

**PIVGETH INDUSTRIES AND DEVELOPMENT CORPORATION,
PETITIONER, VS. HONORABLE JESUS DE VEYRA, IN HIS CAPACITY
AS PRESID-ING JUDGE OF THE COURT OF FIRST INSTANCE OF
MANILA, BRANCH XI...**

G.R. No. L-33624. October 29, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The relevant facts are recounted in the petition, thus:

"4.01. Petitioner owns the Arias Building which is located at the corner of Carriedo and Estero Cegado Streets, Manila. It acquired the premises in question sometime in April of 1964.

"4.02. herein respondent was one of the tenants of the building standing on the premises, having occupied 113.30 square meters therein. His occupancy ante-dates petitioner's acquisition of the prop-erty. Prior to the sale, he had occupied this portion by virtue of verbal contract of lease with the former owner, paying a monthly rental of P2,700.00.

"4.03. On April 27, 1967, petitioner wrote private respondent a letter informing him to vacate the premises within two (2) months from receipt thereof. Private re-spondent refused petitioner's demand. There-after, negotiations ensued between petitioner and private respondent with the end in view of avoiding court litigation. However, negotiations broke down until finally, on July 21, 1967, petitioner filed with the inferior Court a verified Complaint for ejectment against private respondent and the other tenants of the building. This case was docketed as Civil Case No. 162673 and assigned to the Hon. Gregorio Garcia A true and correct copy of the Complaint for ejectment in Civil Case No. 162673 is hereto attached and made an integral part hereof as ANNEX "A"7.

"4.04. Proceedings in the inferior Court were, however, interrupted because private respondent attacked the jurisdic-tion of the inferior Court on the ground that it had no jurisdiction over the case since the Complaint was filed more than one (1) year after the first letter of demand although admitted within one (1) year after the last letter of demand this issue was eventually decided by the Honorable Court in G.R. No. L-29598 on June 30, 1969.

"4.05. After the jurisdiction of the inferior Court was finally upheld by the Honorable Court, proceedings were con-tinued in the inferior Court and on Decem-ber 7, 1970, it rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment hereby rendered confirming plaintiff's possession, as of March 23, the premises formerly occu-pied by See Liong and Sy Oh referred to in the Complaint; ordering Lim Chi and all other persons under him to vacate the premises alluded to in the Complaint; See Liong and Sy Oh to pay rent from July 1, 1964, at the rate of P80.00 per square meter a month up to March 23, 1970 (Lim Chi occupies a portion of the Arias Building with an area of 113.30 square meters; Sy Oh, 26.35 square meters; and See Liong, 71.22 square meters),

and Lim Chi to pay rent at the same rate of P80.00 per square meter monthly from July 1, 1964 up to the date he surrenders to plaintiff possession of the premises leased to him and described in the Complaint; each of the three defendants to pay attorney's fees of P300.00, and costs.

'Whatever amounts that have been paid by any and all three defendants to plaintiff are ordered deducted from the rentals obligations of the said defendants.

'Defendant Sy Oh's counter-claim considered not exactly as a counterclaim but a mere set-off calculated to defeat the cause of action of the plaintiff, for lack of evidence, is dismissed.

xx xx xx xx.'

"A true and correct copy of the Decision is hereto attached and made an integral part- hereof as ANNEX "3"

"4.06. On December 10, 1970, herein petitioner filed with the inferior Court a Motion for Writ of Execution Pending Appeal, a copy of which is hereto attached and made an integral part hereof as ANNEX "C".

"4.07. On December 15, 1970, the inferior Court issued the writ of execution prayed for. A copy of the Order is hereto attached and made an integral part hereof as ANNEX "D".

