

**AGUSTIN DORMITORIO AND LEONCIA D. DORMITORIO,
PETITIONERS, VS. HONORABLE JOSE FERNANDEZ, JUDGE OF THE
COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH V,
BACOLOD CITY, AND S...**

G.R. No. L-25897. August 21, 1976

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The filing of this suit for certiorari could have been avoided had there been full awareness by petitioners of the legal import and significance of a later decision involving the parties. If such were the case, they would have realized that no grave abuse of discretion, no abuse of discretion for that matter, could be imputed to respondent Judge for issuing the challenged order,[1] setting aside a writ of execution conformably to a petition for relief by private respondent Serafin Lazalita.[2] Insofar as pertinent, it is worded thus: "That the above-mentioned order of Execution to be set aside is based on the decision of the Honorable Court dated September 5, 1961 in the above-entitled case which is no longer enforceable, and executory by virtue of the 'Agreed Stipulation of Facts' entered into by the Plaintiffs and Defendants in Civil Case No. 6553, and which said 'Agreed Stipulation of Facts' was the basis for the judgment of the Honorable Court dated February 12, 1965. That the parties and subject matter in Civil Case No. 5111 and Civil Case No. 6553 are the same except that the plaintiffs in Civil Case No. 5111 were the defendants in Civil Case No. 6553, and vice-versa; * * * That in the 'Agreed Stipulation of Facts' in Civil Case No. 6553 which was the basis of the Honorable Court judgment dated February 12, 1965, it was agreed by the defendant spouses Dormitorio, who are the plaintiffs in Civil Case No. 5111 that the defendant Serafin Lazalita should be reimbursed for his expenses in trans-ferring his house to another Lot to be assigned to him by the Municipality of Victorias, and that the Decision in Civil Case No. 5111 shall not be enforced and executed anymore; That by means of fraud, misrepresentation and concealment of the true facts of the case, the plaintiffs were able to mislead the Honorable Court, thru an Ex-Parte Motion to issue by mistake an Order for the issuance of a Writ of Execution by making this Honorable Court believe that the Decision of September 5, 1961 is still enforceable and executory; * * *." [3] Respondent Judge granted the relief prayed for and set aside the writ of execution, in view of the conclusion reached by him that such later decision, arrived at as the result of a compromise between the same parties, evidenced by the agreed stipulation of facts, was clear proof of an animus novandi and thus superseded the previous judgment which as a result of an ex parte motion was mistakenly ordered executed. Such a conclusion is borne out by a study of the records of the case. Certiorari does not lie.

The decision in the aforecited Civil Case No. 6553, which as contended by private respondent, a submission that earned the approval of respondent Judge, sufficed for the lifting of the writ of execution, pursuant to the decision in Civil Case No. 5111 deemed superseded, started with a stipulation of facts. Thus: "When this case was called for hearing the parties submitted an Agreed Stipulation of Facts duly signed by the parties and their respective counsel, as follows: '[Agreed Stipulation of Facts],' Come now the parties, in the above-entitled case, represented by their respective counsel and before this Honorable Court, respectfully submit the following agreed stipulation

