

GERUNDIA IBATAN, BY HERSELF AND IN REPRESENTATION OF THE MINORS, CANCIO, JUANA, MARILYN, IRENEO, EMMA, ALEJANDRO AND VERONICA, ALL SURNAMED IBATAN, RAYMUNDO IBATAN, ESTELITA IBA...

G.R. No. L-39125. August 20, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari with preliminary injunction under Rule 65 of the Rules of Court seeking the annulment of the following: (1) the order of respondent judge dated April 18, 1973 denying petitioners' motion to set aside the writ of execution and/or notice of levy on execution of the final judgment in Civil Case No. C-839 rendered by the Court of First Instance of Leyte; and (2) the levy upon the real properties of the deceased defendant, Quiterio Ibatan, and the subsequent execution sale thereof conducted by the sheriff.

The antecedent facts are as follows:

Private respondent brought an action for partition of real property with the Court of First Instance of Leyte (now RTC) docketed as Civil Case No. 839, against Quiterio Ibatan, predecessor-in-interest of petitioners herein.

On July 21, 1966, the trial court rendered a decision the dispositive portion of which states:

“In view of all the foregoing considerations, the Court hereby renders judgment:

1. Declaring that the parcels of land described in sub-paragraphs (3), (4) and (6) under paragraph VI of the complaint did not form part of the estate of the deceased spouses Alejandro Ibatan and Juana Dagalea and therefore, not subject to partition among the plaintiffs and defendant, the same having been acquired by the latter by purchase from third persons;
2. Declaring that the parcels of land described in sub-paragraphs (1), (2), (5) and (7) under paragraph VI of the complaint were the properties of the deceased Alejandra Ibatan and, therefore, subject to co-ownership and partition. Parcels 1, 2 and 5 shall be divided equally into two (2) equal parts between the children of Alejandra Ibatan, namely Clarita, Alicia Eugenia and Benigno, all surnamed Arguelles, and Quiterio Ibatan. Parcel 7 shall be divided equally into three (3) equal parts among Gertrudes Ibatan, the children of Alejandra Ibatan and Quiterio Ibatan. Let judgment be entered divesting the title of defendant Quiterio Ibatan and vesting it in plaintiff Gertrudes Ibatan of one-third (1/3) of parcel 7 and also one-third (1/3) of parcel 1, 2, 5 and 7 in the children of Alejandra Ibatan and ordering the defendant to deliver their respective shares as already indicated above to Gertrudes Ibatan and the children of Alejandra Ibatan;
3. Declaring that Gertrudes Ibatan is entitled to one-third (1/3) share of all the products of parcels 1, 2, 5 and 7 and the rental of the house in parcel 7 from the time the defendant took possession of the properties after the death of their father in 1944 up to February, 1951 when she sold her shares to the defendant, or the amount of P1,542.00 annually, and ordering the defendant to deliver said amount to Gertrudes Ibatan. She is also entitled to receive one-third (1/3) share of the products of parcel 7 from 1952, or the amount of P8.00 annually, until

her share is actually delivered to her;

4. Declaring that Alejandra Ibatan and/or her children are entitled to one-third (1/3) share of all the products of parcels 1, 2, 5 and 7 and the rental of the house in parcel 7 from 1944, or the sum of P1,542.00 annually, and ordering the defendant to deliver said amount to the children of Alejandra Ibatan, minus the amount of P740.00 representing the amount of mortgage to Apolonio Indita and expenses in prosecuting the case of parricide against Alejandra's husband until her shares are actually delivered to them;

5. Ordering the defendant to pay to the plaintiffs the amount of P500.00 for attorney's fees and P250.00 for expenses of litigation; and

6. To pay the costs of the suit." (pp. 24--25, Rollo)

Petitioners appealed the decision to the Court of Appeals. The appellate court however, dismissed the same and the decision of the trial court became final and executory.

On January 20, 1970, the Court of First Instance of Leyte issued a writ of execution of the final judgment in Civil Case No. 839.

