

**ATTY. FRANCISCO C. DIVINAGRACIA, JR., PLAINTIFF-APPELLEE, VS.
MA. CRISTETA M. MANALO, AS EXECUTRIX OF THE TESTATE
ESTATE OF THE LATE SALVACION MONTECLARO,
DEFENDANT-APPELLANT.**

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before this Court is the Appeal[1] assailing the Decision[2] dated June 13, 2011 of Branch 33, Regional Trial Court, Iloilo City (hereafter, the “court a quo”), in Civil Case No. 10-30796, reviving the Decision of Branch 30 of the Regional Trial Court, Iloilo City in CAR Case No. 4143. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, a decision is hereby rendered reviving the judgment in CAR Case No. 4143 rendered by the Regional Trial Court, Branch 30, Iloilo City and ordering the defendant in this case, Ma. Cristeta M. Manalo as Executrix of the Testate Estate of the late Salvacion Monteclaro, to deliver to plaintiff Atty. Francisco C. Divinagracia, Jr. the area of Two Hundred Fifty (250) square meters from Lot 2404 covered by Transfer Certificate of Title No. T-31436 as his attorney's fees pursuant to the CAR Case No. 4143.

SO ORDERED.

The facts of the case as synthesized by the court a quo are as follows:

The plaintiffs alleged that last December 20, 2001, while the late Salvacion J. Monteclaro was still alive, there was a case entitled “Jesus Nacional represented by his heir Arturo Nacional versus Sps. Serafin Linacero, et. al., docketed as CAR Case No. 4143, Branch 30 of this Court where Salvacion Monteclaro was one of the parties therein. In the said case, a Decision dated December 20, 2001 was rendered based on a Compromise Agreement dated June, 2001. It was provided in paragraph 3 of the said Decision, that defendant Salvacion Monteclaro agrees to assume the plaintiff's obligation therein, by giving, ceding, transferring and conveying in favor of counsel therein Atty. Francisco C. Divinagracia, Jr. of an area consisting of Two Hundred Fifty (250) square meters to be taken from Lot No. 2404 covered by TCT No. T-31436. The said Decision rendered on December 20, 2001 became immediately final and executory as it was based on a compromise agreement. However, despite the finality of the same, defendant Salvacion Monteclaro failed to abide by it and until now, the area of Two Hundred Fifty (250) square meters from Lot. No. 2404 covered by TCT No. T-31436 which was allotted for the plaintiff as his attorney's fees remains elusive to him. Although the judgment was not executed by mere motion within the period of five (5) years from date of the entry of or from the time decision becomes final and executory, said judgment can still be enforced by an action to be instituted within the period of ten (10) years provided under No. 3 of Article 1144 of the Civil Code of the Philippines, thus this complaint is precisely filed for revival of action which is done within the reglementary period. As shown in the entry of judgment dated December 20, 2001, the period of ten (10) years will prescribed on December 20, 2011, hence the decision to be revived by the action and to be executed is not yet barred by the laws on prescription nor by statute of limitations. Assuming that the reckoning date is the date of the compromise settlement which is June 2001, still the ten (10) year prescriptive period for revival of action has not yet prescribed.

In answer to the complaint, defendant Ma. Cristeta M. Manalo averred that the complaint should be dismissed

for failure to implead indispensable parties, more particularly the plaintiffs and other defendants in CAR Case No. 4143. While defendant was the executor of the Testate Estate of the late Salvacion Monteclaro, her authority had already ceased when the Project of Partition was approved by the Court and the respective hereditary shares of the heirs have been distributed way back in the year 2007. Defendant had long ceased to become the executor of the Testate (sic) Estate of the late Salvacion Monteclaro, as a matter of fact the same special proceedings had long been closed and terminated. The plaintiff has not also filed any claim against the estate of the late Salvacion Monteclaro before the testate court during the pendency thereof and within the period provided by the rules, hence, whatever claim he may have against the estate is already barred.

The court a quo declared the defendant-appellant in default for her failure to appear during the preliminary conference. The plaintiff-appellee was the allowed to present evidence ex parte.

