

**CONRADO C. DE JESUS AND EMILIA ESTRELLA DE JESUS,
PETITIONERS, VS. HON. FELIX R. DOMINGO, HON. ANTONIO
PERALTA PAREDES, SPECIAL CITY COURT SHERIFF PROCULO E.
CARDENAS, AND TRINI...**

G.R. Nos. L-30006-07. August 31, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The spouses Conrado C. de Jesus and Emilia Estrella de Jesus seek a writ of certiorari and/or prohibition with preliminary injunction to annul an order of respondent Hon. Felix R. Domingo, as Judge of First Instance of Manila, dismissing the petition of said Conrado C. de Jesus - hereinafter referred to as De Jesus - for relief in Civil Case No. 72104 of said court of first instance, as well as a writ of execution issued by respondent Hon. Antonio Perelta Paredes of the City Court of Manila, in connection with Civil Case 156580 thereof, and the levy made, in compliance therewith, by respondent Proculo E. Cardenas, as Special City Court Sheriff of Manila.

The record shows that on January 6, 1966, respondent Trinidad D. Fernandez, assisted by her husband, respondent Ricardo G. Fernandez, instituted said Case No. 156580 of the city court, against De Jesus, to recover the sum of P3,000 representing the amount of a promissory note executed by him, on November 14, 1966, in favor of Mrs. Fernandez. In his amended answer, De Jesus alleged inter alia, that he signed the promissory note merely for the accommodation of one Ramon G. Diaz, and set up a counterclaim for damages. At the same time, De Jesus filed a third-party complaint against Diaz, for him to pay to Mrs. Fernandez the sum claimed by her in the complaint. In due course, the city court rendered judgment on August 29, 1967, sentencing De Jesus to pay to Mrs. Fernandez the aforementioned sum of P3,000, with interest thereon, and P200 as attorney's fees, apart from the costs, as well as dismissing the counterclaim of De Jesus, and sentencing Diaz to pay to De Jesus the amount he had been adjudged indebted to Mrs. Fernandez.

De Jesus appealed to the Court of First Instance of Manila, where the case was docketed as Civil Case No. 72104, which was assigned to Branch XV of said court, presided over by respondent, Hon. Felix R. Domingo, Judge. On February 27, 1968, said court issued an order setting the case for pre-trial on April 5, 1968. On that date, Judge Domingo was, however, absent, in view of which the pre-trial was, by agreement between the parties, reset for May 22, 1968. Since judge Domingo would be on leave on the date last mentioned, he issued, on May 15, 1968, an order resetting the pre-trial for July 17, 1968, on which date neither De Jesus nor his counsel appeared before the court. On motion of Mr. and Mrs. Fernandez, Judge Domingo, accordingly, issued an order of the same date dismissing the appeal, for failure of De Jesus to prosecute the same. On August 20, 1968, counsel for De Jesus moved to reconsider said order, alleging that the registry postal notices of the pre-trial order of May 15 had not been turned over to him due to inadvertence or excusable neglect of the messenger to whom they were delivered and to the fact that in June, 1968, said counsel was outside the city convalescing from a recurring ailment. This motion for reconsideration having been denied by Judge Domingo, in an order dated September 10, 1968, the record was remanded to the city court, which, on motion of Mr. and Mrs. Fernandez, issued, on October 29, 1968,

the corresponding writ of execution.

On November 16, 1968, De Jesus moved to lift the same, upon the ground that he had not received notice of the order of Judge Domingo denying said motion for reconsideration. Thereupon, or on November 18, 1968, City Court Judge, Hon. Antonio Peralta Paredes, issued an order directing the Sheriff of Manila to hold in abeyance any action on the writ of execution, pending resolution of said motion of November 16, 1968. Mr. and Mrs. Fernandez having subsequently shown that said motion for reconsideration of De Jesus had been denied by the court of first instance, the aforementioned order of November 18 was set aside the next day. On November 26, 1968, De Jesus filed, with the city court, a motion to lift the levy made by respondent Sheriff upon certain personal properties specified in the motion, alleging that said properties belong exclusively to his wife, Mrs. de Jesus, whose affidavit was appended to the motion, and that she and the conjugal properties are not liable for his debts that have "never benefited the conjugal partnership." On November 29, De Jesus moved, upon the same ground, for a restraining order to suspend the execution. Petitioners herein, likewise, allege that, on December 13, 1968, Mrs. de Jesus filed a "third-party claim and motion to dissolve special sheriff's levy," although copy of the claim has not been attached to the petition, despite the allegation to the contrary therein made.