On March 13, 1970, the deputy sheriff levied upon the real properties of Quiterio Ibatan for the satisfaction of the judgment debt. Thereafter, he submitted to the court on March 14, 1970 a return of the writ stating as follows: that when defendant Quiterio Ibatan was served with the writ, the latter refused to sign for acknowledgment thereof alleging that he will first consult his lawyer; that in the presence of Gertrudes Ibatan, tenants of Quiterio Ibatan, the Chief of Police of this municipality and many others, the parcels of land described in sub-paragraphs 1, 2 and 5 under paragraph VI of the complaint were divided among the children of Alejandra Ibatan and Quiterio Ibatan; that the latter failed to show up during the time of partition despite personal and written notice; and that the money judgment against the defendant is still unsatisfied but the sheriff was already at the stage of levying the properties of defendant Quiterio Ibatan.

On March 17, 1970, the deputy sheriff registered the notice of levy on execution with the Register of Deeds of the province of Leyte.

In the meantime, the defendant Ibatan remained in actual possession of the properties subject of the partition. Thus, private respondents on June 29, 1970, filed a petition for contempt of court against him. Ibatan filed an opposition to the petition.

On July 25, 1970, the respondent judge denied the petition to declare defendant in contempt on the ground that the execution made by the sheriff was not valid because of the lack of specifications as to which portions of the parcels of land were to be delivered to prevailing parties. The judge also ordered all the parties to agree upon a project of partition, and in case of disagreement, the deputy sheriff is thereby commissioned to conduct an inspection of the property and submit to the court a project of partition for approval and upon notice to all parties (pp. 41-42, Rollo).

On June 6, 1971, defendant Quiterio Ibatan died and he was substituted by petitioners herein as his legal heirs.

On September 14, 1971, private respondents filed a motion for issuance of an alias writ of execution for the satisfaction of the money judgment. The court granted the motion on September 18, 1971 and issued an alias writ of execution on October 5, 1971 (pp. 44-45, Rollo). The deputy sheriff filed with the Registry of Deeds of Tacloban City on November 15, 1971 a subsequent notice of levy on execution upon the real properties of the deceased defendant for the satisfaction of the money judgment plus sheriff's fees and other expenses incidental to the execution.

On April 3, 1972, the petitioners filed a motion to set aside the alias writ of execution and the levy on execution, alleging that insofar as the money judgment is concerned, the same could no longer be executed due to the fact that the judgment-debtor Quiterio Ibatan was already dead. The court denied the motion on the ground that it failed to disclose to the court the identities of the movants. Petitioners moved to reconsider the order of denial.

In the meantime, petitioners filed a petition for repartition contending that there were actually only three (3) parcels of land to be partitioned instead of four (4) parcels as reported in the first execution on February 11, 1970, and that repartition would be just and equitable to both parties.

The trial court, on October 21, 1972, granted the petition and directed deputy sheriff Vivencio Fallore as commissioner to conduct another ocular inspection of the properties. The latter submitted the commissioner's report with the corresponding sketches of the partition. This was approved by the court in the absence of any objection thereto from the parties during the hearing on the report.

On April 18, 1973, the court denied petitioners' motion to set aside the alias writ of execution and/or to annul the levy on execution, and their motion for reconsideration, holding that the levy on the real properties of the deceased Ibatan made on March 13, 1970, for the satisfaction of the money judgment against him is valid and enforceable by sale.

Hence, on June 28, 1973, the deputy sheriff sold at public auction the properties levied upon on March 13, 1970 to private respondent Gertrudes Ibatan, who was the only bidder during the execution sale. The sale was evidenced by the Sheriff's Certificate of Sale dated July 17, 1973 (pp. 71-73, Rollo).

After the instant petition was filed, this Court issued a temporary restraining order on August 26, 1974 to prevent public respondents from executing final deed of conveyance and possession of the properties mentioned in the sheriff's certificate of sale on July 17, 1973 in favor of respondent Gertrudes Ibatan.

Petitioners argue that the levy on the properties by the sheriff on March 13, 1970 for the satisfaction of the money judgment was not valid since it was made pursuant to a void writ of execution. They allege that the order of respondent judge on July 25, 1970 which dismissed the petition of respondents to declare Quiterio Ibatan in contempt of court, declared that the delivery made by the sheriff of any portion pursuant to the judgment would be invalid because of the lack of specifications therein as to which portions of the land were to be delivered to the prevailing parties, and that the violation of such execution would not legally constitute contempt of court, because in the eyes of the law, there was no valid execution that was violated.

