

JOSE MA. ANSALDO, PETITIONER AND APPELLEE, VS. FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS, OPPOSITOR AND APPELLANT.

G. R. No. L-2378. April 27, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

The herein appellant, Fidelity and Surety Company of the Philippine Islands, obtained in civil case[^]No. 33923 of the Court of First Instance of Manila a money judgment against Romarico Agcaoili and Angel A. Ansaldo. A writ of execution was issued on April 11, 1933, and corresponding notice of levy was, on April 17, 1933, notion Transfer Certificates of Title Nos. 7232 and 19165 of the City of Manila, in respect of the interest and participation of Angel A. Ansaldo in the properties covered by said titles. No other step was taken by the appellant on the writ of execution and notice of levy. On July 30, 1947, the herein appellee, who alleged having inherited the same properties, filed in the Court of First Instance of Manila a petition praying that, in view of the appellant's inaction for over fourteen years, the notice of levy noted on the aforesaid titles be cancelled. After the appellant had filed an opposition alleging that the noted attachment liens were still subsisting and valid and could be enforced by corresponding sale on execution, to which the appellee filed a reply, the Court of First Instance of Manila issued an order dated November 26, 1947, granting appellee's petition for cancellation, on the ground that appellant's right to enforce its judgment by execution or action had prescribed. From this order, the present appeal was taken by the petitioner.

Under section 6 of Rule 39 of the Rules of Court, a judgment may be executed on motion within five years from the date of its entry and, thereafter and before it is barred by the statute of limitations, it may be enforced by action. The prescriptive period for an, action to enforce a judgment is ten years (Sec. 43, Par. 1, Act No. 190), and this period was held to commence from the date the judgment is entered and not from the expiration of the five years within which the judgment may be executed by motion (*Gutierrez Hermanos vs. De la Riva*, 46 Phil., 827). We have not discovered any plausible reason for departing from this rule (by a majority of the Court) and adopting— as does counsel for the appellant—the dissenting view. It is, therefore, obvious that appellant's judgment is barred by prescription, even assuming that April 11, 1933 (when the writ for its execution was issued) is the date of entry of judgment, because more than ten years had elapsed up to July 30, 1947, when appellee's petition for cancellation was filed.

Appellant contends that there is no law limiting the time within which property already levied upon may be sold by the sheriff at public auction; and reliance is placed on the case of *Government vs. Echaus*, (71 Phil., 318). This authority is not in point, because, as stated in the very brief for appellant, the judgment in that case was rendered on November 15, 1932, levy was made on October 8, 1934, and the sale at public auction was held on September 14, 1939. In other words, the execution sale took place (although beyond the 5-year period within which the judgment might be executed on motion) within' the period of ten years during which the judgment could be enforced by action.

There is no merit in appellant's contention that its judgment had already been executed after the properties in question were levied upon: Under section 14, Rule 39, of the Rules of Court, an execution is enforced (and therefore accomplished) by levy and sale.

The order appealed from is affirmed, and it is so ordered with costs against the appellant.

Pablo, Bengzon, Padilla, Montemayor, Jugo and Bautista Angela, JJ., concur.

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