Petitioners further aver that, in view of the failure of the city court to act on said motions of November 16 and 26, and December 13, 1968, on December 5, 1968, De Jesus filed, in Civil Case No. 72104 of the Court of First Instance of Manila, a petition (Annex T), based upon fraud, accident, mistake or excusable negligence, for relief from the order of the city court of November 19, 1968, lifting its order restraining the Sheriff from enforcing the writ of execution of October 29, 1968. On December 9, De Jesus filed, with said court of first instance, a motion for a restraining order or a writ of preliminary injunction against the city court, the Sheriff "and any other person or persons deriving their right from said inferior court," until the aforementioned petition for a declaratory relief shall have been resolved. Acting upon this motion, Judge Domingo issued, on December 18, 1968, the restraining order prayed for (Annex BB) and an order (Annex Z) directing the postmaster of Makati to certify to the court whether or not notice of the registered mail containing copy of such restraining order had been sent to and received by counsel for De Jesus.

Thereafter, or on December 26, Judge Domingo issued an order (Annex A) dismissing the petition for relief and lifting "the order granting the issuance of the writ of preliminary injunction, as well as the restraining order issued on December 18, 1968," upon the ground that an order for the issuance of a writ of execution, such as that complained of, is not a "judgment", as the term is used in section 1 of Rule 38 of the Rules of Court and that copy of the order of September 10, 1968, denying the motion for reconsideration of De Jesus, had been sent to him by registered mail and notice thereof sent to him, but he did not claim from the post office the envelope containing said copy and, hence, it was returned to the court. Soon thereafter, or on January 6, 1969, Mr. and Mrs. de Jesus filed the present action for certiorari and prohibition, with preliminary injunction, against Judge Domingo of the Court of First Instance of Manila, Judge Antonio Peralta Paredes of the City Court, Special City Court Sheriff Proculo E. Cardenas and Mr. and Mrs. Fernandez. On January 14, We issued a writ of preliminary injunction restraining said respondents from further action in Civil Case No. 72104 of the Court of First Instance of Manila, and Civil Case No. 156580 of the City Court of Manila.

Petitioners maintain (1) that respondent judge Domingo has erred in issuing said order of dismissal, dated January 6, 1969, for he had, it is claimed, jurisdiction to grant relief against the order of execution of the city court and its order lifting the suspension of the writ of execution; (2) that the sending to petitioners' counsel of copy of the order setting the case for pre-trial on July 17, 1968 was insufficient for purposes of the pre-trial, no such copy having been sent to petitioners themselves; (3) that there is insufficient proof of service to their counsel of the registered mail matter containing copy of said order: and (4) that, owing to insufficient proof of service of the

orders of July 27 and September 10, 1968, "the inferior court never acquired jurisdiction over Civil Case No. 156580."

The first argument is anchored upon the premise that Judge Domingo had refused to apply Section 1 of Rule 38 of the Rules of Court, upon the theory that it merely makes reference to judgments and does not apply to the order of Judge Paredes of November 19, 1968, lifting its order, of the previous day, restraining the Sheriff from enforcing the writ of execution of October 29, 1968. Petitioners insist that, as used in said section, the term "judgment" is synonymous with "final order", and that said order of November 19, 1968 partook of the nature of a final order, and is, accordingly, within the purview of said provision.

An order denying a petition for relief is, however, appealable.[1] Hence, the order of Judge Domingo of January 6, 1969 dismissing the petition for relief in Civil Case No. 72104 of the Court of First Instance of Manila - may not be corrected through the present special civil action for certiorari and prohibition.[2]

Independently of the foregoing, it should be noted that, unlike section 2 of Rule 38 of the Rules of Court, reading -

"When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside." [3]

and, consequently, applies to any judgment, order or proceeding taken against a party in the court of first instance, for:

"The use of the word 'judgment, order or other proceeding' in this section indicates an intention on the part of the Legislature to give a wide latitude to the remedy here provided, and in our opinion its operation is not to be restricted to judgments or orders entered in ordinary contentious litigation where a plaintiff impleads a defendant and brings him into court by personal service of process. In other words the utility of the provision is not limited to actions proper but extends to all sorts of judicial proceedings."

Section 1 of the same Rule provides that:

"When a judgment is rendered by an inferior court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits." [4]

and, in the language of former Chief Justice Moran:

"The relief provided in section 1 is against a judgment rendered by an inferior court where a party has been unjustly deprived of a hearing or has been prevented from taking an appeal, whereas the relief provided in section 2 is against any judgment, order or proceeding taken against a party in a Court of First Instance. Section 2 does not only refer to judgments, but also to orders, or any other proceedings. x x x." [5]

In other words, the order of execution issued by City Judge Paredes on October 29, 1968, and his order of November 19, 1968 lifting his order of November 18, 1968 restraining the enforcement of said writ of execution, in Case No. 156580 of the city court, are not "judgments" within the contemplation of section 1 of Rule 38. Moreover, in connection with said orders, petitioners herein were not deprived, by reason of fraud, accident, mistake or excusable negligence, of a hearing or from taking an appeal. Hence, respondent Judge Domingo did not err in finding himself without authority, under said section 1, to grant relief from the effects of the aforementioned orders of City Judge Paredes.