On June 13, 2011, the court a quo issued the assailed Decision. Unfazed, defendant-appellant filed a Notice to Appeal[3] which was given due course via an Order dated July 18, 2011.[4]

Hence, this Appeal, defendant-appellant making the lone assignment of error:

THE HONORABLE COURT ERRED IN ORDERING DEFENDANT-APPELLANT, AS EXECUTRIX OF THE TESTATE ESTATE OF THE LATE SALVACION MONTECLARO, TO DELIVER TO PLAINTIFF-APPELLEE ATTY. FRANCISCO C. DIVINAGRACIA, JR. THE AREA OF TWO HUNDRED FIFTY (250) SQUARE METERS FROM LOT 2404 COVERED BY TRANSFER CERTIFICATE OF TITLE NO. T-31436 AS HIS ATTORNEY'S FEES PURSUANT TO THE CAR CASE NO. 4143, WHICH IN EFFECT MODIFIED THE JUDGMENT SUBJECT OF THE INSTANT ACTION FOR REVIVAL.

During the pendency of the case before the Court, the heirs of plaintiff-appellee filed a Notice of Death and Substitution,[5] informing the Court of the death of Atty. Francisco C. Divinagracia, Jr., with prayer that the latter be substituted by his heirs.

Defendant-appellant argues that the court a quo exceeded its jurisdiction when it ordered her to deliver to plaintiff-appellee the Two Hundred Fifty (250) square meter portion of Lot 2404 (hereafter, "subject lot") because her authority as executor of the Testate Estate of Salvacion Monteclaro was terminated when the Project of Partition was approved by the probate court and the respective shares of the heirs have been distributed to them. Moreover, defendant-appellant asserts that she was not a privy to the CAR Case No. 4143. Defendant-appellant maintains that the special proceedings of Testate Estate of Salvacion Monteclaro had long been closed and terminated. It is also posited that plaintiff-appellee did not file any claim against the estate. Defendant-appellant further maintains that plaintiff-appellee failed to implead as indispensable parties the other parties of CAR Case No. 4143. Lastly, defendant-appellant claims that the payment for the supposed attorney's fees is illegal for being contrary to the provision of Article 1491.

The heirs of plaintiff-appellee, on the other hand, claim that the court a quo did not go beyond the limit of its jurisdiction by ordering the revival of judgment and in ordering defendant-appellant, as executrix, to deliver to plaintiff-appellee the subject lot. They allege that Transfer Certificate of Title No. T-31436 covering Lot 2404 is still intact and has not been subdivided. It is posited that the conveyance of the subject property is not illegal as it is not contrary to the provision of paragraph 5, Article 1491 of the Civil Code.

The Ruling of the Court

We deny the appeal.

It bears noting that defendant-appellant does not challenge the authenticity of the 2001 Decision in CAR Case No. 4143. The issue posed before Us is whether the said judgment can still be revived; and if so, how the said judgment can be enforced.

An action for revival of judgment is governed by Article 1144 (3), Article 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court. Thus,

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

x x x x

(3) Upon a judgment

Article 1152 of the Civil Code states:

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

Apropos, Section 6, Rule 39 of the Rules of Court reads:

Sec. 6. Execution by motion or by independent action. - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The rules are clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten years from the time the judgment becomes final.[6]

Notably, a compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Once submitted to the court and stamped with judicial approval, it becomes more than a mere private contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment. Consequently, a judgment rendered in accordance with a compromise agreement is immediately executory as there is no appeal from such judgment.[7]

In the instant case, the Decision in CAR Case No. 4143 (which portion the plaintiff-appellee wants to enforce) was based on the compromise agreement executed by the parties thereof, and was dated December 20, 2001. By operation of law, December 20, 2001 is likewise the date of finality of the said decision. Hence, the prescriptive period of ten (10) years for the filing of a revival of judgment case would be December 2011.

With the filing of the instant case before the court a quo on December 10, 2010, it is clear that it is not yet barred by the statute of limitations.

Since Salvacion Monteclaro already died, judgment in CAR Case No. 4143 is enforceable against her estate, where defendant-appellant is the executrix. Section 7(b), Rule 39 of the Rules of Court mandates that:

Sec. 7. Execution in case of death of party. — In case of death of a party, execution may issue or be enforced in the following manner:

xxx

(b) In case of death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;

xxx

Defendant-appellant contends that plaintiff-appellee could not anymore claim his judgment because the special proceedings for the testate estate of Salvacion Monteclaro had been closed and terminated with the approval of the Project of Partition executed by the heirs and the delivery of the respective shares to them.