of facts: 1. That the defendant Municipality of Victorias, is the owner of several parcels of lands in Victorias, Negros Occidental, known as Lots Nos. 102 and 120 and 138 and 102-New, which [are] consolidated and subdivided into small lots for sale to the inhabitants thereof; the lots were sold by the Municipality, either in cash or installment for ten (10) years at [one peso] (P1.00) per square meter; 2. That on December 7, 1948, the plaintiff Serafin Lazalita, bought from the Municipality of Victorias, Lot No. 1, Block 16 of the consolidated-subdivision plan PCs-118 having an area of Two Hundred Thirty (230) Square Meters, payable in installment at [one peso] (P1.00) per square meter, and in the year 1958, upon full payment by plaintiff Lazalita of the purchase price of the land, a deed of definite sale was executed in his favor by the then Municipal Mayor Montinola of Victorias, Negros Occidental, and thereafter a Certificate of Title No. T-23098 covering the property, was issued him by the Register of Deeds of Bacolod, Negros Occidental; 3. That from February 7, 1948, until about eight continuous years thereafter, plaintiff had been in full and peaceful possession of the said land, and he introduced permanent and valuable improvements thereon, [namely] fruit trees, like coconuts, avocados, pumelos and oranges, which have long been fruit bearing, and built a house of strong materials, valued at P5,000.00; 4. That plaintiff Lazalita, was placed in possession of the said Lot No. 1, Block 16 of the subdivision plan of Victorias, by the persons designated by the Municipality to take charge of the sale of said lots to the people, and from the time, he had occupied by same, up to the present, there has not been a change in the location thereof, as described in the Certificate of Title covering the property, now registered in plaintiff's name; 5. That about the year 1955, however, the other co-defendants herein—the spouses Agustin Dormitorio and Leoncia D. Dormitorio, purchased also, from the defendant Municipality of Victorias, their lot known as Lot 2, Block 16, of the same consolidation-subdivision plan PCs-118, having an area of Three Hundred Forty-Three (343) Square meters, in cash, at [one peso] (P1.00) per square meter. Immediately thereafter, the Dormitorios, obtained a transfer Certificate of Title known as T-18189 for their property, from the Office of the Register of Deeds, Bacolod, Negros Occidental. However, the spouses Dormitorio, have not taken actual possession of the land, they have purchased from the defendant Municipality of Victorias, up to the present; 6. That on December 12, 1958, the spouses Dormitorio, brought a suit against the plaintiff Lazalita, for Ejectment and the conflict between them was made known to the office of the Municipal Mayor and the Council of Victorias, who tried to settle the matter between the parties – Dormitorio and Lazalita. Later, a private Land Surveyor, was hired by the Municipality of Victorias, and it was found out, according to said Surveyor, Mr. Ceballos, that the Lot sold by the Municipality of Victorias, to the plaintiff, was converted into the new Municipal Road known as 'Jover Street' and that the lot presently occupied by him, is supposed to be the lot No. 2, bought by the spouses Dormitorio from the Municipality of Victorias; and so, availing of the said discovery, the Court of First Instance of Negros Occidental, Branch V, Presided over by Hon. Jose F. Fernandez, rendered judgment in that case No. 5111, in favor of Dormitorio, ordering the plaintiff herein Lazalita, to vacate the land and to pay a monthly rental of P20.00, to said Dormitorio, besides his Attorney's fees; 7. That Lazalita, having failed to appeal from said judgment in Civil Case No. 5111 of this Honorable Court, brought this present action, against the Municipality of Victorias, and joined the Dormitorios, as formal parties, because of the value of his permanent improvements and building introduced or constructed on Lot No. 2, Block 16, ascertained to be that, very lot purchased by Dormitorio from the defendant Municipality of Victorias, which building and improvements, have far exceeded then, the original purchase price of the land; 8. That the present fair market value of residential lots in the Poblacion of Victorias, ranges between P15.00 to P25.00 per square meter and the lots in controversy, are saleable at present, at P20.00 per square meter; 9. That the Municipality of Victorias, under the present administration, is willing to amicably settle the case, now before this Honorable Court, by giving the plaintiff another lot, if they could open their newly proposed subdivision, or pay back Lazalita, the amount necessary and just for plaintiff to acquire another lot for his residence, and for the expenses of transferring his present residential house thereto. * * *"[4] Then, as noted in the decision, the parties did respectfully pray "that judgment be rendered by this Honorable Court, on the basis

of the foregoing agreed stipulation of facts, and on such other basis just and equitable, without special pronouncement of costs." [5] So it was granted in the dispositive portion of such decision: "[Wherefore], judgment is hereby rendered in accordance with the above-mentioned Agreed Stipulation of Facts." [6]

The lack of any basis for imputing to respondent Judge a grave abuse of discretion when he set aside the writ of execution is thus clearly apparent. He had no choice on the matter. That was made even more evident in the answer to the petition filed by respondents. It must have been the realization by petitioners that certiorari certainly did not lie that led to their not only failing to make an attempt at a refutation of what was asserted in the answer but also failing to appear at the hearing when this case was set for oral argument. As noted at the outset, this petition must be dismissed.

