

**JUANA CANAFE, ASSISTED BY HER HUSBAND, RAYMUNDO CEDRO,
PETITIONER, VS. HERMOGENES CALUAG, JUDGE OF FIRST
INSTANCE OF ALBAY, AND CRISTETO SORIA, RESPONDENTS.**

G.R. No. L-1319. July 31, 1947

Ponente: PADILLA, J.

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PADILLA, J.:

On 19 October 1943, an action was brought in the Court of First Instance of Albay to compel the defendant, the herein respondent Cristeto Soria, to allow the plaintiff, the herein petitioner, to redeem a parcel of rice land described in the complaint, the usufruct of which had been ceded to the defendant in exchange for a loan of P280, and to recover the sum of P170, the excess of the value of the products harvested by the defendant in the land over and above the amount of the loan. In the defendant's answer it is averred that the transaction between his predecessor in interest, the late Narciso Buendia, as vendee, and the plaintiff's predecessor in interest, the late Francisco Canafe, as vendor, was a sale of the parcel of land with the right reserved by the vendor to repurchase it within four years from 16 November 1937; and that the time for the repurchase thereof already had expired.

After trial, on 18 May 1944, the Court finding that the transaction was a sale with the right reserved by the vendor to repurchase the parcel of land within eight years, for the contract stipulated an extension of another four years, rendered judgment "declaring that the plaintiffs have the right to repurchase the land described in the complaint from the defendant and latter is ordered to deliver the possession thereof to the plaintiff Juana Canafe and to execute in her favor the corresponding deed of resale, the expenses for the execution of this deed to be paid by the said plaintiff. The clerk of court will deliver to the defendant the sum of P280 deposited with him by the plaintiffs for the benefit of the former and the receiver heretofore appointed will deliver to the plaintiff the palay harvested from the land in question during the month of March 1944. The defendant will pay the costs." (Exhibit A.)

On 30 June, the defendant was notified of the judgment. On 25 July, the defendant filed his notice of appeal. On 28 July, the plaintiff asked for immediate execution of the judgment, on the ground that the appeal taken by the defendant was just to prolong his possession of the parcel of land in order to take advantage of the high prices of palay then prevailing (Exhibit B). On 9 August, in the order allowing the record on appeal, the Court directed the immediate execution of the judgment (Exhibit C). Nothing was done to carry out the writ of execution until after liberation when an alias writ of execution was issued. Pursuant thereto, the plaintiff was placed in possession of the parcel of land. On 5 October 1946, the defendant asked for the annulment of the alias writ of execution and for the reconstitution of the record of the case that had been destroyed, and offered to file a supersedeas bond to stay execution of the judgment (Exhibit D). Plaintiff objected to this motion on the ground that the Court had lost its jurisdiction over the case after the allowance of the record on appeal on 9 August 1944 (Exhibit E). On 21 October 1946, the defendant's motion was denied (Exhibit F). On 23 October, defendant filed a motion for reconsideration of the preceding order and asked that the writ of execution be suspended and that the plaintiff be ordered to deposit with the clerk of court P280 in Philippine money in lieu of the Japanese war notes that were lost (Exhibit G). Notwithstanding plaintiff's verbal objection to the motion on the ground of loss of jurisdiction,

on 26 November, the Court amended the previous order of 21 October, by ordering the plaintiff to deposit the sum of P280 in Philippine currency within fifteen days from receipt of a copy of the order (Exhibit H). On 18 December, plaintiff moved for reconsideration of the preceding order (Exhibit I), but the motion was denied in an order entered on 27 December (Exhibit J).

Petitioner, plaintiff in the case brought in the respondent Court, seeks relief in this Court against the order directing her to deposit, within fifteen days from notice, the sum of P280 in Philippine currency in exchange for an equal sum in Japanese war notes which she had deposited with the clerk of court and were lost as a result of the war, and against the other order denying her motion for reconsideration, on the ground that the respondent Court in entering said orders acted without jurisdiction. The respondent Court, it is contended, lost its jurisdiction over the case after it approved the record on appeal on 9 August, 1944. Hence the orders complained of were beyond the power of the respondent Court to issue and enter.

