

**JULITA FRANCISCO AND HER HUSBAND, HERMENEGILDO
TANKENKO, AND RES-TITUTO FRANCISCO AND HIS WIFE, FELISA
ABEJO, PETITIONERS, VS. CRISPIN V. BAUTISTA, JUDGE OF THE
COURT OF FIRST I...**

G.R. No. L-44167. December 19, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In Civil Case No. 501-V of the then Court of First Instance of Bulacan (Branch III, Valenzuela) -- which was an action for partition and reconveyance instituted by Maxima, Francisca, and Francisco, all surnamed Francisco, together with their respective spouses, against Julita, Romeo Lorenza and Restituto, all also surnamed Francisco, and their respective spouses -- judgment was rendered on August 11, 1971 by Judge Juan de Borja the dispositive portion of which is as follows:

"WHEREFORE, judgment is hereby rendered declaring Maxima Francisco entitled to 138 square meters and Francisca Francisco to 126 square meters from the portion sold to Restituto Francisco, and Francisco Francisco to 360 square meters from the portion sold to Julita Francisco at a price of P11.00 per square meter, the same to be paid within thirty (30) days after this decision becomes final, otherwise plaintiffs shall lose all their rights to said portion, and after payment shall have been made defendants shall execute the proper deeds of conveyance in favor of plaintiffs. * * *." (Emphasis supplied)

This judgment was affirmed by the Court of Appeals in a decision promulgated on September 16, 1975.[1] No appeal was attempted from the Appellate Court's decision which consequently became final and executory on October 9, 1975, and was remanded to the Trial Court for execution.

On January 12, 1976, the plaintiffs filed a motion for execution. The motion was denied by respondent Judge, Hon. Crispin V. Bautista, by Order dated February 2, 1976.[2] His Honor ruled that since the judgment had given the plaintiffs thirty (30) days from finality of decision within which to pay to the defendants the price of the areas respectively awarded to them at the rate of P11.00 per square meter; and since considerably more than thirty (30) days had elapsed since the decision of the Court of Appeals, affirming that of the Trial Court, had become final, said plaintiffs had, in accordance with the judgment, lost "all their rights" to their portions.

The respondent Judge however later reconsidered and set aside his Order of February 2, 1976, on motion of the plaintiffs. This he did in an Order dated April 14, 1976.[3] In said Order, he declared that upon the facts, the failure of the plaintiffs to effect payment within the appointed time could not ascribed to their fault. His Honor found that -

" * * plaintiffs' attempt to tender payment in accordance with the decision of this Court which the Court of Appeals affirmed on September 16, 1975 failed to materialize because plaintiff Restituto Francisco and his wife were in the United States and defendant Julita Francisco to whom plaintiffs rendered payment refused the same which resulted in their failure to comply with their obligation to pay within the period of thirty (30) days

provided for in the decision, the Court considers plaintiffs' attempt to tender payment sufficient to comply with their undertaking. Art. 1186 of the New Civil Code provides that 'the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.'"

The respondent Judge accordingly RESOLVED -

" * * to set aside ** (the) Order of February 2, 1976 and plaintiffs are given a period of fifteen (15) days from receipt of this Order within which to tender payment to the defendants and/or deposit with the Office of the Clerk of Court the amount corresponding to the value of the parcel of land subject matter of this case after the same is segregated from the portion belonging to the defendants."

The defendants moved, in their turn, for reconsideration of the Order of April 14, 1976. The motion was seasonably opposed by the plaintiffs, and thereafter denied by Judge Bautista, by Order dated July 2, 1976. It is these Orders of April 14, and July 2, 1976 that the petitioners would have this Court annul in the special civil action of certiorari at bar.

The petitioners theorize that in rendering the Order of April 14, 1976, respondent Judge had acted with grave abuse of discretion because he had in effect substantially altered the final and executory judgment of his predecessor, as affirmed by the Court of Appeals.

It is well settled that a court has plenary power to alter, modify or even set aside, its own decisions, and even order a new trial, at any time before the decision becomes final, or before an appeal from that decision has been perfected.[4] However, after the decision has become final and executory, it can no longer be amended or corrected by the court except for clerical errors or mistakes.[5] This principle of immutability of judgments already final and executory has invariably been adhered to by this Court regardless of any occasional injustice, for the equity of a particular case must yield to the "overmastering need" of certainty and unalterability of judicial pronouncements.[6] Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[7] It is these principles that petitioners invoke to nullify the questioned orders of the respondent Judge in this case. The facts here and the applicable principles, however, preclude such relief.

A distinction should be made between the jurisdiction of the court to amend, modify or alter its judgment and its power to enforce it. The former ceases to attach when the judgment becomes final, while ordinarily, the latter exists precisely after the judgment has become final for the purpose of its execution,[8] the propriety of its exercise rather than the jurisdiction to amend or modify being the real issue here. Now, in the execution proceedings in question, the court a quo found as a fact that plaintiffs were prevented from consummating the requisite tender of payment due to the absence of two of the defendants from the Philippines and the refusal of the third to accept such tender which, it is not seriously disputed, was attempted within the prescribed 30-day period from finality of the judgment. There is no cogent reason to disturb that factual conclusion, which therefore is binding and conclusive upon this Court.[9]

This Court has held in several cases[10] that where a timely and valid tender of payment is made pursuant to the exercise of a right (not an obligation) it is sufficient, without consignation, to preserve such right.

In *Vda. de Quirino v. Palarca*,[11] it was ruled that consignation referred to in Article 1256 of the Civil Code is inapplicable to a lease with option to buy because said provision refers to consignation as one of the means for the payment or discharge of a "debt," whereas the lessee was not indebted to the lessor for the price of the leased premises. The lessee merely exercised a right of option and had no obligation to pay said price until execution of the deed of sale in his favor, which the lessor refused to do.

