

**VICENTE CALUAG AND JULIANA GARCIA, PETITIONERS, VS.
POTENCIANO PECSON AND ANGEL H. MOJICA, JUDGES OF THE
COURT OF FIRST INSTANCE OF BULACAN AND LEON ALEJO,
RESPONDENTS.**

G.R. No. No. L-1403. October 29, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari and prohibition filed by the petitioners on the ground that the respondent judge acted without or in excess of the jurisdiction of the court in rendering the resolution dated April 1, 1947, which declares the petitioners guilty of contempt of court for not complying or performing the order of the court of January 7, 1947, in the case No. 5486 of the Court of First Instance of Bulacan, requiring the petitioners to execute a deed of sale in favor of plaintiff over one-half (1/2) of the land pro indiviso in question, within ten (10) days from the receipt of copy of said resolution, and which orders that the petitioners be imprisoned until they perform the said act.

The first ground on which the petition is based is that the judgment of the court which the petitioners are ordered to perform has not yet become final. This ground is unfounded. From the pleadings and annexes it appears that the judgment of the lower court against the petitioners was appealed to the Court of Appeals and was affirmed by the latter in its decision promulgated on May 50, 1944; that the petition to appeal to the Supreme Court by certiorari filed by the petitioners was denied on July 24, 1944; that a motion for reconsideration filed by the petitioners was also denied on August 21, 1944; that the record of the case, having been destroyed during the liberation, was reconstituted; that on September 24, 1946, the Deputy to Clerk of this Court wrote a letter and notified the petitioners of the resolution of the Court declaring said record reconstituted, together with the copies of the decision of the Court of Appeals and resolutions of the Supreme Court during Japanese occupation of June 24 and August 21, 1944; and that on October 23, 1946, the Clerk of Court of First Instance of Bulacan notified the attorneys for both parties of the said decision of the Court of Appeals and resolutions of the Supreme Court. There can be no question therefore, that the judgment of the Court of First Instance above mentioned as affirmed by the Court of Appeals has become final and executory.

The other two grounds alleged by the petitioners in support of the present petition for certiorari are: that plaintiff's action abated or was extinguished upon the death of the plaintiff Fortunato Alejo, because his right of legal redemption was a personal one, and therefore not transferable to his successors in interest; and that, even assuming that it is not a personal one and therefore transferable, his successors in interest have failed to secure the substitution of said deceased by his legal representative under Sec. 17, Rule 3. These reasons or grounds do not deserve any serious consideration, not only because they are without merits, but because the Court of First Instance of Bulacan, having jurisdiction to render that judgment, the latter cannot be disobeyed however erroneous it may be (*Compañia General de Tabacos v. Alhambra Cigar & Cigarette Mfg. Co.*, 33 Phil. 503; *Golding v. Balatbat*, 36 Phil. 941). And this Court can not in this proceeding correct any error which may have

been committed by the lower court.

However, although not alleged, we may properly take judicial notice of the fact that the respondent Judges have acted without jurisdiction in proceeding against and declaring the petitioners guilty of contempt of court.

The contempt supposed to have been committed by the petitioners is not a direct contempt under Sec. 1, Rule 64, for it is not a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. It is an indirect contempt or disobedience of a lawful order of the court, under Sec. 3, Rule 64, of the Rules of Court. According to Sees. 4 and 5 of said Rule, where a contempt under Sec. 3 has been committed against a superior Court or judge the charge may be filed with such superior court, and the accused put under custody; but if the hearing is ordered to be had forthwith, the accused may be released from custody upon filing a bond in an amount to be fixed by the court for his appearance to answer the charge. From the record it appears that no charge for contempt was filed against the petitioners nor was a trial held. The only proceeding had in this case which led to the conviction of the defendants are: the order of January 7, 1947, issued by the lower court requiring the defendants to execute the deed of conveyance as directed in the judgment within ten (10) days from the receipt of the copy of said order, with the admonition that upon failure to do so, said petitioners will be dealt with for contempt of court; the motion of March 21, 1947, filed by the attorney for the respondent Leon Alejo, administrator of the estate of Fortunato Alejo, that the petitioners be punished for contempt; and the resolution of the Court of April 1, 1947, denying the second motion for reconsideration of March 17, 1947, of the order of January 7, 1947, filed by the petitioners, and ordering the petitioners to be imprisoned in the provincial jail until they have complied with the order of the court above mentioned.

