

**CESAR ROBLES, ELISA G. DE ROBLES, AND SULPICIO ROCO,
PETITIONERS, VS. DONATO TIMARIO, ET AL., RESPONDENTS.***G. R. No. L-18239. October 30, 1962*

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

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From the records of this case for certiorari, we gather that in Civil Case No. 3015 of the Court of First Instance of Camarines Sur, certain properties of the defendants Cesar Robles and Elisa C. de Robles, consisting of a house and lot, were preliminarily attached. In the decision, promulgated thereafter, said defendants were ordered to pay the plaintiffs, Donato Timario and Consuelo J. Timario, the sum of P9,218.00, with costs. This decision was affirmed by the Court of Appeals, and became final and executory; but execution thereof was set aside by the Supreme Court, on certiorari (G.R. No. L-13911, Apr. 28, 1960; 107 Phil., 809) for the reason that the writ of execution ordered collection of legal interest, which was not authorized in the judgment.

Now the matter of execution of the decision has again come up to this Court, this time petitioners claiming that the whole amount of P9,218.00 should not be enforced against them in view of supervening circumstances that transpired pending their appeal of the principal case.

In the present case, petitioners alleged that, pending the former appeal to the Court of Appeals, the Robles spouses sold the attached properties to one Sulpicio Roco, their co-petitioner, under stipulation that the latter should assume payment to the Timarios of whatever amount may finally be adjudged in their favor; that the Timarios, learning of the transaction, verbally requested Roco to cede to them a strip of land with an area of approximately 84 square meters, and, upon assent by Roco, took possession of the premises. The petition further alleges that through a letter dated June 16, 1959, sent by petitioner Roco's counsel to the Timarios, Roco offered payment to them of the amount of P9,218.00, adjudged against the spouses Robles;

"* * * after deducting the value of the small parcel of land in Dimasalang street which Mr. Roco ceded to you as part of the redemption; and with respect to the 'legal interest', he will abide by the result of the certiorari case."

i.e., G. R. No. L-13911; that Donato Timario answered the letter (Annex C) manifesting:

"* * * I wish to state that inasmuch as the period for redemption had already expired and inasmuch as you have raised this point in your motion to the Supreme Court, it seems to me that it would be better to wait for the resolution of the Supreme Court of your said motion.";

and that when the earlier certiorari case was decided, the Timarios moved again for execution for the full amount of P9,218.00, without deducting the value of the strip of land ceded to them.

Except for the motion for the writ of execution for the full amount, the respondents denied all the preceding allegations, not only in their answer to the present petition but also in previous pleadings filed with the trial court.

Over the opposition to the motion for execution filed by herein petitioners, the lower court, in its order dated

December 20, 1960, granted the issuance of an alias writ of execution because of the denial by the plaintiffs Timarios (herein respondents) of the alleged agreement with Sulpicio Roco, and because, even if true, said contract is foreign to the case and may be the subject of an independent action. Further steps to proceed with this alias execution were blocked when this Court issued a writ of preliminary injunction.

The theory of petitioners is that there has been a change in the situation of the parties which makes the execution inequitable at present. We agree. If it be true (and Timario's letter, Annex "C", above-quoted does not deny it) that Roco did cede to the Timarios the parcel of land in Dimasalang street as part payment of their judgment credit, it is but just that the value of this property should be determined and deducted from the judgment. Such determination cannot be properly made in an independent case, because the judgment debtor is entitled to the benefit of it, and to have the exact balance fixed. In addition, the reduced judgment may affect the amount of property to be sold; it may sway prospective bidders for the property levied upon, as well as influence the judgment debtors, or their successors in interest, in deciding whether or not they should redeem the property sold. Much complication can be avoided if the trial court should resolve now what is the true balance of the judgment in favor of respondents Timario, instead of leaving the question open for a separate suit that does not appear to be a fully adequate remedy.

As to Roco's personality to intervene, it must be remembered that the property attached was transferred to him, and he has stepped into the shoes of his assignors, the original party defendants; and if the Timarios did accept a part payment from him (Roco), they would be stopped to question his intervention in these proceedings.

The order appealed from is hereby set aside and the records ordered remanded to the court of origin for further proceedings conformable to this decision, in order to determine the exact balance of the judgment in favor of spouses Timario before execution is issued. The preliminary injunction is hereby made permanent. Costs shall be paid by respondents Donato and Consuelo Timario.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concur.

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