We do not agree.

In the first place, there was no proof that the probate court had already issued an order declaring the estate proceedings closed and terminated.

Moreover, the finality of the approval of the project of partition does not terminate the probate proceeding.[8] The rule is that as long as the order for the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated. The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same.[9]

The term "delivery" or tradition has two aspects: (1) the de jure delivery or the execution of deeds of conveyance and (2) the delivery of the material possession (*Florendo vs. Foz*, 20 Phil. 388, 393). The usual practice is that, if the land to be delivered is in the name of the decedent, the administrator executes a deed, conveying the land to the distributee. That deed, together with the project of partition, the order approving it, the letters of administration and the certification as to the payment of the estate, inheritance and realty taxes, is registered in the corresponding Registry of Deeds. Title would then be issued to the distributee. Thereafter, the administrator or executor places him in material possession of the land if the same is in the custody of the former.[10]

A perusal of TCT No. T-31436 of Lot 2404 reveals that as of May 19, 2010, Lot 2404 was still registered in the name of Salvacion Monteclaro. Apparently, at the time that the instant revival of judgment was filed, the subject lot was not yet "delivered" to the heirs.

Lastly, We cannot give credence to the assertion of defendant-appellant that the conveyance of the subject lot to plaintiff-appellee would be illegal being contrary to Article 1491 of the Civil Code of the Philippines.

Article 1491(5) of the Civil Code provides:

1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

xxx

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

xxx

Here, Article 1491 does not apply. True, the subject lot is a portion of Lot 2404 which was the subject of compromise agreement, however, the supposed transfer of the subject lot to plaintiff-appellee takes effect only after the finality of the judgment as his attorney's fees. Hence, this agreement is akin to that of a contingent fee which is generally not covered by Article 1491.[11]

More importantly, a case for revival of judgment is a new and independent action wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.[12]

Besides, it would be more in keeping with justice and equity to allow the revival of the judgment rendered in CAR Case No. 4143 and execute the same from the estate of Salvacion Monteclaro.

WHEREFORE, the Decision dated June 13, 2011 of Branch 33, Regional Trial Court, Iloilo City in Civil Case No. 10-30796 is AFFIRMED.

SO ORDERED.s

Ingles, Chairperson, and Lagura-Yap, JJ., concur.

[*]Substituted by his heirs and granted by the Court per Resolution dated May 30, 2013 Rollo, p. 66.

[1] Rollo, p. 17.

[2] Records, p. 75.

[3] Ibid., p. 79.

[4] Ibid., p. 82.

[5] Rollo, p. 59.

[6] Villeza v. German Management and Services, Inc., G.R. No. 182937, August 8, 2010.

[7] Reyes- Mesugas v. Reyes, G.R. No. 174835, March 22, 2010, citing Article 2028, New Civil Code; Domingo v. Court of Appeals, 325 Phil. 469 (1996).

[8] Guilas v. Judge of the Court of First Instance of Pampanga, et al., G.R. No. L-26695 January 31, 1972, citing Timbol vs. Cano, 1 SCRA 1271, 1276, L-15445, April 29, 1961; Siguiong vs. Tecson, 89 Phil., pp. 28-30).

[9] Ariaga Vda. de Gurrea v. Suplico, G.R. NO. 144320, April 26, 2006, citing Portugal v. Portugal-Beltran, G.R. No. 155555, August 16, 2005; Guilas v. Judge of the Court of First Instance of Pampanga, et al., *ibid.*

[10] Ariaga Vda. de Gurrea v. Suplico, *ibid.*, citing Lucero v. Bañaga, 158 Phil. 408 (1974).

[11] See Biascan v. Lopez, A.C. No. 4650, August 14, 2003, citing Director of Lands v. Ababa, G.R. No. L-26096, 27 February 1979.

[12] See Juco v. Heirs of Tomas Siy Chung Fu, G.R. NO. 150233, February 16, 2005.

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