

FRANCISCO BUENAVENTURA, PETITIONER VS. HON. WENCESLAO L. FERNAN AS JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO; PACIFICO LASTRADO, VICENTE LASTRADO, CORNELIO LA TORRE AND DIO...

G.R. No. L-14282. December 29, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of Iloilo commanding the Sheriff to eject defendants from the southern portion of the plaintiff's land.

DECISION

This case started in a complaint for forcible entry filed by plaintiff (now petitioner) Francisco Buenaventura against defendants (now respondents) Pacifico Lastrado, et al., in the justice of the peace court of Lambunao, Iloilo, over a parcel of land of which plaintiff claimed he was the rightful possessor. Plaintiff won in the inferior court, lost in the Court of First Instance of Iloilo, but won again in the Court of Appeals, which found that defendants had encroached upon a portion of plaintiff's property and ordered said defendants to vacate the same immediately.

The records were accordingly remanded to the trial court for execution, which was ordered on March 8, 1955 by Judge Ambrosio T. Dollete. Defendant Pacifico Lastrado refused to vacate plaintiff's land and so, on May 28, 1955, another writ of execution was issued by Judge Jose r. Querubin. Still, defendant Lastrado refused to comply, prompting plaintiff to file a motion for contempt against him. On November 19, 1956, Judge Hilarion U. Jarencio dismissed the motion for contempt, ascertained that the area involved between the parties was an 8-hectare portion on the west of the land described in the original complaint, and again ordered the provincial sheriff to deliver the possession thereof to plaintiff. Defendant Lastrado, nevertheless, persisted in his refusal to remove his house from the insisting that the Court of Appeals found the converted area to be only a three-hectare portion on the southern side of plaintiff's land, and that his house was outside said portion. To avoid further dispute between the parties as to the area and the boundaries of the land adjudicated to plaintiff, Judge Jarencio, on March 23, 1957, and upon agreement of the parties, commissioned Surveyor Ramon Sirilan to determine the exact boundaries and area of said land. On October 29, 1957, Surveyor Sirilan submitted his report and survey, showing that the portion of plaintiff's land occupied by defendants and on which they have their houses is on the western part and has an area of 87,880 square meters, more or less. As the parties submitted no opposition to the surveyor's report, the same was, on January 18, 1958 approved by Judge Jarencio, and execution was ordered issued on the basis thereof. Still, defendant Lastrado refused to comply with the writ of execution, and similar orders were issued on March 31, 1958 by Judge Jarencio and F. Imperial Reyes, respectively.

On July 2, 1958, defendants for the first time moved for the reconsideration of the execution orders, claiming that

said order could not vary the finding of the Court of Appeals that the converted portion of plaintiff's land on the south. Convinced that the writ of the execution were issued in excess of the Court's jurisdiction, the then presiding judge Wenceslao L. Fernan annulled them and issued another writ commanding the sheriff to eject defendants from the southern portion of plaintiff's land. Having failed to obtain reconsideration of this last order, plaintiff applied to this court for relief by filing the present petition for certiorari.

It is settled that the judgment or fallo is found in the dispositive part of final order or decision, which dispositive portion is the controlling factor for the purpose of res judicata (*Neri Edwards v. Arce*, 52 O.G. No. 5, 2537; *Siari Calley Estates v. Lucasan*, G.R. L-11805, October 31, 1957; *Government v. Ramon y Vasquez, et al.* 73 Phil. 669); and that is only what is ordained and decreed in said dispositive portion that becomes subject to execution (*Neri Edwards, v. Arce, supra*). Therefore, the only portion of the decision of the Court of Appeals that is subject to execution by the trial court of in this case is that which is decreed in its dispositive portion, to wit:

"We, therefore, reverses the decision appelled from and declare plaintiff entitled to the possession of the portion of land herein controverted and, therefore, defendants are ordered to vacate it immediately and to pay the immediately fixed above to plaintiff, with costs against them."

The records show that in the course of the proceedings for the execution of the above judgment in the court below, the parties could not agree on the exact area and boundaries of the land adjudicated to the plaintiff claiming that it was an eight-hectare portion of his land on the west, the same portion that was delivered to the defendants by the Justice of Peace of Lambunao on December 18, 1948 when he lifted and injunction in the case after defendants filed a counterbond; and defendants insisting that it was only a three-hectare portion o the south of plaintiff's land, as found by the Court of Appeals. To finally resolve this dispute between the parties, the trial court through Judge Hilarion Jarencio, appointed a surveyor to determine the true area and boundaries of the land i question, and both parties agreed to the appointment.

The authority and power of the lower court in appointing said commissioner to ascertain the exact area and location of the disputed land for the purpose of carrying into effect the final judgment of the Court of Appeals awarding it possession to herein petitioner Francisco Buenaventura, is based on Rule 34, paragraph (3); of the Rules of Court, that provides that "the court may, upon the application of either (party) or of its own motion, direct a reference of a commissioner x x x when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect." Applying this same rule, we held in *Villones v. Hon. Nable*, G.R. L-1372, November 29, 1949, that supplementary proceedings under this rule are proper where the final judgment is ambiguous and the identity of the res is not ascertainable therefrom; while in *Silva v. Macadaeg, et al.*, 47 O.G. No. 2337, we said that although a judgment or decree which determines all the equities or the substantial merits of the case is final for the purpose of appeal, further proceedings may be necessary in the execution of it, or some incidental or dependent matters may still remain to be settled.

For the purpose of of carrying into the effect the judgment of the Court of Appeals in this case, the lower court found it necessary, to which both parties agreed, to appoint a commissioner to ascertain and do limit the land adjudicated to plaintiff. The survey was conducted in the presence of all the parties, and the commissioner found that said land was, as contended by plaintiff, an eight-hectare portion of his land on the west. Defendants offered no objection to the commissioner's report, and the same was accordingly approved and ordered executed by the trial court. If the defendants below did not agree with the referee's report and the order approving it, their remedy was seasonable appeal from the order, a step that they have not taken.

As the findings of the commissioner on the area and location of the land awarded to plaintiff superseded and substituted whatever findings the Court of Appeals made on this same question in its decision, it has become

immaterial in the execution of the judgment of the appellate tribunal that it found, in the body of its decision, that the converted land was only a three-hectare portion of plaintiff's property on the south. To go along with respondents' insistence that it is from said portion that they should be ejected, would be to render the very judgment of the Court of Appeals awarding possession of the southern part of his property, and it is on an eight-hectare portion thereof on the west that defendants had illegally settled and on which their houses stand up to this time. It is precisely for the purpose of giving effect to defendants had encroached, that the court below, with the consent of all the parties, commissioned a surveyor to determine the exact area and boundaries of said land. Having agreed to the commissioner's finding; respondents are bound by them and cannot be heard to dispute their truthfulness nor escape their legal consequences (*Santos v. De Guzman*, 45 Phil. 646).

WHEREFORE, the order complained of dated July 25, 1958 is set aside, and execution shall issue in this case pursuant to the orders of the lower court of January 18 and May 27, 1958. Costs against respondents Pacifico Lastrado, et al.

Paras, Bautista Angelo, Concepcion, Barrera, Padilla, Labrador, Endencia and David, JJ., concur.

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