

ANTONIO T. CARRASCOSO, JR., PLAINTIFF AND APPELLANT, VS. JOSE FUENTEBELLA, DEFENDANT AND APPELLEE.

G. R. No. L-5888. April 22, 1953

Ponente: TUASON, J.

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TUASON, J.:

This action, labeled in the brief as revival of judgment, was brought in the Court of First Instance of Manila with the prayer that judgment be rendered for the "total sum of P4,295.20, with interest thereon at the rate of 6 per cent per annum, from September 9, 1939, until fully paid, and the costs of suit," and for "the defendant to deliver to plaintiff the shares of stock which defendant was ordered by this court to deliver to plaintiff." The court below held that the suit wherein the judgment sought to be revived was handed down had not reached the final stage, and so dismissed the complaint. Hence this appeal.

It appears that the above court on June 28, 1940 and August 6, 1940, in case No. 55592 between the same parties, gave judgment for the plaintiff the dispositive part of which was follows:

"Por tanto el Juzgado dicta sentencia:

"(a) Declarando al demandante con derecho a un interes y participacion de 16.52 por ciento en todo interes a participacion que el demandado Jose Fuentebella ha adquirido en las pertenencias mineras que hay en la Isla de Oring, por otro nombre, Lahuy, en el municipio de Caramoan, provincia de Camarines Sur, y que se mencionan en la escritura Exhibito C; y un interes de 16.52 por ciento en la suma de P60,000 que Tomas Confesor se ha obligado a pagar al demandado, de conformidad con la escritura Exhibito D;

"(b) Declarando al demandante con derecho a participar en un 16.52 por ciento de todas las acciones que las corporaciones Raja Lahuy Mining Co., y cualesquiera otras corporaciones que se organicen para la explotacion y desenvolvimiento de pertenencias mineras en la referida Isla Oring, o Lahuy, puedan expedir a favor del demandado, a quien se le ordena a entregar al demandante dicha participacion tan pronto como reciba dichas acciones convirtiendose en definitivo el interdicto prohibitorio preliminar expedido por este Juzgado con respecto a dichas acciones que le corresponde al demandante percibir del demandado;

"(c) Declarando al demandante con derecho a percibir en un 16.52 por ciento en los pagos que Tomas Confesor pudiera hacer al demandado, de acuerdo con los terminos del Exhibito D, y se ordena al demandado que entregue al demandante la participacion de este en dichos pagos tan pronto como los reciba del referido Tomas Confesor;

"(d) Ordenando al demandado a pagar al demandante la suma de P4,130, equivalente al 16.52 por ciento de los P25,000 que el demandado recibio de Feldman y sus compañeros, con interes de 6 por ciento al año, a contar desde la fecha de la demanda;

"(e) Ordenando al demandado a pagar al demandante la suma de P165.20, equivalente al 16.52 por ciento de la cantidad de P1,000 que Tomas Confesor pago al demandado, de acuerdo con el Exhibito D, con un interes de 6 por ciento al año, a partir de la fecha de la demanda;

"(f) Ordenando al demandado a que rinda cuenta detallada de todos los gastos por el incurridos por la adquisicion y explotacion de las pertenencias mineras mencionadas arriba dentro del plazo de diez dias despues de notificado de esta decision enmendada, para deducir la parte de dichos gastos (16.52 por ciento) que le corresponde al demandante costear, de las cantidades adjudicadas al demandante en esta sentencia; y

"(g) Condenando al demandado al pago de las costas."

That judgment was appealed by the defendant to the Court of Appeals, but the latter court, upon objection by the plaintiff, dismissed the appeal on the grounds that the decision was interlocutory and the appeal premature; and when the defendant applied to the Supreme Court for a writ of mandamus to compel the appellate court to give due course to his appeal, the former sustained the latter court's order. The Supreme Court ruled that "the judgment rendered by the Court of First Instance of Manila declaring plaintiff entitled to share in the assets of the partnership and directing the defendant to render an accounting of the expenses incurred in the purchase and exploitation of the mining claims, is not final but merely interlocutory and, therefore, not appealable."

All that was during the war and matters were allowed to rest in the Court of First Instance until June 30, 1947, when the plaintiff filed a petition with the trial court for the reconstitution of the record, which had been destroyed or lost. Over the objection of the defendant, the court in an order of July 26, 1947, granted the petition, and the defendant having filed a notice of appeal, the appeal was disallowed. The defendant then instituted in the Supreme Court mandamus proceedings to have his appeal given due course, but without success. This court, in a decision promulgated on June 25, 1948, held that the order for reconstitution of the lost records was interlocutory and not appealable.

During the pendency of the last-mentioned proceedings for mandamus the Court of First Instance ordered the defendant to render an accounting to the plaintiff in pursuance of paragraph (f) of the dispositive part of the decision quoted above, but it does not appear that order was heeded or that it was pressed by the plaintiff.

By section 6 of Rule 39 only final judgments may be revived by separate action after the expiration of five years. It will be seen that by the express ruling of this court and by the tenor of the judgment which the plaintiff seeks to enforce, the said judgment is not yet final and could not have lapsed. At the present stage of the litigation, there is an accounting still to be made, and not until this has been effected and the accounting acted upon can there be a final judgment.

It is noticed that the plaintiff's complaint makes reference to only two items of the judgment in question, but the pleadings and the briefs do not disclose whether these items are independent of the others or are subject to the results of the accounting which has been ordered. However that may be, this Court's decision declaring the judgment interlocutory made no exceptions and by this decision the defendant's appeal was totally overthrown. In the circumstances, it would hardly be fair to hold that part of the judgment which concerns the payment of P4,295.20 and the delivery of shares of stock was separable from the rest and could or should have been disposed of in the appeal without waiting for decision on the other details of the litigation. It should be noted that it was through the plaintiff's vigorous objections that the appeal was declared premature, and dismissed in its entirety. Having taken that position, plaintiff is at least estopped from asserting that the judgment or some parts of it became executory by reason of the defendant's failure to prosecute his appeal to its final conclusion. As matters stand, it seems obvious that the only course open to the plaintiff is follow through the order for accounting and liquidation that the case may be placed in a state to be decided definitely.

The appealed order is therefore affirmed, with costs against the appellant.

Feria, Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.
Paras, C. J., concurs in the result.

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