This is the first time that petitioners raised the foregoing argument. Records show that petitioners never questioned before the trial court the validity of the writ of execution dated January 20, 1970. What the petitioners sought to annul or set aside before the trial court was the subsequent or alias writ of execution, on the ground that it was issued after the death of the judgment debtor on June 6, 1971 and therefore, cannot be enforced by levy on the properties of the deceased debtor pursuant to Rule 39 of the Rules of Court. Petitioners having failed to challenge the order of the court directing the issuance of the first writ of execution, they are now estopped from asserting that the said writ was null and void.

Moreover, the jurisdiction and power to entertain motions to quash writs of execution and to correct errors and mistakes in the execution properly belongs to the court which issued the execution. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution (*Seavan Carrier, Inc. v. GTI Sportswear*, No. 65953, July 16, 1985, 137 SCRA 580). The court should first be given the opportunity to correct the errors of its ministerial officers and to control its own process. Failure of the

petitioners in not promptly filing a motion to annul the prior writ of execution issued by the court is fatal to their cause.

Even if We were to disregard the technicalities of this case, petitioners cannot just rely on declaration made by the court as to the invalid execution and delivery by the sheriff of portions of the disputed land to the parties, to justify their contention that the writ is null and void. The court's statement refers only to the improper implementation of the writ by the sheriff with regard only to the delivery of the partitioned portions of the property. In view of this, the court, declared the enforcement erroneous and ordered measures to ensure the proper implementation of the writ (pp. 41-42, Rollo).

To justify the quashing of a writ of execution, there must, of course, be sufficient ground therefor. A writ may be quashed or recalled only when a) it appears that it has been improvidently issued, b) that the writ is defective in substance, or c) is issued against the wrong party, or d) that the judgment debt has been paid, or e) that the writ has been issued without authority, or f) there is a change in the situation of the parties which makes such execution inequitable, or g) the controversy was never submitted to the judgment of the court (*International School, Inc. v. Minister of Labor and Employment*, G.R. No. 54243, July 21, 1989). Clearly, petitioners failed herein to allege or to sufficiently show in their petition the existence of any ground to justify the setting aside of the writ. We find that the order of execution of the trial court on January 20, 1970 is valid where it merely enforces the dispositive portion of the final and executory judgment in the partition case. Consequently, the levy made on the real properties of the judgment debtor Ibatan on March 13, 1970 should also be considered valid and regular in the absence of any showing that the requisites therefor had not been complied with.

Petitioners submit that the trial court acted whimsically in refusing to set aside the alias writ of execution and levy on execution for having been issued after the death of the deceased defendant Quiterio Ibatan. Section 7, Rule 39 of the Rules of Court provides:

“Execution in case of death of party. -- Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases:

“x x x.

“c) In case of the death of the judgment debtor after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands.”

If the levy had been made before the death of the judgment debtor, the sale on execution could be carried to completion in accordance with the aforequoted rule which provides that in case the judgment debtor dies after execution is actually levied upon any of his property, the same may be sold for the satisfaction of judgment. (*Py Eng Chong v. Herrera*, G.R. No. L-31299, March 25, 1976, 70 SCRA 130). In the instant case, the order of execution was issued on January 20, 1970 and the levy on the properties was made on March 13, 1970, prior to the death of Quiterio Ibatan on June 6, 1971. Hence, the properties levied upon by the sheriff may be sold for the satisfaction of the money judgment. The subsequent issuance of the alias writ of execution and levy after the death of Ibatan did not affect the validity of the first writ and levy thereon. It has been held that the issuance of subsequent writs of execution does not operate as abandonment or waiver of a prior writ of execution (*Government v. Echaus and Gonzales*, 71 Phil. 318).

Finally, with respect to the partition of the parcels of land subject of the decision in Civil Case No. 839, We believe that the repartition made by the court on January 13, 1973 (p. 67, Rollo) approving the commissioner's report by the sheriff upon the instance of petitioners herein and without objection from private respondents has cured whatever defects or irregularities attended the execution and delivery of the parcels of land to the prevailing

parties. With respect to the levy and execution sale held on June 28, 1973 for the satisfaction of the money judgment against the judgment debtor, petitioners have not clearly and sufficiently shown to this Court legal and justifiable grounds upon which the foregoing incidents should be nullified and set aside.

ACCORDINGLY, the instant petition is hereby DISMISSED. The temporary restraining order issued by this Court is lifted.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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