It is well settled that jurisdiction of the subject matter of a particular case is something more than the general power conferred by law upon a court to take cognizance of cases of the general class to which the particular case belongs. It is not enough that a court has power in sMfc i8 abstract to try and decide the class of litigations to which a case belongs; it is necessary that said power be properly invoked, or called into activity, by the filing of a petition, complaint or other appropriate pleading. A Court of First Instance has an abstract jurisdiction or power to try and decide criminal cases for homicide committed within its territorial jurisdiction; but it has" no power to try and decide a criminal case against a person for homicide committed within its territory, unless a complaint or information against him be filed with the said court. And it has also power to try civil cases involving title to real estate situated Within its district; but it has no jurisdiction to take cognizance of a dispute or controversy between two persons Hirer title of real property located in his province, unless a proper complaint be filed with its court. So, although the Court of First Instance of Bulacan has power conferred by law to punish as guilty of indirect contempt a party who disobeys its order or judgment, it did not have or acquire jurisdiction of the particular case under consideration to declare the petitioners guilty of indirect contempt, and order their confinement until they have executed the deed of conveyance in question, because neither a charge has been filed against them nor a hearing thereof held as required by law.

The respondent Judge Angel Mojica acted not only without jurisdiction in proceeding against and declaring the petitioners guilty of contempt, but also in excess of jurisdiction in ordering the confinement of the petitioners, because it had no power to impose such punishment upon the latter.

The respondent judge has no power under the law to order the confinement of the petitioners until they have complied with the order of the court. Sec. 9, Rule 39, in connection with Sec. 7 of Rule 64, provides that if a person is required by a judgment or order of the court to perform any other act than the payment of money or sale or delivery of real or personal property, and said person disobeys such judgment or order while it is yet in his power to perform it, he may be punished for contempt and imprisoned until he performs said order. This provision

is applicable only to specific acts other than those provided for or covered by Sec. 10 of the same Rule, that is, it refers to a specific act which the party or person must personally do, because his personal qualification and circumstances have been taken into consideration in accordance with the provision of Art. 1161 of the Civil Code. But if a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any specific act which may be performed by some other person, or in some other way provided by law -with the same effect, as in the present case, Sec. 10, and not said Sec. 9. of Rule 59 applies? and under the provision of said Sec. 10, the court may direct the act to be done at the cost of the disobedient party, by some other person appointed or designated by the court, and the act when so done shall have like effect as if done by the party himself.

It is also well settled by the authorities that a judgment may be void for want of power to render the particular judgment, though the court may have had jurisdiction over the subject matter and the parties. A wrong decision made within the limits of the court's authority is erroneous and may be corrected on appeal or other direct review, but a wronger for that matter a correct decision is void, and may be set aside either directly or collaterally, where the court exceeds its jurisdiction and power in rendering it. Hence though the court has acquired jurisdiction over the subject matter and the particular case has been submitted properly to it for hearing and decision, it will overstep its jurisdiction if it renders a judgment which it has no power under the law to render. A sentence which imposes upon the defendant in a criminal prosecution a penalty different from or in excess of the maximum which the court is authorized by law to impose for the offense of which the defendant was convicted, is void for want or excess of jurisdiction, as to the excess in the latter case. And a judgment of imprisonment which the court has no constitutional or statutory power to impose, as in the present case, may also be collaterally attacked for want or rather in excess of jurisdiction.

In *Cruz v. Director of Prisons* (17 Phil. 269, 272, 373), this Court said the following applicable to punishment imposed for contempt of court:

"x x x The courts uniformly hold that where a sentence imposes a punishment in excess of the power of the court to impose, such sentence is void in toto; but the weight of authority sustains the proposition that such a sentence is void only as to the excess imposed in case the parts are separable, the rule being that the petitioner is not entitled to his discharge on a writ of habeas corpus unless he has served out so much of the sentence as was valid. (Ex parte Erdmann, 88 Cal., 579; Lowrey vs. Hogue, 85 Cal., 600; Armstrong vs. People, 37 Ill., 459; State vs. Brannon, 34 La Ann., 942; People vs. Liscomb, 19 Am. Rep., 211; In re Taylor, 7 S. D., 382, 45 L. R. A., 136; Ex parte Ivlooney, 26 W. Va., 36, 53 Am. Rep., 59; U. S. vs. Pidgeon. 153 U. S., 48; In re Graham, 138 U. S., 461.)"