1. What was done by respondent Judge in setting aside the writ of execution in Civil Case No. 5111 finds support in the applicable authorities. There is this relevant excerpt in *Barretto v. Lopez*, [7] this Court speaking through the then Chief Justice Paras: "Alleging that the respondent judge of the municipal court had acted in excess of her jurisdiction and with grave abuse of discretion in issuing the writ of execution of December 15, 1947, the petitioner has filed the present petition for certiorari and prohibition for the purpose of having said writ of execution annulled. Said petition is meritorious. The agreement filed by the parties in the ejectment case created as between them new rights and obligations which naturally superseded the judgment of the municipal court." [8] In *Santos v. Acuña*, [9] it was contended that a lower court decision was novated by subsequent agreement of the parties. Implicit in this Court's ruling is that such a plea would merit approval if indeed that was what the parties intended. Nonetheless, it was not granted, for as explained by the ponente, Justice J. B. L. Reyes: "Appellants understood and expressly agreed to be bound by this condition, when they stipulated that 'they will voluntarily deliver and surrender possession of the premises to the plaintiff in such event' * * *. Hence, it is plain that in no case were the subsequent arrangements entered into with any unqualified intention to discard or replace the judgment in favor of the plaintiff-appellee; and without such intent or animus novandi, no substitution of obligations could possibly take place." [10] Can there be any doubt that if it could be shown, as it was in this case, that there was such clear manifestation of will by the parties, the original decision had lost force and effect? To ask the question is to answer it. The presence of the animus novandi is undeniable. Nor is there anything novel in such an approach. So it was noted by the then Chief Justice Concepcion in *De los Santos v. Rodriguez*: [11] "As early as *Molina v. De la Riva* the principle has been laid down that, when, after judgment has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts." [12] *Molina v. de la Riva* [13] was a 1907 decision. Again, the present case is far stronger, for there is a later decision expressly superseding the earlier one relied upon on which the writ of execution thereafter set aside was based.

2. Nor can it be denied that as the later decision in Civil Case No. 6553 was the result of a compromise, it had the effect of *res judicata*. This was made clear in *Salazar v. Jarabe*. [14] There are later decisions to the same effect. [15] The parties were, therefore, bound by it. There was thus an element of bad faith when petitioners did try to evade its terms. At first, they were quite successful. Respondent Judge, however, upon being duly informed, set matters right. He set aside the writ of execution. That was to act in accordance with law. He is to be commended, not condemned.

3. There is no merit likewise to the point raised by petitioners that they were not informed by respondent Judge of the petition by private respondent to set aside the writ of execution. The order granting such petition was the subject of a motion for reconsideration. [16] The motion for reconsideration was thereafter denied. [17] Under the circumstances, the failure to give notice to petitioners had been cured. That is a well-settled doctrine. [18] Their complaint was that they were not heard. They were given the opportunity to file a motion for reconsideration. So

they did. That was to free the order from the alleged infirmity. Petitioners then cannot be heard to claim that they were denied procedural due process.

WHEREFORE , the petition for certiorari is dismissed. Costs against petitioners.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Petition, Annex F.

[2] Ibid, Annex E.

[3] Ibid, Annex E, pars. 4-6.

[4] Ibid, Annex B, 1-3.

[5] Ibid, 3-4.

[6] Ibid, 4.

[7] 83 Phil. 734 (1949).

[8] bid, 736.

[9] 100 Phil. 230 (1956).

[10] Ibid, 237.

[11] L-23170, January 31, 1968, 22 SCRA 451.

[12] Ibid, 458.

[13] 8 Phil. 569. Chief Justice Concepcion, in addition to Molina, also cited the following cases: Behn, Meyer & Co. v. M'Micking, 11 Phil. 276 (1908); Warner, Barnes & Co. v. Jaucian, 13 Phil. 4 (1909); Espiritu v. Crossfield, 14 Phil. 588 (1909); Flor Mata v. Lichauco & Salinas, 36 Phil. 809 (1917); De la Costa v. Cleofas, 67 Phil. 686 (1939); Amor v. Judge Jugo, 77 Phil. 703 (1946). Cf. Nazal v. Belmonte, L-24410, May 23, 1968, 23 SCRA 700.

[14] 91 Phil. 596 (1952).

[15] Cf. Piano v. Cayanong, L-18603, Feb. 28, 1963, 7 SCRA 397; Araneta v. Perez, L-16187, April 30, 1963, 7 SCRA 923; Serrano v. Miave, L-14678, March 31, 1965, 13 SCRA 461; Manique v. Cayco, L-17059, Nov. 29, 1965, 15 SCRA 296; Sabino v. Cuba, L-18328, Dec. 17, 1966, 18 SCRA 981; Samonte v. Samonte, L-40683, June 27, 1975, 64 SCRA 524.

[16] Petition, Annex G.

[17] Ibid, Annex H.

[18] Cf. Borja v. Flores, 62 Phil. 106 (1935); De Borja v. Tan, 93 Phil. 167 (1953); Flash Taxicab Co., Inc. v. Cruz, L-15464, March 30, 1963, 7 SCRA 518; Caltex (Phil.), Inc. v. Castillo, L-24657, Nov. 27, 1967, 21 SCRA 1071; Demaronsing v. Tandayag, L-27057, Aug. 21, 1974, 58 SCRA 484; Maglasang v. Ople, L-38813, April 29, 1975, 63 SCRA 508; Nation Multi Service Labor Union v. Agcaoili, L-39741, May 30, 1975, 64 SCRA 274.

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