of the Bacanto clan filed any answer.

On August 25, 1976, the pre-trial hearing was set for September 16, 1976. Pre-trial was later reset to September 17, 1976. On that date scheduled for pre-trial, all the defendants and their counsel failed to appear. Upon motion of plaintiff Francisco A. Fuentes, all the defendants were declared in default. The plaintiff was directed to present his evidence before a commissioner.

On December 2, 1976, upon motion of Arnaldo Vasquez, the court lifted the declaration of default insofar as he was concerned.

On June 3, 1977, respondent Cirilo Bacanto filed a motion to quash/dismiss the complaint alleging as grounds therein that - (a) the facts charged do not constitute an offense and/or the complaint states no cause of action and (b) the cause of action is barred by statute of limitations and/or that the criminal action or liability has been extinguished.

After conducting hearings on said motion, the respondent Judge issued the questioned order of July 27, 1977, dismissing the complaint for contempt as to respondent Cirilo Bacanto.

The court stated:

“The Court finds that the Complaint does not state that after the lands in question have been delivered to the

plaintiffs, that actual ejectment of the defendants was effected by the proper authorities. In fact it is admitted in the Complaint that said defendants refused to remove their houses and vacate the premises. Is it disobedience for Cirilo Bacanto to re-fuse to vacate the premises even if he is not a party to the original action, Civil Case No. 72 for Unlawful Detainer? The Court says no, because the Court has not acquired jurisdiction on his person.

"The Court finds that defendant is not charged with conspiracy to interfere or impede the enjoyment of the properties in question by plaintiffs after the said properties were 'delivered' and that defendant has not been actually ejected from the property in question."

A motion for reconsideration was denied prompting the petitioners to file the instant petition. The main issue raised by the petitioners is -

May a party after being duly summoned, and after nine months is duly declared in default move to dismiss the complaint against him on the ground that it does not state a cause of action without first moving for and obtaining an order lifting the order of default?

It is argued by petitioners that when a defendant is declared in default, he loses his standing or is considered out of court, and consequently cannot appear in court, adduce evidence and be heard, and he is not entitled to notice of the proceedings until the final termination of the same.

To refute the respondent Judge's finding that the complaint states no cause of action, the petitioners argued further that there were sufficient allegations in the complaint stating valid cause for injunction and damages, particularly the gathering of the fruits of the coconut trees and bamboos standing on the parcels of land in question by the defendants and their refusal to vacate the premises.

On the other hand, the private respondent claims that since he was not a party in Civil Case No. 72 for unlawful detainer in the municipal court of Pilar, Capiz, the failure to allege that he conspired with his co-defendants in the complaint for contempt filed before the respondent court is tantamount to failure to state a cause of action against him.

Parenthetically, Francisco A. Fuentes was sole plaintiff and Emilio Bacanto, sole defendant in Civil Case No. 72 for unlawful detainer. Respondent Cirilo Bacanto was not a party in Civil Case No. 72 but was included as a party with various other defendants in the contempt of court charges arising from the detainer case. This was the basis of Cirilo Bacanto's invocation of lack of cause of action in his motion to quash or dismiss the complaint and of the respondent court's finding of lack of jurisdiction over his person.

Under the rules of civil procedure in ordinary civil actions, the private respondent could no longer file a motion to dismiss after he had been declared in default and had done nothing to lift or set aside the said default declaration. A defendant declared in default is not entitled to notice of subsequent proceedings nor to take part in the trial (Sec. 2, Rule 18, Rules of Court). While it is true that a defaulting defendant does not completely lose his standing under the revised Rules such as the right to appeal from the judgment without having to file a petition to set aside the order of default, the right to file a motion to dismiss is not among those granted to him (Cf. Sec. 4, Rule 13; Sec. 2, Rule 41). It is not clear, therefore, why the respondent court acted favorably on the defendant's motion to dismiss more than eight months after having declared him in default.

But more important, the respondent court overlooked the fact that the case before it was a contempt case and not the ejectment case. The trial court erred in assuming that a contempt proceeding is governed by the rules of ordinary civil actions. A contempt case is a special civil action governed by Rule 71 of the Rules of Court, and by the rules on ordinary civil actions only insofar as they are not inconsistent with the rules of the special civil action. (Sec. 1, Rule 62). A contempt charge partakes of the nature of a criminal prosecution and should follow procedure

similar to criminal prosecutions (Flores vs. Ruiz, 90 SCRA 428; Lee Yick Hon. vs. Collector of Customs, 41 Phil. 548, 552).

Under Rule 71, a respondent in a contempt charge is not required to file a formal answer similar to that in ordinary civil actions. Instead, the court must set the contempt charge for hearing on a fixed date, on which date the respondent must make his "appearance to answer the charge" (Sec. 5). If he shall fail to appear on the date fixed for the hearing (and thus fail to answer or offer his testimony), the court may order his arrest (Sec. 8). The court does not declare him in default. This procedure is analogous to what follows the non-appearance of an accused in a criminal case during arraignment to enter his plea.

The finding of the respondent court that it had not acquired jurisdiction over the person of the private respondent in the contempt case because he was not a party to the original action, Civil Case No. 72 for Unlawful Detainer, cannot be sustained. Private respondent was not asking for the dismissal of the ejectment case, but of the contempt proceeding filed against him where he was duly summoned and, thru counsel, filed a motion for extension of time to file an answer. He had therefore been placed under the jurisdiction of the court insofar as the contempt case was concerned.

The mishandling of this case by the respondent judge notwithstanding, we have to sustain his order dismissing the complaint against Cirilo Bacanto to avoid a remand that will result in unnecessary court proceedings. It was error for the petitioners to file a petition for contempt of court as a mode of relief from the refusal of the Bacanto clan to vacate the premises. A refusal to obey the implementation of a writ of execution in an ejectment case is not contempt of court.

The petitioners should have filed a petition for the issuance of a special order to destroy, demolish or remove the improvements on the property subject of execution. This special order may only issue upon the plaintiff's petition after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court. (Sec. 14, Rule 39, Rules of Court).

Under Sec. 13, Rule 39 of the Rules of Court, it is not enough for the sheriff, in the enforcement of a judgment for delivery or restitution of property, to merely direct the defeated party to effect such delivery or restitution. The refusal of the defeated party to surrender the property to the winning party upon the order of the sheriff does not constitute contempt. The sheriff himself must oust the defeated party from the property and effect the delivery or restitution by placing the winning party in possession of the property (U.S. v. Ramayat, 22 Phil. 183). However, if to place the winning party in possession, the sheriff has to remove an improvement made by the defeated party, he cannot do so, unless upon special order of the court issuing the execution. And this order may be granted only upon motion of the plaintiff with notice and after hearing, and upon the defeated party's failure to remove the improvement within the reasonable time given him by the court (Guevara v. Laico, 64 Phil. 144). This is in accordance with Sec. 14, Rule 39 of the Rules of Court.

The proper recourse of the petitioners, therefore, was to apply for a special order of the court for demolition and removal of the judgment debtor's house, with due notice to the judgment debtor, and not the institution of the contempt charge against the judgment debtor. (Rom v. Cobadora, 28 SCRA 758, 763).

WHEREFORE, the petition is hereby dismissed.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Vasquez, and Relova, JJ., concur.
Teehankee, J., (Chairman), on official leave.

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