In the present case, in view of the failure of the petitioners to execute the deed of conveyance directed in the judgment of the court, the respondent may, under Sec. 10, Rule 39, either order its execution by some other person appointed or designated by the court at the expense of the petitioners, or enter a judgment divesting the title of the petitioner over the property in question and vesting it in Leon Alejo, administrator of estate of the deceased Fortunato Alejo, and such judgment has the force and effect of a conveyance executed in due form of law.

In view of the foregoing, the order of the court of April 7, 1947, ordering the confinement of the petitioners in the provincial jail until they have complied with the order of the court, is set aside without costs. So ordered.

Moran, C.J., Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Paras, J., concurs in the result.

CONCURRING AND DISSENTING OPINION

PERFECTO, J.:

On August 10, 1937, Fortunato Alejo filed a complaint against the spouses Vicente Caluag and Juliana Garcia, herein petitioners, for the redemption of one-half pro indiviso of a parcel of land in Guiguinto, Bulacan, covered by Transfer Certificate No. 19178. After trial, the Court of First Instance of Bulacan rendered judgment on June 23, 1941, ordering petitioners to execute a deed of sale in favor of Fortunato Alejo, upon payment "by plaintiff, as purchase price, of the amount of 12,551.00. The judgment was affirmed by the court of Appeals of Central Luzon on May 30, 1944. A petition for review on certiorari was denied by the Supreme Court of the so-called Republic of the Philippines on July 28, under oath, that he was not notified of said denial. The record of the case was lost or burned during the liberation of Manila. Fortunato Alejo died on December 10, 1944, petitioners made aware of the fact only on December 1, 1946. The record, upon petition, was duly reconstituted on August 30, 1946, a resolution to said effect having been issued by this Court.

On October 21, 1946, respondent Leon Alejo, judicial administrator of the estate of Fortunato Alejo, filed a motion with the Court of First Instance of Bulacan for the execution of the judgment. On October 28, the motion was indefinitely postponed. On November 21, Leon Alejo filed another motion for the execution of the judgment, which was granted on January 7, 1947, Judge Potenciano Pecson ordering defendants "to execute the deed of sale in favor of the plaintiff for the sum of P2,551.00 over one-half of the land pro indiviso described in Transfer Certificate of Title No. 191.78 within ten days from the receipt of a copy of this order; upon failure to do so the said defendants will be dealt with for contempt of court;"

On February 3, 1947, Leon Alejo filed a petition praying that defendants be punished for contempt for having failed to comply with the order of January 7. On February 19, defendants filed a petition seeking reconsideration of the order of January 7, and dismissal of the complaint for contempt, upon three grounds: (a) That the judgment of the Court of Appeals of Central Luzon, has not become final, and executory; (b) That the plaintiff's action was abated or extinguished upon Fortunato Alejo's death, his right of legal redemption being personal; and (c) That his successors cannot ask for the execution of the judgment because they failed to secure the reglementary substitution of parties and amendment of the judgment.

On March 3, Judge Pecson denied defendants' petition and granted them five days within which to comply with the order of January 7, otherwise they would be held in contempt of court. On March 17, defendants filed another petition for reconsideration. On March 21, Leon Alejo moved again that defendants be punished for contempt. On April 1, Judge Angel J. Hojica issued a resolution denying the second petition for reconsideration, finding defendants guilty of contempt of court and ordering their confinement in the provincial jail of Bulacan until they have complied with the order of January 7, directing further that warrant of arrest be issued to said effect. On April 1, 1947, Leon Alejo deposited with the court of first instance the amount of P2,261.63, evidenced by provincial receipt No. 211013.

Upon the above facts, petitioners raise before us several questions,

(a) LACK OF NOTIFICATION

Petitioners maintain that the decision of the Court of Appeals of Central Luzon, promulgated on May 30, 1944, and the resolution of the Supreme Court of the so-called Republic of the Philippines, issued on July 24, 1944, denying their petition for review on certiorari, had not yet become final, because their counsel has not yet received a copy of the resolution of denial dated July 24, 1944.

