

**BONIFACIO S. MACEDA, JR. AND TERESITA MACEDA, PETITIONERS,
VS. MOREMAN BUILDERS CO., INC., AND HON. BENJAMIN A.G. VEGA,
AS PRESIDING JUDGE OF RTC OF MANILA, BRANCH 39,
RESPONDENTS.**

G.R. No. 100239. October 28, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The principal issue presented in this case is whether or not respondent judge committed grave abuse of discretion in staying his prior order granting a motion for the execution of the decision until after he shall have appreciated the report of a committee he created to determine the location of the properties levied on attachment and their values, both current and as of the time of the levy.

The procedural antecedents which gave rise to this petition are not disputed.

Petitioners were the plaintiffs in a civil case[1] for rescission of contract and damages with attachment and preliminary injunction assigned to Branch 39 of the then Court of First Instance (now Regional Trial Court) of Manila. Private respondent was among the defendants therein. Upon proper application by petitioners, a writ of preliminary attachment was issued by the court and pursuant thereto, the Sheriff levied certain properties which were duly inventoried.

On 28 November 1978, the trial court rendered its decision in said Civil Case No. 113498 in favor of petitioners, which, among other things, declared the building contract rescinded and awarded to the latter actual, moral and liquidated damages in the aggregate sum of P445,000.00; the sum of P20,000.00 representing the increase in the construction materials; and P35,000.00 as attorney's fees.

Defendants appealed said decision to the Court of Appeals, which, however, dismissed the same on 7 March 1989. The petition to review the dismissal subsequently filed with this Court[2] was denied due course for utter lack of merit. In G.R. No. 88310, this Court, through the Third Division, made the following pertinent findings and conclusions:

"Petitioners appealed from the decision. The trial court ordered the completion and transmittal of the record on appeal to the Court of Appeals on 19 March 1979. It appears that the records of the case were not transmitted to the appellate court. Three (3) years later, on 6 January 1981, private respondents moved to dismiss the appeal in the Court of Appeals. The Motion was denied by the appellate court which at the same time ordered the Clerk of the trial court to forward the complete records of the case to the Court of Appeals within thirty (30) days and directed petitioners (appellants) to see to it that the clerk of court complied with the order.

Seven (7) years later, on 14 August 1988, private respondents moved to strike out the reconstituted records and asked the trial court to dismiss the appeal. The trial court held that it could no longer complete reconstitution of the records for purposes of the appeal considering that petitioners-appellants had refused or failed to appear in the reconstitution proceedings.

On 7 March 1989, upon motion of private respondents, the Court of Appeals dismissed the appeal finding that petitioner Moreman had become a phantom and fugitive paper corporation, which had failed to submit its annual reports to the Securities and Exchange Commission (SEC) since 1977 and whose address of record was found by the Sheriff of the trial court to have been abandoned. Petitioner Moreman's motion for reconsideration was denied.

Deliberating on the instant Petition for Review, the Court considers that petitioners have failed to show any reversible error on the part of the Court of Appeals in dismissing their appeal. The Court of Appeals found that Moreman's appeal was dilatory and frivolous, having prevented the trial court's decision from becoming final for more than ten (10) years since its rendition, by failing to act on the completion of the record on appeal. Petitioners question these factual findings of the Court of Appeals, which findings are, as is well-known, binding upon this Court, absent any compelling reason for overturning such findings of fact. Petitioners have not shown any such compelling reason. On the contrary, the record bears out the conclusions of the Court of Appeals."

This resolution was declared immediately executory.

A motion to reconsider the above order was denied in the Resolution of this Court of 26 March 1990. The denial was declared final.

Thereafter, herein petitioners filed a motion to execute the decision of 28 November 1978. As claimed by petitioners, however, private respondent filed several motions and pleadings "the common thread of which is that the judgment purportedly had been fully satisfied or even over satisfied x x x." [3]

Eventually, on 26 October 1990, respondent judge issued an Order granting the issuance of a writ of execution. The respondents filed a motion for reconsideration alleging therein, as summarized in the Order of respondent judge of 23 May 1991, that:

"x x x the writ of execution is no longer necessary because the judgment is more than satisfied by the attached properties at the inception of the case at bar; that when the instant suit was filed, plaintiffs prayed for, and the same was granted, the issuance of a writ of preliminary attachment; that there was in fact levy on attachment made by the sheriff, the inventory of which amount (sic) to a total of P1,056,842.01; x x x."

Over the opposition of petitioners who asserted that there was no satisfaction of the judgment as there has been no execution, the respondent judge in his aforesaid Order of 23 May 1991, after making the following disquisition:

"The purpose of preliminary attachment need not be sufficed (sic) herein. It suffices that the same is normally availed of by the plaintiffs in order to be assured of the satisfaction of judgment, if they prevailed after the trial. However, before judgment is rendered, the properties subject of the attachment are under custodia legis for which the party who secured the same is accountable together with the attaching officer.