"4.08. On the same date, December 15, 1970, private respondent filed with the inferior Court a Motion for New Trial and/or Reconsideration (a copy of which is hereto attached and made an integral part hereof as ANNEX "E"); and on December 16, 1970, private respondent filed an Urgent Motion to Suspend and Recall the Writ of Execution of the Judgment Rendered (a copy of which is hereto attached and made an integral part hereof as ANNEX "F"). Both motions were denied by the inferior Court in separate Orders of December 17, 1970 and December 21, 1970 (copies of the Orders are hereto attached and made [an] integral parts hereof as ANNEXES "G" and "H"- "G" "H", respectively).

"4.09. On December 16, 1970, enforcing the writ of execution issued by the inferior Court, the respondent Sheriff of Manila took over possession of the premises in question, levied upon the goods found therein, and, thereafter, scheduled the auction sale of the goods for February 28, 1971. A true and correct copy of the Notice of Sale on Execution of Personal Property is hereto attached and made an integral part hereof as ANNEX "I".

"4.10. On December 23, 1970, private respondent filed a Petition for Certiorari with the certiorari Court. In his Petition filed against the Judge of the inferior Court and herein petitioner, private respondent sought the following:

'(a) to declare null, void and without any effect the judgment rendered by the respondent Judge on 7 December 1970 and the order authorizing immediate execution of the judgment pending appeal;

'(b) to order the suspension and recall of the writ of execution issued in this case of Civil Case No. 162673 of the City Court of Manila;

'(c) to declare that the respondent Judge had no jurisdiction for gravely abusing his discretion in denying the petitioners motion for new trial and reconsideration of the judgment in said Civil Case No. 162673 of the City Court of Manila;

'(d) to make permanent and final the writ of preliminary injunction prayed for and issued in this petition; and

'(e) sentencing private respondent, or Pivgeth Industries & Development Corporation, to pay the costs of this suit.' -- Civil Case No. 81815.

A true and correct copy of the Petition is hereto attached and made an integral part hereof as ANNEX "J".

"4.11. The certiorari Court gave due course to the petition and on December 29, 1970, issued an Order

restraining therein respondent Sheriff from enforcing the writ of execution issued by the inferior Court. A true and correct copy of the Order is hereto attached and made an integral part hereof as ANNEX "K".

"4.12. On the same date, December 29, 1970, private respondent filed his Notice of Appeal in the inferior Court, a copy of which is hereto attached and made an integral part hereof as ANNEX

"4.13. Proceedings were thereafter held in the certiorari Court and on May 6, 1971, the certiorari, Court rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, Judgment is hereby rendered, denying the petition for a writ of certiorari insofar as it seeks to annul the judgment in Civil Case No. 162673 and the orders of the respondent Judge denying the petitioner's motion for extension of time to file memo-randum, the order denying the motion for reconsideration of the same, and the order denying the motion for new trial and/or reconsideration; granting the writ with respect to the order of execution pending appeal and the order denying petitioner's motion to suspend and recall the writ of execution, which orders are accordingly annulled and set aside for having been issued in grave abuse of discretion; and enjoining the enforcement of the said decision until such time that the Court taking cognizance of the appeal shall order other-wise. The Court makes no pro-nouncement as to costs.

xx xx xx.'

Decision, Civil Case No. 81815; underscoring supplied.

A true and correct copy of the Decision is hereto attached and made an integral part hereof as ANNEX "M".

"4.14. O May 19, 1971, petitioner filed a Motion for Partial Reconsideration of the Decision of the certiorari Court. xx xx xx x xx ANNEX "N".

"4.15. Meanwhile, on May 11, 1971, private respondent with the appeal Court a Motion praying the appeal Court to fix the reasonable amount of super-sedeas bond that no cad to file during the pendency of the appeal to stay immediate execution of the judgment of the inferior Court, as well as the current monthly rental to be deposited. A copy of the said Motion is hereto attached and made an integral part hereof as ANNEX "O".