Although the allegation of non-receipt of notice is made under oath and the opposing party do not specifically contradict the allegation, in respondent Leon Alejo's answer it is stated that petitioners filed a motion for reconsideration of the resolution of denial of July 24, 1944, and the motion was denied on August 21, 1944.

A perusal of the record as declared reconstituted by this Court demonstrates that on August 11, 1944, the Supreme Court of the so-called Republic of the Philippines adopted a resolution granting petitioners an extension of five days only of the reglementary period within which to file a motion for reconsideration of the resolution of denial of July 24, 1944, the extension granted being in response to petitioners' prayer for an extension of ten days, and that on August 21, 1944, said Supreme Court issue' a resolution denying the motion for reconsideration, with Mr. Justice Ozaeta dissenting.

The authenticity of the copies of papers forming part of the reconstituted record has not been disputed by petitioners. We may, therefore, assume that said record represents the proceedings which have taken place. Upon this premise, we are constrained to dismiss petitioners' allegation that they were not notified of the resolution of denial of July 24, 1944, as, otherwise, they could not have filed a petition for extension of ten days and, after being given an extension of only five days, a motion for reconsideration, the filing of which was necessarily based on petitioners' knowledge of the resolution of denial; of July 24, 1944, a knowledge that they should have obtained, in the ordinary course of judicial proceedings, from official notification.

Petitioners' contention, being based on a fact that is unacceptable, has no leg to stand on.

(b) EFFECT OF FORTUNATO ALEJO'S DEATH

The next question raised by petitioners is that upon Fortunato Alejo's death on December 10, 1944, the complaint "was abated or extinguished," his "act of legal redemption being personal and not real," and his heirs "could not have acquired that right" (of legal redemption),

Petitioners appear to labor under the confusion of mistaken concepts. They assume that the right of legal redemption of Fortunato Alejo is of such personal nature that it could not be transmitted to his heirs. The proposition has no basis in law. There is absolutely no reason why his heirs could not inherit said right of legal redemption. Petitioners then jump to the proposition that Fortunato Alejo's death "abated or extinguished" his complaint, premised on the wrong idea that the right of legal redemption is not transmissible by inheritance. The reasoning is the result of a confusion of petitioners' wrong concept on substantive law with a mistaken idea of adjective law.

Petitioners' contention has no merit.

(c) NINE-DAY PERIOD

Petitioners contend that, granting arguendo that the judgment has become final and executory and that Fortunato Alejo's heirs stepped into his shoes after his death and could have exercised his right of legal redemption, "they should have done or exercised it within nine days from his death or knowledge thereof."

Petitioners chose not to adduce any reason in support of the theory which has absolutely no basis in law.

(d) PROCEDURAL OMISSIONS

Petitioners allege that Fortunato Alejo's heirs, or the administrator or executor of his estate, are not entitled to the execution of the judgment due to three procedural omissions, i.e. a. No petition for substitution has been filed with the Court of Appeals of Central Luzon; b. No petition to secure amendment of the judgment so as to make effective the substitution; and c. No petition to remand the record to the Court of First Instance of Bulacan.

The grounds alleged are exclusively technical in nature and of scant importance. After the judgment became final and executory, it is late to raise the question of substitution. In the present case, it appears that Leon Alejo is appearing as the judicial administrator of the deceased Fortunato Alejo. Such a representative capacity, undoubtedly given to him by proper judicial appointment[^] satisfies fully the legal purposes of substitution. The remanding of the record to the Court of First Instance of Bulacan is a matter of official duty, compliance of which does not require any initiative from any party.

(e) CONTEMPT OF COURT

Petitioners allege that they could not properly and legally be declared in contempt of court because: a. The judgment sought to be executed ordered them to execute the corresponding deed of sale upon payment by plaintiff of the sum of P2,551.00, and only the sum of P2,261.63 has so far been paid or consigned, thus leaving a balance of P289.37, and b. The judgment provides that the sale be executed "in favor of Fortunato Alejo, who is now dead."

Respondent Leon Alejo answered that the amount deposited with the Court of First Instance of Bulacan is P2,551. At the hearing, his attorney explained that two deposits were made, one in the sum of P2,261.63 and the other in the amount of P289.37, due to a misunderstanding of the clerk of the lower court of said respondent. But the fact that the deposit -was made only on April 1, 1947, as alleged under oath by petitioners, is not denied by respondent, April 1, 1947, is the date of the resolution issued by Judge Mojica, ordering confinement of petitioners in the provincial jail of Bulacan until they comply -with the order of January 7, 1947.