In the instant case, the record shows that almost all the large portions of the attached properties were at the project site when the writ of attachment was enforced and that the plaintiffs were in possession of the attached properties thereafter. They cannot therefore protest (sic) innocence as to the whereabouts thereof even as they had denied lack of knowledge thereof.

x x x

At the hearing of the open incidents relative to the enforcement of the order of execution, the parties while agreed that the decision of the Court should be enforced, differed on whether the judgment has already been satisfied considering the attachment of the properties of the defendants earlier made by the Court. The deputy sheriff, Angel Borja who executed the writ of attachment has (sic) long been dead and the record does not already show where the attached properties are now located, even as they are considered under custodia legis.

There is a need for this Court to determine where the properties are presently located and the values thereof at the time of the attachment and their present values. A committee therefore has to be created by the Court in order to determine once and for all how the writ of execution should be executed, without unnecessary delay."

ruled:

"WHEREFORE, the motion for reconsideration filed by the defendants is hereby DENIED. The order of execution dated October 26, 1990 hereby stays (sic) as the Court hereby creates a Committee of 3 members, appointing the Clerk of Court as the Chairman thereof, and the two members shall be appointed by the parties, one from the plaintiff and the other from the defendants.

The parties are hereby directed to submit the names of their representative (sic) and after the members of the Committee shall have qualified, the committee shall proceed to Tacloban City or to any place where the attached properties are presently found. This committee shall determine the specific whereabouts of the attached properties and to make a valuation thereof at the time the writ of attachment was executed and their present values. The committee shall submit a report within 5 days from the completion of their field work to the Court for its proper appreciation and enforcement of the order of execution. The Clerk of Court is hereby directed to issue the writ of execution after the court shall have appreciated the report of the Committee."[4]

Without first seeking a reconsideration, petitioners commenced the instant petition claiming that a motion for reconsideration would be an "exercise in futility"[5] and alleging therein that respondent judge committed grave abuse of discretion in issuing the above order in that he:

"i. violated 'res judicata' in the final decision of 28 November 1978.

ii. obstructed the Third Division's Final and Executory Resolutions of 21 February 1990 and 26 March 1990."[6]

They vigorously maintain that the creation, purpose and duty of the committee imply that after its work is done, the respondent court intends to credit the value of the unused construction materials against the judgment awards, which further means that the respondent court has recognized the ownership of Moreman -- contrary to the findings in the final decision. They further claim that per the Resolution of the Third Division of this Court of 21 February 1990 in G.R. No. 88310, the decision of 28 November 1978 is "immediately executory," to which respondent judge, with the way things proceeded in his court, did not accord serious fealty.

Petitioners then pray that We give due course to the petition and issue a restraining order. They further pray that after hearing, We issue a writ of mandamus directing respondent judge to vacate and set aside the order of 23 May 1991 and in lieu thereof to immediately direct the sheriff to speedily enforce the writ of execution.

In the resolution of 26 June 1991, We granted the prayer for the issuance of a temporary restraining order and directed the respondents to comment on the petition.

In their Comment filed on 18 July 1991, respondents claim that in issuing the questioned order, the respondent judge merely applied the express provision of Section 15 of Rule 57 of the Rules of Court on satisfaction of judgment out of property attached; that the attached properties belong to Moreman, hence it was not only necessary but it was also the duty of the court to determine where the attached properties are, as well as their present value, before mandating enforcement of the writ of execution, otherwise, there would be a violation of the constitutional right against deprivation of life, liberty and property without due process of law; that res judicata will not apply as there was no prior adjudication on the ownership of the properties attached; and, finally, the instant petition for certiorari is fatally defective for failure of petitioners to ask for a reconsideration of the questioned order.

Petitioners filed their Reply to the Comment on 1 August 1991.

We gave due course to the petition and required the parties to submit their Memoranda which respondents complied with on 2 October 1991. Petitioners, in their Manifestation filed on 23 September 1991, informed the Court that they are waiving the submission of their Memorandum and are submitting the case on the strength of their own pleadings.

We rule for the petitioners, but not for the reasons advanced and relied upon.

The decision of 28 November 1978 in Civil Case No. 113498 had long become firm, final and executory. The rule is well-settled that the prevailing party is entitled, as a matter of right, to a writ of execution and the issuance thereof is the court's ministerial duty compellable by mandamus.[7]

Execution of a final judgment cannot be postponed or deferred by the trial court.[8] Courts should never allow themselves to be party to maneuvers intended to delay the execution of final decisions. They must "nip in the bud any dilatory maneuver calculated to defeat or frustrate the ends of justice, fair play and prompt implementation of final and executory judgments." [9]

In *Lim Kim Tho vs. Go Sim Ko, et al.*, [10] We ruled:

"Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them."

In the instant case, respondent judge was trapped by private respondent into aborting the implementation of his 26 October 1990 Order for the issuance of a writ of execution, or preventing the prompt execution thereof, thereby making uncertain the end of the controversy.

