

**JESUS AGUIRRE, PETITIONER, VS. HON. HIGINIO B. MACADAEG, AS
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, THE
SHERIFF OF MANILA AND LEONORA & COMPANY,
RESPONDENTS.**

G. R. No. L-12337. July 31, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari and prohibition with preliminary injunction filed by Jesus Aguirre, against respondent Judge Macadaeg of the Court of First Instance of Manila, the Sheriff of said city, and Leonora & Company. The petition was given due course and a writ of preliminary injunction was issued.

To better understand the background and basis of the present case, it is advisable to narrate some of the facts in two interrelated cases of the lower court. The National Shipyards and Steel Corporation, later referred to as the nassco, advertised for the purchase of a secondhand belted steel tank with capacity of 210,000 gallons, through public bidding. The Leonora & Company, being the lowest bidder for the amount of P14,500, was awarded the bid, and on December 5, 1954, it bought a secondhand belted steel tank from Zosimo Gabriel, who previously had purchased it from Vicente Aldaba and Teresa Aldaba on December 2, 1954. It turned out, however, that before the Aldabas sold the tank to Gabriel, herein petitioner Aguirre had bought the same tank from them and paid the amount of P900 as purchase price. Aguirre tried to take possession of the tank, but the Bureau of Public Works filed a claim to it and the municipal authorities of Los Banos where the tank was located, would not allow Aguirre to take possession of the tank, much less take it away. This was probably the reason why the Aldabas made a second sale of the same tank to Gabriel, who in turn made the sale to the Leonora & Co. and the latter, after dismantling the same, buying spare parts therefor and putting the tank in a useable condition, could deliver it to the NASSCO, at Engineers Island, Manila, on December 20, 1954. Aguirre immediately filed formal notice with the nassco of his rights and claim of prior ownership and demanded suspension of payment by the nassco to Leonora & Company, until the question of ownership of the tank shall have been settled. Aguirre then filed a complaint in the Court of First Instance of Manila, Civil Case No. 24914, against Leonora & Company and the Aldabas for delivery to him of the tank, with damages. The NASSCO suspended payment for the steel tank. As a result of this suspension of payment, the Leonora & Company, through its manager, filed a complaint on October 24, 1955 against the NASSCO, to recover the amount of P14,500 for the purchase price of the tank or else to reimburse it in the amount of P12,299, which allegedly represents the actual investment and expenses made and incurred by it in repairing the tank and putting it in a useable condition, plus damages and attorney's fees. This case was docketed as Civil Case No. 27988. Aguirre was allowed to intervene and he filed a complaint in intervention.

Civil Case No. 24914 was decided first by the lower court, the dispositive part of which decision reads as follows:

"IN VIEW OF THE FOREGOING, the Court hereby declares Jesus Aguirre the absolute owner of the property

described in his complaint. The subsequent sale made by defendants Aldaba to Zoshno Gabriel, the sale made by Zosimo Gabriel to defendant Leonora and Co.; and the sale made by defendant Leonora and Co. to the National Shipyards and Steel Corporation, are hereby declared null and void and of no effect. Defendants Aldaba and Leonora and Co. and the National Shipyards and Steel Corporation are hereby ordered to deliver, to plaintiff Jesus Aguirre the tank in question. Failure to make such delivery, defendant National Shipyards and Steel Corporation, in whose possession the tank is at present, shall pay to the said Jesus Aguirre the original purchase price of the tank in the amount of P900."

It would appear that this decision became final. Then, on September 29, 1956, the same court decided Case No. 27988, based on a stipulation of facts filed by the parties therein, including intervenor Aguirre. After reproducing the said stipulation of facts and on the basis thereof, the court rendered decision thus:

"In view of the foregoing agreement, judgment is hereby rendered as follows:

Intervenor Jesus Aguirre, as we have already declared in Civil Case No. 24914, is hereby adjudged owner of the oil tank in question. Defendant National Shipyards and Steel Corporation is hereby ordered to deliver to the said Jesus Aguirre such tank, but in the event that delivery is not possible, to pay to Aguirre the purchase price of P900, and to Leonora and Co. the amount of P11,299 which represents the costs of the improvement made by the said Leonora & Co.

"In the event that the National Shipyards and Steel Corporation shall deliver the oil tank to Jesus Aguirre as it is, the latter shall pay to Leonora and Co. the amount of P11,299 which, as already stated was spent by Leonora and Co. for the improvement of the tank."

Aguirre filed a motion for reconsideration or for new trial in said Case No. 27988, which motion was denied. He perfected his appeal and according to Annex B of his petition for certiorari, the Clerk of Court forwarded the amended record on appeal to the Clerk of the Court of Appeals on April 17, 1957. But before that date, plaintiff Leonora & Company in said Civil Case No. 27988 filed a motion for execution of the judgment, which motion was opposed by Aguirre. It would appear that the motion for execution was granted though belatedly, because according to Annex C of the petition for certiorari, the writ of execution was actually issued on April 23, 1957 (Case No. 27988), which was several days after the record on appeal had been approved and supposedly been forwarded by the Clerk of Court to the Court of Appeals. On the basis of this issuance of the writ of execution, Aguirre filed the present petition, claiming that when the writ of execution was issued, the appeal had already been perfected and the record on appeal had already been forwarded to the Court of Appeals, naturally, the lower court had already lost jurisdiction to issue the writ of execution.

Under Section 2 of Rule 39 of the Rules of Court, before the expiration of the time to appeal, the trial court is vested with the discretion to issue a writ of execution pending appeal. However, once the record on appeal has been approved, specially when said record has already been forwarded to the appellate court, the trial court no longer has jurisdiction either to issue a writ of execution or to dissolve a writ of execution already issued before the perfection of the appeal. (*Syquia vs. Concepcion and Palma*, 60 Phil. 186; *Uvero, et al. vs. Court of Appeals et al.*, 95 Phil., 11; *LVM Transportation Co. et al vs. Hon. Enrique Fernandez*, G. R. No. L-9136, May 31, 1953). It is therefore evident that the writ of execution issued on April 23, 1957, was issued without or in excess of jurisdiction.

In view of the foregoing, the writ of certiorari is hereby granted, the writ of execution issued by the trial court is hereby set aside and the writ of preliminary injunction heretofore issued is made permanent. Respondent Leonora & Company will pay the costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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