Upon the technicality of substitution, petitioners' contention is without merit.

We are of opinion that the resolution holding petitioners guilty of contempt and ordering their confinement in the provincial jail of Bulacan should be denied force and effect upon weightier grounds than the ones alleged by petitioners.

The applicable provision of law in this case is Section 10 of Rule 39 which provides:

"Judgment for specific acts; vesting title.—If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is within the Philippines, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment, shall have the force and effect of a conveyance executed in due form of law."

Accordingly, instead of intimidating petitioners to be dealt with for contempt of court, as provided In the last part of its order of January 7, 1947, and insisting in its order of March 3, 1947, that petitioners should comply with said order of January 7, reiterating that, otherwise, "the court will "be constrained to hold said defendants in contempt of court" and, lastly, in issuing the resolution of April 1, 1947, finding petitioners guilty of contempt, ordering their confinement in the provincial jail of Bulacan, until they have complied with the order of January 7, and, to said effect, ordering their arrest, the lower court should have directed that the deed of sale provided in the judgment and in the order of January 7, to be executed by petitioners, be done by some other person "appointed by the court" and "at the cost of the disobedient party." The lower court's orders Intimidating petitioners with punishment for contempt, and ordering their arrest and confinement in the provincial jail of Bulacan for an indeterminate period, until they have complied with the order of January 7, a course of action that petitioners may not follow until their respective deaths, must be declared null and void.

There are members of this Court which hold the position that the lower court could have legally followed two

alternatives, either by applying the above-quoted Section 10 of Rule 39 or by punishing petitioners for contempt, by applying Section 9 of the same Rule 39, but they are of opinion that the lower court acted with grave abuse of discretion by resorting to the drastic measure of contempt proceedings, when the proceeding outlined by Section 10 of Rule 39 could be availed of easily and without causing unnecessary suffering to any party. The rule is that when two or more means are available to attain a legal end, harsher ones should only be adopted as a last resort.

There are other members of this Court, among them the writer of this opinion, that are convinced that in the case at bar Section 9 of Rule 39 is not applicable and the lower court could not have followed other proceeding than the one outlined by Section 10 of Rule 39. "Furthermore, those of us who maintain such position, are of opinion that, even in the hypothesis that the lower court could have followed the contempt proceedings outlined by Section 9 of Rule 39, the lower court could only punish petitioners with fine or fixed term of imprisonment, or both, as provided by Section 6 of Rule 64, but never to hold them in confinement, as provided in the resolution of April 1, 1947, for an indefinite period, until petitioners should choose to execute the deed of sale in question. Although that authority is granted in Section. 7 of Rule 64, we hold that said section cannot be given force nor effect, because it is null and void as violative of the following constitutional mandatet "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." (Sec. 1(19), Art. III of the Constitution.)

While petitioners could have avoided altogether any imprisonment or they could reduce its term to any period of time they may choose, there is nothing to preclude them from undergoing forty or more years imprisonment, if they decide to continue refusing that long, while the life imprisonment provided by the Revised Penal Code for the most heinous crimes, murder, parricide, treason, and others, is limited to a maximum of thirty years. Is it not shocking that a longer term should be imposed for a simple refusal to sign a deed of sale, for which refusal the disobedient party may have strong reasons, because he may deem it humiliating, than for the most hateful crimes known under our laws? By the way, is it not absurd for the lower court to wait for petitioners to execute the deed of sale until they choose to perform the action required £sjp» them, which may take years, instead of appointing a third person to perform the act according to Section 1.0 of Rule 39, which will take just a small fraction of a day?

For all the foregoing, the orders of the lower court of January 7, March 3, and April 1, 1947, are set aside. To make effective the execution of the deed of sale as provided in the judgment in question, upon the validity of which the members of this Court follow the same alignment as that in the case of Co Kim Cham vs. Valdes, L-5[1], the lower court is ordered to follow the procedure outlined by Section 10 of Rule 39. The petition is denied in all other respects.

Certain offers subject of petition are set aside.

[1]75 Phil., 113 and 371.

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