"4.16. Since respondent Sheriff of Manila was threatening to turn over the possession of the premises to private re-spondent even before the resolution of herein petitioners Motion for Reconsideration in the certiorari Court, petitioner decided to file with the appeal Court a Motion for Execution Pending Appeal, a copy of which is hereto attached and made an integral part hereof as ANNEX "P".

"xx xx xx xx xx

"xx xx xx However, the appeal Court xx xx denied the Motion for Execution Pending Appeal" in an order dated June 5, 1971 (Annex "R").

Hence, this petition for certiorari, prohibition and mandamus seeking to nullify the order of respondent Judge dated June 5, 1971 and to compel the respondent Judge to issue a writ of execution pending appeal, as well as praying for the issuance of a writ of preliminary injunction to enjoin the Sheriff of Manila from turning over the possession of the premises in question (pp. 24-25, rec.).

On June 16, 1971, petitioner filed a supplemental petition dated June 15, 1971 urging the issuance of a writ of preliminary mandatory injunction (pp. 98-105, rec.).

In a resolution dated June 16, 1971, this Court resolved: "(1) to require the respondents to file answer, not a motion to dismiss, within ten (10) days from notice; and (2) with respect to the petition for preliminary mandatory injunction, to issue the writ prayed for, upon petitioner's posting a bond of ten thousand pesos (P10,000.00): (a) directing the re-spondent Judge to reinstate the writ of execution issued by the City Judge which was set aside in

the order issued by Judge Conrado Vasquez, on May 6, 1971; and (b) further ordering the respondent sheriff to reinstate the afore-said levy of execution and said sheriff and private respondent Lim Chi to restore the possession of the premises to the petitioner, and thereafter, to refrain from proceeding with any public or private sale or disposition of the goods, merchandise, articles and equipment in the premises and from further action on the said levy until further orders from this Court." (p. 107, rec.).

On June 28, 1971, the respondents filed their answer (pp. 121-128, rec.).

On August 12, 1971, petitioner filed its memorandum dated August 11, 1971, attaching thereto the order of respondent Judge dated June 14, 1971 denying the motion to reduce supersedeas bond filed by respondent Lim Chi (pp. 138-161, rec.).

On August 23, 1971, respondents filed their memorandum in lieu of oral argument dated August 21, 1971 (pp. 168-178, rec.).

Thereafter, the case was deemed submitted for decision.

But in a manifestation dated August 17, 1971, followed by a supplemental manifestation dated September 13, 1971, herein respondents informed the Court that respondent Judge rendered a decision dated August 25, 1971 in Civil Case No. 82244, ordering therein defendant and herein private respondent Lim Chi to vacate the premises and to pay the plaintiff or petitioner herein a monthly rental of P2,700.00 from July 1, 1964 until Lim Chi vacates the premises and to pay the costs, annexing thereto as Annex "B" a copy of said decision of respondent Judge and praying that this petition be dismissed with costs against petitioner on the ground that the appealed decision of the municipal court cannot be executed as it ceases to exist after the rendition of the judgment by the Court of First Instance in exercise of its appellate jurisdiction (pp. 187--188, rec.).

In its comment filed on and dated October 18, 1971 (p. 201, rec.), herein petitioner confirmed the rendition of the decision by the respondent Judge from which petitioner appealed to the Court of Appeals before which the case is now pending, and submits to the sound discretion of this Court whether to consider this case as moot and academic.

It is an established principle that an appealed decision of the municipal court cannot be executed after the rendition of the judgment by the Court of First Instance, which supersedes and renders the municipal court decision functus officio and inexistent. Consequently, it is now the decision of the Court of First Instance that prevails and may be executed pending appeal. [1]

WHEREFORE, this case is hereby dismissed as moot and academic, without costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] De la Fuente, et. al. vs. Jugo, March 12, 1946, 76 Phil. 262, 264; Zarcal, et. al. vs. Herrero, et. al., May 26, 1949, 83 Phil. 711, 712-713; Moran, Vol. 3, 1970 ed., 339-340.

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