

GERMANICO A. CARREON, PETITIONER, VS. HON. DIMALANES B. BUISSAN, PRESIDING JUDGE OF BRANCH III, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE; AND PATERNO F. ADASA, RESPONDENTS.

G.R. No. L-41875. March 12, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

The only issue in this petition for certiorari is whether or not respondent Judge committed a grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing petitioner's motion for execution of the final judgment of the Court of Appeals in CA-G.R. No. SP-01824-R.

Petitioner, as protestee in an election contest in the 1971 mayoralty election in the City of Dapitan[1] appealed to the Court of Appeals from the decision of the Court of First Instance of Zamboanga del Norte, Branch III, presided over by respondent Judge, declaring Adasa as the duly elected Mayor of said city.

Notwithstanding the pendency of the appeal, the respondent court, on motion of respondent, and despite petitioner's opposition, granted the writ of execution on February 21, 1973, of the appealed judgment, and petitioner was ousted and respondent Adasa installed as the new Mayor of Dapitan City.

Contending that the respondent Judge gravely abused his discretion in issuing the said order, petitioner instituted with the Court of Appeals, on March 5, 1973, a special civil action for certiorari.[2] Thereafter, after due proceedings, the appellate court, on May 12, 1973, promulgated its decision in CA-G.R. No. SP-01824-R, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

- 1) Special Order dated February 19, 1973, and the order dated February 21, 1973, denying the petitioner's motion for reconsideration of the same special order, as well as the writ of execution that was issued pursuant to said orders, are hereby set aside and declared null and void;
- 2) Let a writ of mandatory injunction be issued against the respondents enjoining them and all their attorneys, representatives, agents, and all other persons assisting them, to restore or reinstate and allow the petitioner to occupy the position of City Mayor of Dapitan and to exercise the powers and duties appertaining thereto;
- 3) And, ordering said private respondent to pay the petitioner P5,000.00 attorney's fee and expenses of litigation, with costs against the respondents."

On June 20, 1973, petitioner, pursuant to the order of the Court of Appeals in the afore-mentioned case, was reinstated as Mayor of Dapitan City.

Respondent Adasa, not satisfied with the aforesaid decision, brought the matter to this Court on certiorari on June 21, 1973 in G.R. No. L-37023. This petition, however, as well as Adasa's motion for reconsideration, was denied

for lack of merit.

Entry of judgment in CA-G.R. No. SP-01824-R was made by the Appellate Court on June 6, 1973.

On October 17, 1973, the record of the afore-mentioned case was remanded to the Court of First Instance of Zamboanga del Sur for execution of the judgment.

On April 30, 1974, the Court of Appeals approved the Bill of Costs of petitioner in the amount of P117.44.

On March 3, 1973, petitioner filed with the respondent court a motion for execution for the purpose of enforcing Adasa's obligation in the judgment to pay petitioner the total sum of P5,117.44, as approved by the Appellate Court. This motion was denied by the respondent Judge on April 2, 1975. This was predicated on the contention that the same is premature as the case from which the said judgment was rendered was a mere incident in the main case, which is the election protest pending with the Court of Appeals, and being a "mere incident in the main case it can not be executed because said judgment or order did not dispose finally of the main action or proceedings." Two motions for reconsideration of the afore-mentioned order, filed by petitioner to enable respondent court to rectify its error, were both denied, hence this petition for certiorari and mandamus.

In the meantime, on May 13, 1975, the Court of Appeals, in the election protest,[3] rendered its judgment reversing the appealed decision and dismissing the election protest of respondent Adasa.

Respondent Adasa appealed from the aforesaid judgment of the Appellate Court by filing with this Court a petition for certiorari on September 8, 1975. This petition[4] was, however, denied by the Court for lack of merit in its Resolution of November 5, 1975. His motion for reconsideration was likewise denied on December 8, 1975, and the denial was considered final.

The settled rule is that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution,[5] and the issuance thereof is the court's ministerial duty, compellable by mandamus.[6] It has been fittingly observed that "an execution is the fruit and end of the suit, and is very aptly called the life of the law." [7] The judgment of the Court of Appeals in CA-G.R. No. SP-01824-R explicitly ordains the payment by private respondent Adasa to petitioner of the amount of P5,000.00 as attorney's fees and expenses of litigation, with costs against said party. This judgment has become final, and respondent court has the ministerial duty to order its execution. That duty is compellable by mandamus. This judgment of the Appellate Court in CA-G.R. No. SP-01824-R, is distinct and independent from the judgment of the same Court in CA-G.R. No. SP-02029-R,[8] and the pendency of the latter cannot be an obstacle to the execution of the former.

In any event, the decision of the Court of Appeals in the election protest (SP-02029-R) has now become final.

WHEREFORE, in view of the foregoing, the orders of respondent court of April 2, 1975, May 26, 1975, and September 22, 1975 are hereby set aside, and said court is directed to issue the corresponding writ to enforce the final judgment in CA-G.R. No. SP-01824-R. No Special pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion Jr., JJ., concur.

[1] Sp. Civil Case No. 2220, entitled "Paterno F. Adasa, Protestant, versus Germanico A. Carreon, Protestee".

[2] CA-G.R. No. SP-01824-R, entitled "Germanico A. Carreon, Petitioner, vs. Hon. Dimalaries B. Buissan, etc., et al., Respondents".

[3] CA-G.R. No. SP-02029-R, entitled "Paterno F. Adasa, Appellee, versus Germanico A. Carreon, Appellant.

[4] G.R. No. L-41043, entitled "Paterno F. Adasa versus Honorable Court of Appeals and Germanico A. Carreon".

[5] Section 1, Rule 39, Rules of Court; De Luna v. Kayanan, 61 SCRA 49.

[6] Facundo v. Hon. Pabalan, 114 Phil. 307, 315; San Diego v. Hon. Montesa, 116 Phil. 512, 516.

[7] Bank of U.S. v. Halstead, 6 Law Ed. 264-267, 268.

[8] Entitled "Paterno F. Adasa, Protestant-Appellee, versus Germanico A. Carreon, Protestee-Appellant."

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