

ANG LIN CHI, PETITIONER, VS. OSCAR CASTELO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, VALENTIN TECH, PROVINCIAL SHERIFF OF RIZAL, AND GENARO S. PAZ, RESPONDENTS.

G.R. No. L-2514. March 31, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

This is a petition to annul the order of the respondent judge directing the issuance of a writ of execution against Jose Ang and the petitioner Ang Lin Chi for P1,800 jointly and severally.

It appears that in the Court of First Instance of Rizal, in civil case No. 181 Genaro S. Paz vs. Jose Ang, et al., the Honorable Oscar Castelo, Judge, rendered on June 30, 1948, a decision, the dispositive part of which reads as follows:

"En su virtud se dicta sentencia ordenando a los demandados Jose Ang y Ang Lin Chi devuelvan al aqui demandante dicho automovil, o en su defecto la cantidad de mil ochocientos (P1,800) pesos, con las costas a cargo de dichos demandados."

That decision having become final, a writ of execution was issued by the clerk on August 21, 1948. It turned out that the automobile was entirely useless, and the sheriff so reported. Whereupon the attorney for the plaintiff Genaro S. Paz asked for another writ "ordering the defendants Jose Ang and Ang Lin Chi to pay jointly and severally to plaintiff the value of the automobile in question, in accordance with the decision promulgated" in the case. The defendants' attorney objected to the motion on two grounds, the second of which maintained that their liability under the judgment was only joint—not solidary. The motion was heard, and on September 18, 1948, the court directed the issuance of a new writ "ordenando a los demandados Jose Ang y Ang Lin Chi para que paguen mancomunada y solidariamente al demandante Genaro Paz la suma de P1,800 como precio del automovil en cuestion". A motion for reconsideration was denied. Hence this special civil action hurriedly instituted because the sheriff, pursuant to the order, had attached real properties of petitioner for sale on execution. At the petitioner's request an injunction was issued by this Court on October 11, 1948, to prevent the carrying out of the aforesaid judicial directive.

Petitioner's case is clearly meritorious. The tenor of the writ of execution may not vary the terms of the judgment it seeks to enforce. In decreeing that Jose Ang and Ang Lin Chi shall pay the sum of P1,800 the original judgment did not specify that they shall do it solidarily. Under the law the liability thus imposed on defendants was joint (mancomunada). After that judgment had become final, the court had no power to amend it to convert defendants' liability into a solidary obligation. Much less could it issue an order of execution charging the defeated parties with solidary responsibility the latter having possibly chosen not to appeal in view of the joint obligation (not solidary) declared by the decision.

Our views in *Contreras, vs. Felix*, (78 Phil., 570) are quite decisive of this litigation.

This Court in that case rendered judgment the dispositive part of which was in these words and phrases:

"For all the foregoing, the deed of mortgage dated November 8, 1930, is declared null and void as to the one-half of the mortgaged property belonging to Jerusalem Gingco and rescinded as to the remaining one-half belonging to the spouses Molina, and the appealed decision is modified by ordering all the defendants to pay Jerusalem Gingco the amount of P30 monthly from September 4, 1934, to September 4, 1941, and to continue paying the same monthly amount thereafter until the two new doors of the accesoría in question are delivered to said Jerusalem Gingco. The defendants shall also pay the filing fees of the complaint in the lower court and the costs in both instances".

The defendants were the China Banking Corporation, Juan B. Molina and his wife. On execution proceedings in the Manila court of first instance the Honorable Alfonso Felix, Judge, declared that under the judgment the Bank's liability was only one-third. Upon a suit for mandamus, we sustained his view saying in part:

"There is no dispute, and it can be said with confidence, that the China Banking Corporation's liability under the terms of the judgment of this court is merely joint, joint in the sense in which the word is understood in the civil law. 'It is already a well-settled doctrine in this jurisdiction that, when it is not provided in a judgment that the defendants are liable to pay jointly and severally a certain sum of money, none of them may be compelled to satisfy in full said judgment'. (*Oriental Commercial Co. Inc. vs. Abeto and Mabanag*, 60 Phil., 723, citing *De Leon vs. Nepomuceno* and *De Jesus*, 37 Phil., 180, and *Sharuff vs. Tayabas Land Co. and Ginainati*, 37 Phil., 655). That ruling is in entire harmony with arts. 1137 and 1133 of the Civil Code.

"Under that doctrine the lower court has no legal authority under any circumstances to make the change sought by the plaintiffs; and this court itself may not make the change after the judgment has become executory. According to that decision a mistake such as that here alleged, if it be a mistake, is not clerical; it goes to the very substance of the controversy.

"Only clerical errors, or mistakes or omissions plainly due to inadvertence or negligence may be corrected or supplied after the judgment has been entered."

Respondents, however, maintain that Judge Castelo did nothing more than to clarify his decision as was done and approved in *Lacson vs. Paredes*, 63 Phil., 87. But the facts in that precedent are distinguishable from those presently before us, because there it was obvious that the omission of the word "severally" from the dispositive part of the judgment was an inadvertence, "the parties as well as the trial judge" having understood all the time that the obligation was joint and several; whereas here the petitioner disclaimed any obligation to the respondent Genaro S. Paz, and there is no positive indication in the original decision that the intention of His Honor was to impose a joint and several liability.

Wherefore, the disputed order is hereby set aside, and the injunction heretofore issued is made permanent. Petitioner will have costs. So ordered.

Moran, C.J., Paras, Feria, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

Briones, M., Conforme con la parte dispositiva.

DISSENTING

PERFECTO, J.:

Aside from the views we have expressed in *Contreras vs. Felix*, L-884,[1] there are other strong reasons to deny the petition. Upon the facts on record, it appears that Ang Lin Chi is the father of Jose Ang, with whom he appears to be, guilty, of imposture, in relation with fraudulent maneuvers, regarding the automobile in question. Said Jose Ang has been investigated for forgery in relation with the same automobile. As declared by the trial court, the automobile in question was seen, after liberation, by the owner in the possession, of Jose Ang. A police officer of Manila took possession of the automobile as involved in a criminal action for falsification against Jose Ang. But the Court of First Instance of Manila dismissed the information, because the Jose Ang that appeared as such before the investigator Vicente Ilagan, Chief of Division of Automobile, Bureau of Public Works and Communication, was in fact petitioner Ang Lin Chi.

Upon the facts on record, there cannot be any question as to the solidarity between Jose Ang and Ang Lin Chi and as to the solidarity of their obligation to return the automobile to the owner Genaro S. Paz and, failing thereof, to indemnify, him in the sum of P1,800.

Petitioner Ang Lin Chi being one of the principals in the fraudulent and criminal maneuvers to deprive the owner of his automobile cannot now hide behind an insubstantial technicality so as to elude the corresponding, civil liability.

The petition, should be denied as, otherwise, is tantamount to rewarding fraud.

[1] 78 Phil., 570.

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