As regards the alleged insufficiency of the notice of pre-trial in the Court of First Instance and of the proof of

service of said notice and of that of the orders of Judge Domingo, dated July 27 and September 10, 1968, respectively dismissing the appeal of De Jesus and denying his motion for reconsideration of the order of dismissal, We, likewise, find that petitioners' pretense is untenable, because: (1) no appeal having been taken from said order of dismissal, the same became final and executory; (2) there being no question that petitioners' appeal from the decision of the city court had been dismissed, that petitioners' motion for reconsideration of the order of dismissal of the appeal had been denied, and that, accordingly, the record of the case was remanded to the city court for the execution of its decision therein, it follows necessarily that said inferior court had authority to proceed with the enforcement of such decision.

It may not be amiss to point out that petitioners have not submitted any affidavit of merit in support of their petition for relief; that, on the contrary, the record shows that De Jesus has no valid defense against the action instituted against him by Mrs. Fernandez, the former having admittedly executed and signed the promissory note upon which the complaint of Mrs. Fernandez is based; that the defense set up by De Jesus, to the effect that he executed said promissory note merely by way of accommodation to one Ramon G. Diaz against whom he filed a third party complaint, bolsters up the cause of action of Mrs. Fernandez against De Jesus; that the granting of the writs of certiorari, prohibition and mandamus, like that of the petition for relief, is within the sound discretion of the courts, to be exercised on equitable grounds "where necessary to prevent a substantial wrong, or to do substantial justice";[6] and that equity does not justify the issuance of the writs prayed for, since a reinstatement of the case appealed to the Court of First Instance would serve no useful purpose, owing to the absence of any valid defense on the part of petitioner De Jesus, as defendant-appellant in the main case.

Petitioners have, also, prayed that respondents Mr. and Mrs. Fernandez, Proculo Cardenas, and City Judge Paredes, as well as Nestor N. Peña, the Acting Register of Deeds of Quezon City, be dealt with for contempt of court, upon the ground that Mr. and Mrs. Fernandez, and special sheriff Cardenas, together with other persons, had gone to the residence of petitioners herein to levy execution upon their property, despite the writ of preliminary injunction issued by this Court; that City judge Paredes had tried mislead this Court by issuing an order dated December 28, 1968 - purporting to deny petitioners' motion to lift the execution and dissolve the sheriff's levy - although said order was actually forwarded to the sheriff's office on January 15, 1969, or one (1) day after Judge Paredes had been notified of the resolution of this Court requiring him to answer the petition in the case at bar; and that the Acting Register of Deeds of Quezon City had ignored the writ of preliminary injunction issued by this Court, by refusing to cancel the notice of levy annotated on a certificate of title in the name of herein petitioner Mrs. de Jesus.

Upon consideration of petitioners' "motion for contempt" and of the answers thereto, it appears, however, that respondents herein were notified on January 14, 1969 of the issuance of said injunction; that the acts imputed to Mr. and Mrs. Fernandez and sheriff Cardenas, were committed prior thereto, or January 7, 9 and 10, 1969; that it has not been sufficiently shown that the aforementioned order of City Judge Paredes had been ante-dated; that the notice of levy had been filed on December 5, 1968, and no judicial order had been issued directing the cancellation of said notice of levy; and that the persons charged with contempt had desisted from enforcing the writ of execution, upon notice of said injunction. Accordingly, the motion for contempt should be denied.

WHEREFORE, the petition herein is hereby dismissed and the writs prayed for denied. The writ of preliminary injunction issued by this Court is, moreover, set aside, and petitioners' motion for contempt is, likewise, denied. Costs against the petitioners.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Castro and Teehankee, JJ., did not take part.

[1] Section 2, Rule 41, Rules of Court. Bernabe v. Court of Appeals, L-18278, March 30, 1967.

[2] Florendo v. Court of First Instance, 104 Phil. 661; Rios v. Ros, 79 Phil. 243, 244-245; Haw Pia v. San Jose, 78 Phil. 242; Claudio v. Zandueta, 64 Phil. 812.

[3] Underscoring supplied.

[4] Underscoring supplied.

[5] 2 Moran, Comments on the Rules of Court, pp. 232-233. Underscoring supplied.

[6] 14 C.J.S. 137-139; 55 C.J.S. 25-26, 29-30; 73 C.J.S. 18; Encarnacion v. Provincial Sheriff, 67 Phil. 245; Phil. Guaranty Co. v. Belando, 53 Phil. 410, 412; Felismino v. Gloria, 47 Phil. 967, 969; Dirige v. Biranya, L-22033, July 30, 1966.

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