There is no doubt that the orders complained of had been entered by the respondent Court without jurisdiction. They are not designed to preserve and protect the rights of the parties "which do not involve any matter litigated by the appeal," as provided for in sec. 9, Rule 41, because the respondent Soria, the defendant and appellant therein, may and will certainly raise on appeal the question of the validity of the deposit of P280 with the clerk of court for the repurchase of the parcel of land which his predecessor in interest had acquired by purchase from the petitioner's predecessor in interest with the right reserved by the latter to repurchase it. The orders complained of also amended the judgment rendered in the case by the respondent Court on 18 May, 1944 (Exhibit A). Of course, such an amendment could not be made by the respondent Court, for it had lost its jurisdiction after approving the record on appeal.

It is also clear that the petitioner, the plaintiff therein, cannot appeal from the orders complained of, because the only party who appealed from the judgment was the defendant, the respondent Soria. No other appeal may be allowed to review any subsequent action of the respondent Court after it had lost its jurisdiction over the case. The only recourse left to the petitioner to annul orders of the respondent Court entered without jurisdiction is this extraordinary legal remedy of certiorari.

Therefore, the orders of 26 November and 27 December 1946 are hereby declared null and void for lack of jurisdiction of the respondent Court to enter them. Costs shall be taxed against the respondent Cristeto Soria.

Writ granted.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Hontiveros, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

The main question here is whether the lower court acted without jurisdiction when it issued the order of November 26, 1946, requiring plaintiff to deposit within fifteen days from notice the sum of P280 in Philippine currency, in exchange for the sum in Japanese war notes which plaintiff had deposited with the clerk of court and which were lost as a result of the war.

The lower court ordered on August 9, 1944, the immediate execution of the judgment rendered on May 18, 1944, declaring that the plaintiff has "the right to repurchase the land described in the complaint from the defendant and latter is ordered to deliver the possession thereof to the plaintiff Juana Canafe and to execute in her favor the corresponding deed of resale, the expenses for the execution of this deed to be paid by the said plaintiff." At the

same time, in the judgment it was ordered that the sum of P280, in Japanese war notes, deposited by plaintiff with the clerk of court, be delivered by the latter "to the defendant."

The execution not having been accomplished, an alias writ was issued after liberation. On October 5, 1946, defendant, who had appealed the case, asked for the annulment of the alias writ of execution and offered to file a supersedeas bond to stay said execution. The motion was denied on October 21. On October 23, defendant moved for reconsideration, and on November 26, 1946, the lower court amended its order of October 21, 1946, by ordering plaintiff to deposit the sum of P280 in Philippine currency, undoubtedly, in order that execution of the judgment, as ordered since August 9, 1944, be duly accomplished.

The judgment is composed of two parts: First, where defendant is ordered to deliver the possession of the land in question to plaintiff, and second, where the repurchase price of P280 of the land is ordered to be delivered to defendant.

If the lower court had jurisdiction to order the immediate execution of the judgment,—and there is no dispute in this matter—said jurisdiction must necessarily comprehend the exercise of the power or powers necessary to carry on the execution, no matter whether the record on appeal has already been approved or not, or whether the case is already within the cognizance of the appellate court. In fairness to all the parties concerned, if the lower court's judgment is to be executed, it must not be partially executed, for the exclusive benefit of plaintiff, but in all its parts, including the one where defendant is benefited. The judgment is bilateral in nature, and unilateral execution thereof will be contrary to all principles of justice.

While plaintiff, under the judgment, is entitled to the possession of the land in question and its fruits, under the same judgment, defendant is entitled to the price of the land. It is unjust to deprive defendant of the possession of the land and compel him to undertake the delivery thereof to plaintiff, and at the same time deny him the collection of the sum of P280, the repurchase price which, according to the judgment, he is entitled to receive. To declare now that the lower court acted without jurisdiction when it ordered plaintiff to deposit the amount of P280, is to deprive defendant of the amount to which he is entitled under the judgment order to be executed. Our sense of justice revolts against such a result.

The question is whether the judgment is to be executed or not. If it is to be executed, it should not be through a one-sided procedure. Plaintiff is granted by the judgment something tangible, the land and the fruits thereof, and there is no question as to the possibility of undertaking their delivery to her. Under the same judgment, defendant is entitled to something valuable, the sum of P280, and to declare now that the lower court acted without jurisdiction that that something valuable be deposited with the clerk of court, so that the latter may deliver it to defendant, "pursuant to the dispositive part of the decision rendered in this case" as stated in the order of respondent judge, dated December 27, 1946, is to leave defendant empty-handed.

Our decision is that the petition must be denied with costs against petitioner.

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