And in the fairly recent case of *Legaspi v. Court of Appeals*,^[12] which involved the exercise of the right to repurchase, the Court also held that -

"* * In instances where no debt is due and owing, consignation is not proper.

"We have ruled early that:

‘Consignation is not required to preserve the right of repurchase as a mere tender of payment is enough if made on time as a basis for an action to compel the vendee a retro to resell the property.’

"Since the case at bar involves the exercise of the right to repurchase, a showing that petitioner made valid tender of payment is sufficient. It is enough that sincere or genuine tender of payment and not a mock or deserve one was made. The fact that he deposited the amount of repurchase money with the Clerk of Court was simply an additional security for the petitioner. It was not an essential act that had to be performed after tender of payment was refused by the private respondent although it may serve to indicate the veracity of desire to comply with the obligation."

The tender having been made, not so much to discharge an obligation as to enforce or exercise a right (to a reconveyance of the portions of law adjudged to them), no subsequent consignation was necessary to entitle the private respondents to such reconveyance. Hence, the respondent Judge committed no grave abuse of discretion in setting aside his Order of February 2, 1976 and giving said respondents a new period within which to tender payment to the petitioner and/or deposit the required amount in court. It may even be said that in view of the efficacy of said tender for the purpose of enforcing a reconveyance the grant of a fresh period within which to reiterate the same is superfluous and unnecessary.

Moreover, as previously shown, the rights and obligations of the parties arose from a judgment, not from contract and therefore the Civil Code requirements as to consignation are not applicable.^[13] Thus, in case of refusal of a tender of the amount due on a judgment, the court may direct the money to be paid in court and when this is done, order satisfaction of the judgment to be entered.^[14] The tender of payment of a judgment is not the same as tender of payment of a contractual debt and consignation of the money due from a debtor to a creditor.^[15] The requisites of consignation under Art. 1256 et seq. do not apply to the former.

It appearing that private respondents have already deposited with the Office of the Clerk of Court of the Court of First Instance (now RTC) of Valenzuela, Bulacan, the sum of P6,864.00 in accordance with the order of the court a quo dated April 14, 1976, and this as early as May 13, 1976, or six days after their receipt, thru counsel, on May 7, 1976 of said order,^[16] approval of the consignation and discharge of private respondents' obligation are warranted.

WHEREFORE, the petition is DENIED and the court a quo is hereby ORDERED to approve the consignation made by private respondents, and direct execution of the judgment in question so as to effectuate the reconveyance prescribed therein according to its terms. Costs against petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The decision was written for the Court by Vasquez, J., with whom concurred Leuterio and Bautista, JJ.

[2] Judge Bautista succeeded Judge de Borja after the latter was transferred to Manila.

[3] Annex A, petition

- [4] *People v. Villanueva*, 17 SCRA 272 [1966] citing *U.S. v. Vayson*, 27 Phil. 447, *U.S. v. De Iro*, 33 Phil. 14, *U.S. v. Balliad and Tamaray*, 35 Phil. 14, *People v. Buyson Lampa*, 58 Phil. 757
- [5] *Maramba v. Lozano*, 20 SCRA 474 [1967] citing *Marasigan v. Ronquillo*, 94 Phil. 237; *Gabaya v. Mendoza*, 113 SCRA 400 [1982]; *Heirs of Remigio Tan v. IAC*, 163 SCRA 752 [1988]
- [6] *Gabaya v. Mendoza*, supra citing *Contreras and Ginco v. Felix and China Banking Corp., Inc.*, 44 O.G. 4306
- [7] *Marcopper Mining Corp. v. Liwanag Paras Brios, et al.* 165 SCRA 464 [1988]
- [8] *Santos v. Acuña, et al.*, 53 O.G. 358; *Miranda v. Tiangco, et al.*, 96 Phil. 526
- [9] *Mendoza v. Court of Appeals*, 156 SCRA 597 [1987]; *People v. Adares*, 144 SCRA 364 [1986]; *Tan Hong v. Paredes*, 157 SCRA 694 [1988]; *Alba v. Santander*, 160 SCRA 8 [1988]
- [10] *Immaculata v. Navarro*, 160 SCRA 211 [1988] citing *Rosales v. Reyes*, 25 Phil. 495 [1913], *Vda. de Quirino v. Palarca*, 29 SCRA 1 [1969], *Villegas v. Capistrano*, 9 Phil. 416 [1907]; *SEE Fructo v. Fuentes*, 15 Phil. 362 [1910], *La Font v. Pascasio*, 5 Phil. 391 [1905]
- [11] 29 SCRA 1 [1969] citing *Asturias Sugar Central v. Pure Cane Molasses Co.*, 60 Phil. 255 and *Conejero v. CA*, L-21812, April 29, 1966
- [12] 142 SCRA 82 [1986], at page 88, citing *Asturias Sugar Central v. Pure Cane Molasses Co.*, 60 Phil. 255 [1934], *Villegas v. Capistrano*, 9 Phil. 416; *Rosales v. Reyes, et al.*, 25 Phil. 495; *Paez, et al. v. Magno*, 46 O.G. p. 5425
- [13] *Salvante v. Cruz*, 88 Phil. 236 [1951] citing *Del Rosario v. Sandico*, 85 Phil. 170
- [14] *Salvante v. Cruz*, supra, citing 31 Am Jur. p. 362
- [15] *Arzaga v. Rumbaoa, et al.*, 91 Phil. 499 [1952]; *Salvante v. Cruz*, supra
- [16] *Comment of Private Respondents*, p. 2; *Rollo*, p. 86

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