

**ANGELES RODRIGUEZ, JOSE RODRIGUEZ, MARIA RODRIGUEZ,
JOSEFA RODRIGUEZ, CARIOAD RODRIGUEZ, ARACELI RODRIGUEZ,
CORAZON RODRIGUEZ, JESUS RODRIGUEZ, AND CARMELITA
RODRIGUEZ, THE LAST...**

G. R. No. L-3762. March 29, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is a petition to review on certiorari an order of execution.

It appears that, having been adjudicated a $\frac{1}{4}$ undivided share in a small salt-land, in a suit in which they were plaintiffs, Alfredo Ferrer and Trinidad Ferrer, respondents herein, obtained a writ of execution on a specific portion of the lot which they themselves had selected. The execution admittedly departed materially and radically from the tenor of the judgment, but the respondents claim that the defendants', now petitioner attorney had given his assent. The extent of this assent is the principal bone of contention in this court.

What happened in this connection, as disclosed by the transcript of the proceedings, was that the plaintiffs filed a motion praying that the order of execution previously issued be amended so as to state that the $\frac{1}{4}$ part to be allotted to them was the plots (cuadros) indicated as Nos. 1 to 15 in a sketch which they attached to their said motion for execution. It was explained that the judgment "was difficult to execute" and that it was necessary that their $\frac{1}{4}$ share be determined with certainty. The hearing of that motion having been set, the attorneys for both parties made their appearance and the following proceeding took place:

"The court:

This is an amendment to the order of execution in order to make it clear. They want a clarification of the order.

"Atty. Catimbang:

"No objection.

"The court:

"Motion granted."

It was on the basis of that proceeding that the execution now being challenged was decreed. In the words of the order, which apparently was drawn by the counsel for the plaintiffs in the court below, "La representacion de los demandados que esta presente en el acto de la vista de dicha peticion no ha formulado oposicion alguna a la

indicada peticion."

In a motion for reconsideration of that order, Attorney Catimbang stated that he or his client had not been furnished with a copy of the sketch; that in agreeing to the proposed amendment he labored under the distinct belief that "this Honorable Court was only going to make the decision clear" and not "that the land was to be partitioned in accordance with Annex "A" (the sketch).

It may be assumed that the stenographic transcript and Judge Tan's statement in his order are correct that Attorney Catimbang being present expressed his conformity to the plaintiffs' motion. We may go further and assume, for the purpose of this decision, that the defendants' counsel was fully informed of what the plaintiffs requested the court to do. Even so, the question still remains, did the attorney's consent operate to prejudice his clients? This question is decisive and to it this opinion will be confined. Affecting as it does fundamental rights of the defendants, we are not precluded from considering and resting this decision on this legal proposition although the point has not been raised by either party. This is all the more justified because the attorney who agreed to the execution in the form it was issued continues representing the execution debtors. We need to remember that the limitations to the powers of attorneys to be presently transcribed are particularly designed to safeguard the clients' interests against malicious or improvident actions of their representative who, in the complexity of judicial litigations and by the highly technical nature of his work and the highly confidential relations between him and his principal, handles his client's case without the client's intervention or knowledge.

When, how, and to what extent an attorney may bind his client is specially and carefully provided in section 21 of Rule 127 which reads:

"Authority of attorneys to bind clients.—Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."

This court has had occasion to apply this rule or its predecessor, section 27 of Act No. 190, in several cases, in which the powers of an attorney to compromise a cause or to allow judgment to be entered without his client's consent were denied. (*Sons of I. de la Kama vs. Estate of Benedicto*, 5 Phil., 512; *Natividad vs. Natividad*, 51 Phil., 613; *Tan Lua vs. O'Brien*, 55 Phil., 53; *Rodriguez vs. Santos*, 55 Phil., 721; *Monte de Piedad vs. Fernando Rodrigo*, 59 Phil., 310; *Aviar vs. Court of First Instance of La Union*, 64 Phil., 301.)

Upon the facts of this case, and the rule and decisions cited, the conclusion seems undoubted that Attorney Catimbang's conformity, whether express or implied, to the motion for execution was ineffective to obligate the defendants. There is no pretense or showing that Attorney Catimbang had been conferred powers, verbal or written, express or implied, to enter into any agreement for his clients beyond "matters of ordinary judicial procedure." By virtue of his bare retainer or employment, Attorney Catimbang was authorized to do on behalf of his clients, in or out of court, only such acts as were necessary or incidental to the prosecution or management of the suit, or the accomplishment of its purpose, for which he was retained. (7 C. J. S. 896.) Now, as stated, Attorney Catimbang's alleged assent involved not merely procedural or remedial considerations but the subject matter itself of the litigation. By the proposed execution, the petitioners allege, the respondents would not only get the most valuable portion of the property but would, with that portion in their hands, render the rest of the property—3/4 of it—of little or no utility to the other owners. This assertion is denied but, at any rate, each party is the sole judge of what is good for him and it is not incumbent upon him to show that the settlement is unreasonable or prejudicial to his interest. This sole test by which the validity of an attorney's commitment on substantial matters may be judged under the prevailing rule of practice and procedure, is a written agreement or authority by his client.

The powers of attorney are even more restricted after judgment. Thus, it has been said, on the termination of the litigation for which an attorney was employed, by the rendition or entry of judgment, the general implied powers of the attorney cease, and his only authority, if greater powers have not been expressly conferred, is to take such steps or proceedings as are necessary to make it fully effective or to sustain or enforce it or to relieve his client from its effect if it is adverse. (7 C. J. S. 911.) In consonance with this principle, it has also been said that, after a final judgment has been rendered for or against his client, an attorney, who has been employed merely for purposes of the litigation, has no implied authority to alter or modify the judgment in a material particular, or to act or appear in proceedings which have been brought to obtain such an alteration or modification, even though the alteration appears to be beneficial to his client, where the legal effect would be to destroy the judgment in the latter's favor. He may only assent to the correction of a clerical error in a judgment or decree. (Id., p. 912.)

The only recourse then open to the parties, if they can not agree, is partition in the mode described by Rule 71. That this recourse would entail considerable time, trouble and expense, unwarranted by the value of the property from the standpoint of the plaintiffs, is no legal justification for the apportionment of the property not agreeable to any of the co-owners. Disagreements and differences impossible of adjustment by the parties themselves are bound to arise, and it is precisely with such contingency in view that the law on partition was evolved.

The order herein complained of will therefore be set aside and the petition granted, with costs against respondents Alfredo Ferrer and Trinidad Ferrer.

Paras, Pablo, Bengzon, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

PARAS, J.:

I certify that Mr. Justice Feria and Mr. Justice Montemayor voted to grant the petition.

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