

FEDERICO DE LOS ANGELES, ET AL., PETITIONERS, VS. HON GUSTAVO VICTORIANO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH I, BENITO MACROHON, AS EX-OFICIO SHERIFF OF TH...

G.R. No. L-13632. July 27, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an original action for certiorari and prohibition with preliminary injunction to annul an order of execution and writ of possession issued by the Court of First Instance of Rizal in Civil Case No. 7951, entitled "Vicente Santiago, plaintiff, vs. Sixto de los Angeles et al., defendants," and to restrain the provincial sheriff of Rizal from carrying out the same into effect.

The record shows that said Civil Case No. 7951 was originally decided in favor of the defendants, herein petitioners, but, on appeal to the Court of Appeals, the decision was reversed (CA-G. R. No. 16631-R). The dispositive part of the decision of the appellate court dated June 20, 1957 reads as follows:

"Por Tanto, con revocacion de la sentencia apelada y sobreseimiento de la contrademanda, se declara al apelante dueño legitimo del terreno cuestionado y se ordena a los apelados y a sus agentes que desalojen el mismo. Se condena a los demandados al pago de las costas procesales y de la cantidad de P300.00 anuales desde la fecha en que fueron emplazados dela demanda fechada el 26 de Diciembre de 1940 hasta el dia de la entrega de la posesion de la propiedad litigada, con exclusion de los años en que duro la ultima guerra mundia."

No motion for reconsideration having been filed within the prescribed period, entry of judgment was made on July 30, 1957, which entry became the subject matter of an original action for certiorari and mandamus instituted in this Court by herein petitioners (G. R. No. L-13126).

In the meantime, the record of Civil Case No. 7951 was remanded by the Court of Appeals to the court of origin. Upon motion ex parte filed by herein respondent Santiago who was not then aware of the institution of the original action (G.R. No. L-13126) in this Court—the respondent Judge, on November 22, 1967, issued the order of execution and writ of possession now complained of. The following day, respondent Santiago was placed in possession of the property in question, the execution of the pecuniary portion of the judgment, however, was held in abeyance upon manifestation of respondent Santiago himself who had by then learned of the filing of the special civil action in G. R. No. L-13126.

Herein petitioners, defendants below, moved to recall and quash the order of execution and writ of possession on the grounds that it was null and void because it was issued without hearing and without notice, and that the decision sought to be executed had not yet become final, the same having been brought to this Court "for review". The motion, however, was denied, the lower court holding that final judgment had been entered by the Court of Appeals "so that the said judgment, has become executory and the prevailing party, is therefore entitled as of right

to its execution which becomes a ministerial duty of this Court to order." The court also ruled that it had authority to issue the order of execution and writ of possession because there was no preliminary injunction issued by this Court, in the certiorari and mandamus proceedings (G. R. No. L-13126), and that the petition therein filed did not ipso facto affect the finality of the decision of the Court of Appeals since it was not a petition for review but one which involves the original jurisdiction of this Court. Reconsideration of the order having been denied, the defendants brought the case to this Court through the present petition for certiorari and prohibition with preliminary injunction. The petition was given due course and upon the filing of the required bond by the petitioners, the writ of preliminary injunction prayed for was issued by this Court.

The questions raised by petitioners are:

"1. May the Respondent Judge act upon the motion of respondent Santiago for the execution of the decision of the Court of Appeals without notice to your petitioners and without hearing?

"2. Assuming that it may, should the respondent Judge grant the ex-parte motion for execution considering that the decision of the Court is not yet final and executory, (since) certiorari proceedings are pending to annul, revoke and vacate the entry of said decision (G. R. No. L-13126) and hence the finality of the decision in question is in issue and therefore subjudice?"

The issues raised may now be considered moot and academic, since we have already dismissed the certiorari and mandamus proceedings (G. R. No. L-13126) and, consequently, the decision of the Court of Appeals sought to be enforced has already become final and executory. Under section 1, Rule 39 of the Rules of Court, the prevailing party is entitled, as a matter of right, to the execution of said decision and it but becomes the ministerial duty of the court to issue the writ of execution. (Fiesta vs. Llorente, 25 Phil., 554; Lim vs. Singian, 37 Phil., 817; Buenaventura vs. Garcia, 78 Phil., 759; Ebero vs. Cañizares, 79 Phil., 152; Manansala vs. Narvasa et al., G. R. No. L-10223, August 29, 1957.) It is not disputed that respondent Santiago's motion to execute the decision in question did not call for the adjudication of new and independent matters, and there being no showing or even an allegation of any just or valid cause for opposing its execution, we see no necessity to continue these proceedings, and much less to disturb the proceedings below.

Wherefore, the petition is hereby dismissed and the preliminary injunction heretofore issued dissolved. So ordered without costs.

Paras, Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

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