

**CATALINA GARCIA ALMEDA, PETITIONER, VS. HON. AMBROSIO SANTOS, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (PASIG BRANCH) AND ALFREDO WEBER, RESPONDENTS.**

*G.R. No. L-2577. November 28, 1949*

Ponente: REYES, J.

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**REYES, J.:**

This is a special action for certiorari and prohibition. Its object is (1) to annul an order of the Court of First Instance of Rizal giving due course to a petition to set aside the judgment rendered by said court in a case entitled "Alfredo Weber vs. Francisco de la Rama and Teresa Osorio", and (2) to enjoin the respondent judge from further taking cognizance of said petition.

It appears that the case referred to was brought by Alfredo Weber against Francisco de la Rama and Teresa Osorio for the annulment of a deed of sale of real property executed by plaintiff in favor of the defendants. The defendants were declared in default and faded out of the picture. But the action for annulment was resisted by herein petitioner, Catalina Garcia Almeda, who filed a complaint in intervention alleging that, relying on the deed in question, she had loaned to the defendants the sum of P8,000.00 on the security of a mortgage to be constituted by them on the land covered by the deed. Before trial, however, plaintiff and intervenor came to a compromise and signed an agreement of the following tenor:

"We agree to have a decision rendered in this case ordering the private sale of the property in question within a period of three (3) months and from the proceeds of the sale to pay first Catalina Garcia Vda. de Almeda the amount of P8,000.00 and the remaining for the plaintiff Alfredo Weber, with the understanding that if the sale could not be consummated within the specified period the property will be sold at public auction and the proceeds will be applied in conformity with the above agreement.

"Parties agree that a decision be rendered in accordance with the above agreement."

The above agreement having been submitted to the court, the respondent judge rendered a decision in accordance with its terms. That was on May 27, 1948.

As the property in question was not sold within the three-month period mentioned in the agreement, the intervenor, on September 13, 1948, filed a motion for the execution of the judgment, that is, for the sale of the property at public auction by the sheriff and for the application of the proceeds of the sale to the payment of the intervenor's claim of P8,000.00. This motion having been granted, plaintiff asked for reconsideration, alleging that, as a part of the agreement submitted to the court, it was the understanding of the parties that the three-month period given the plaintiff for effecting the sale of the property would be extended "to another like period." The motion for reconsideration was not verified. Neither was it accompanied by any proof of the alleged understanding regarding the extension of the period for the sale. On the other hand, the intervenor, in opposing the motion, denied under oath the alleged extension.

On October 11, 1948, the court rendered an order denying the motion for reconsideration. No appeal was taken from this order; but, with the sale at public auction set for October 23, 1948, as stated in the writ of execution and in the public notice of sale issued for the purpose, plaintiff sought to prevent the sale from taking place by filing a petition to have the judgment set aside and a preliminary injunction issued to enjoin the sale. In its order dated October 21, 1948, the lower court gave due course to the petition by requiring the intervenor to answer within 15 days and granted the preliminary injunction prayed for upon the filing of the corresponding bond. This is the order sought to be annulled in the present action before this Court, which is predicated on the proposition that, as the petition to set aside the judgment was presented 60 days after notice thereof, the lower court no longer had jurisdiction to entertain said petition.

The present petition for certiorari and prohibition was filed on October 28, 1948. But on March 8, 1949, a supplement to the petition was filed, alleging that the lower court had, on January 11, 1949, at the instance of the intervenor, dismissed the petition for the annulment of the judgment, and in its order of February 17, 1949, it also denied reconsideration of the order of dismissal. Though he has been served with a copy of the aforesaid supplement to the petition, respondent Alfredo Weber has not answered the same, and as the allegations therein are supported by copies of court record authenticated by the oath of petitioner's attorney, those allegations may be assumed to be true. On this assumption, we have to declare that the subject matter of the present action has become moot. The action is, therefore, dismissed without costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.  
Feria, and Pablo, JJ., did not take part.

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