We find no valid reason or legal justification to stay the implementation of the said Order and to subject its enforcement or non-enforcement to the appreciation by respondent judge of the report to be submitted by a committee he created to determine the whereabouts of the attached properties and their values, both current and as of the date of their levy. This is certainly an unprecedented procedure of unusual novelty in which the inevitability of undue delay in the execution of the decision logically inheres. No one knows how long the search for the subject properties will last. And even after finding them, the parties may not agree on the valuation of the properties. The court then will have to receive the evidence of the parties in support of their respective valuations. The party aggrieved by any ruling thereon may appeal therefrom.

What We find to be more unacceptable is the implicit postulation of respondent judge that in a case where a writ of attachment is issued and the attaching creditor prevails in the case, determination of the value of the attached properties is a condition sine qua non for the execution of the decision. To save the day for respondent judge, private respondent suggests that this is in accord with Section 15 of Rule 57 of the Rules of Court which provides:

"SEC. 15. Satisfaction of judgment out of property attached; return of officer. - If judgment be recovered by the attaching creditor and execution issue thereon, the sheriff or other proper officer may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose, in the following manner:

- (a) By paying to the judgment creditor the proceeds of all sales of perishable or other property sold in pursuance of the order of the judge, or so much as shall be necessary to satisfy the judgment;
- (b) If any balance remain due, by selling so much of the property, real or personal, as may be necessary to satisfy

the balance, if enough for that purpose remain in the officer's hands, or in those of the clerk of the court;

(c) By collecting from all persons having in their possession credits belonging to the judgment debtor, or owing debts to the latter at the time of the attachment of such credits or debts, the amount of such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment creditor.

The officer shall forthwith make return in writing to the court of his proceedings under this Section."

Reliance on the foregoing section is misplaced. Firstly, it sets the guidelines for the sheriff -- not the court. In the instant case, no writ of execution had been referred to a sheriff; in fact, none had yet been issued. The court's intervention may, if at all, eventuate only if the sheriff should refuse to follow the outlined procedure. It was unwarrantedly premature for respondent court to step into the picture before any breach of the procedure was committed. It should, however, be noted that the procedure is not mandatory. It provides that "the sheriff or other proper officer may cause the judgment to be satisfied out of the property attached, if it be sufficient for the purpose." The use of the word may clearly makes the procedure directory, in which case the sheriff may disregard the properties attached and proceed against other properties of the judgment debtor, if necessary. Secondly, the procedure is subject to the condition explicitly laid down in (b) of the aforesaid provision, to wit: "if enough for the purpose remain in the officer's hands, or in those of the clerk of the court." In the instant case, while the attached properties are in custodia legis, the fact remains that they are not in the possession of the officer concerned or of the clerk of court. It was precisely to determine the whereabouts of the property that a committee was constituted.

Respondent judge then committed grave abuse of discretion in staying the enforcement of his 26 October 1990 Order granting the issuance of the writ of execution and in creating a committee to determine the whereabouts and values of the attached properties. That a motion to reconsider was not filed before the institution of the instant petition is not, under the circumstances obtaining in this case, a fatal error as claimed by private respondents, since the petition raises questions which are essentially legal in nature.[11]

IN THE LIGHT OF THE FOREGOING, the petition is hereby GRANTED and the questioned Order of 23 May 1991 of respondent Judge in Civil Case No. 113498 of Branch 39 of the Regional Trial Court of Manila, insofar as it stays the Order of 26 October 1990 and creates a committee to determine the whereabouts of the attached properties and its values and to submit a report thereon which the court shall then appreciate in connection with the enforcement of the order of execution, is SET ASIDE and respondent Judge is DIRECTED to cause the issuance of the writ of execution which the Sheriff must implement without further delay. This decision is immediately executory.

Costs against private respondent.

IT IS SO ORDERED.

Fernan, C.J., Gutierrez, Bidin, and Romero, JJ., concur.

[1] Civil Case No. 113498.

[2] G.R. No. 88310.

[3] Rollo, 7.

[4] Rollo, 28.

[5] Id., 10.

[6] Id., 144.

[7] Church Assistance Program, Inc. vs. Sibulo, 171 SCRA 408; City Trust Banking Corp. vs. Court of Appeals, 171 SCRA 758; Esqueval vs. Alegre, 172 SCRA 315; International School, Inc. vs. Minister of Labor and Employment, 175 SCRA 507; Philippine Veterans Bank vs. IAC, 178 SCRA 645; and Alazas vs. Salas, 179 SCRA 804.

[8] Suson vs. Court of Appeals, 172 SCRA 70.

[9] Cateclang, et al. vs. Medina, et al., 91 SCRA 403.

[10] 82 Phil. 776.

[11] Eastern Shipping Lines, Inc. vs. Philippine Overseas Employment Administration, et al., 170 SCRA 54.

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