

SPOUSES EMILIO ABINUJAR AND MILAGROS M. LANA, PETITIONERS, VS. THE COURT OF APPEALS AND SPOUSES SANTIAGO RAMIRO AND FLORENTINA RAMIRO, RESPONDENTS.

G.R. No. 104133. April 18, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision dated December 27, 1991 and the Resolution dated February 11, 1992 of the Court of Appeals in CA-G.R. SP No. 24683.

I

On October 10, 1987, petitioners executed a Deed of Sale with Right to Repurchase in favor of private respondents, involving a residential house located at No. 346 Algeciras St., Sampaloc, Manila. Due to serious financial and business reverses, petitioners were not able to redeem the property within four months as agreed upon.

On October 24, 1989, private respondents filed a complaint for ejectment in the Metropolitan Trial Court of the City of Manila, docketed as Civil Case No. 130352-CV against petitioners.

On December 27, 1989, the parties, assisted by their counsels, executed a compromise agreement. In an order dated March 15, 1990, the Metropolitan Trial Court approved the compromise agreement. The order reproduced the agreement as follows:

"1. That defendants [petitioners herein] agree to pay plaintiffs [private respondents herein] in the amounts and on the dates specifically indicated herein below:

- P50,000.00 on Jan. 31, 1990;
- 10,000.00 on Feb. 28, 1990;
- 10,000.00 on March 31, 1990;
- 10,000.00 on April 30, 1990;
- 10,000.00 on May 31, 1990;
- 10,000.00 on June 30, 1990;
- 10,000.00 on July 31, 1990;
- 10,000.00 on August 31, 1990;
- 10,000.00 on September 30, 1990;

"2. That failure on the part of the defendants to pay three (3) consecutive payments, plaintiffs will be entitled to a writ of execution, unless the parties agree to extend the period of entitlement to a writ of execution in writing to be submitted and/or approved by this Honorable Court; xxx" (Rollo, p. 53).

On April 15, 1990, private respondents filed a motion for execution on the ground that petitioners failed to pay the first three installments stipulated in the compromise agreement, to wit: P50,000.00 on January 31, 1990; P10,000.00 on February 28, 1990; and P10,000.00 on March 31, 1990.

On April 6, 1990, petitioners filed an "Urgent Ex-Parte Motion for Reconsideration and/or Correct Order of this Court" calling attention to a typographical error in the Order dated March 15, 1990, and asking that the amount of P10,000.00 payable on September 30, 1990 be corrected and changed to the agreed amount of P5,000.00.

On April 25, 1990, the Metropolitan Trial Court issued an order granting the motion for correction of the typographical error in the decision.

On August 17, 1990, petitioners filed an ex-parte motion asking that the check payments previously deposited by them with the court, be accepted and be given to respondents in compliance with their compromise agreement.

On August 23, 1990, respondents opposed petitioners' ex-parte motion and stated that they would not renew the compromise agreement with petitioners.

The Metropolitan Trial Court denied private respondents' motion for execution dated April 15, 1990 and another similar motion dated June 26, 1990.

On October 12, 1990, respondents filed a petition for mandamus with us (G.R. No. 95470). In a resolution dated November 5, 1990, we referred the case to the Executive Judge of the Regional Trial Court, Manila. Petitioners moved to dismiss the petition for mandamus.

On March 14, 1991, the Regional Trial Court denied the motion to dismiss and issued the assailed resolution commanding the Metropolitan Trial Court to issue a writ of execution of the decision approving the compromise agreement in Civil Case No. 130352-CV.

In compliance with the said resolution, the Metropolitan Trial Court issued an order dated March 27, 1991 directing the issuance of a writ of execution to enforce the compromise agreement entered into by the parties.

On April 11, 1991, a "Sheriffs' Notice to Voluntarily Vacate the Premises" was served on petitioner.

Petitioners then filed a petition for certiorari with a prayer for the issuance of a temporary restraining order and a writ of injunction with the Court of Appeals (CA-G.R. SP No. 24683).

On December 27, 1991, the Court of Appeals dismissed the petition. Likewise, the said court denied the motion for reconsideration filed by petitioner.

II

Petitioners contend that both the Regional Trial Court and Metropolitan Trial Court acted with grave abuse of discretion, the former in issuing a resolution directing the Metropolitan Trial Court to issue a writ of execution against petitioners herein, and the latter, in issuing said writ of execution.

III

A compromise agreement is a contract between the parties, which if not contrary to law, morals or public policy, is valid and enforceable between them (*Municipal Board of Cabanatuan City v. Samahang Magsasaka, Inc.*, 62 SCRA 435 [1975]). There are two kinds of compromise agreements, the judicial, which puts an end to a pending litigation, and the extrajudicial, which is to avoid a litigation (Civil Code of the Philippines, Art. 2028; Caguioa, VI Commentaries and Cases on Civil Law 292 [1970]).

As a contract, a compromise agreement is perfected by mutual consent (*Rovero v. Amparo*, 91 Phil. 228 [1952]). A judicial compromise, however, while binding between the parties upon its execution, is not executory until it is approved by the court and reduced to a judgment.

Article 2037 of the Civil Code of the Philippines provides:

"A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise."

The non-fulfillment of the terms and conditions of a compromise agreement approved by the court justifies execution thereof and the issuance of the writ for said purpose is the court's ministerial duty enforceable by *mandamus* (*Maceda, Jr. v. Moreman Builders Co., Inc.*, 203 SCRA 293 [1991]).

In the compromise agreement, petitioners obligated themselves to pay private respondents the amount of P50,000.00 on January 31, 1990, P10,000.00 on February 28, 1990, and P10,000.00 on March 31, 1990.

Petitioners received a copy of the decision of the Metropolitan Trial Court approving the compromise agreement on March 26, 1990. Clearly, there was a breach, for it was only on August 17, 1990 that petitioners attempted to pay by means of nine postdated checks the amounts agreed upon. In effect, the first installment payment of P50,000.00 due on January 31, 1990 was moved to August 31, 1990, the second installment of P10,000.00 due on February 28, 1990 was moved to September 30, 1990 and so forth, thereby making the last installment of P5,000.00 due on September 30, 1990 moved to April 30, 1991. This is tantamount to novating the original agreement entered into by the parties without the consent of private respondents.

Inasmuch as a judicial compromise becomes binding between the parties upon its execution, petitioners should have paid the installments falling due even before the approval thereof by the trial court. But assuming that a judicial compromise is not perfected until it is approved by the court, still petitioner should have paid the installments due on March 31, 1990, together with the installments due on January 31 and February 28, 1990 on or before March 31, 1990.

Petitioners also assail the validity of the issuance by the Deputy Sheriff of the notice to voluntarily vacate the premises by way of enforcing the decision approving the compromise agreement. They maintain that their obligation is monetary in nature and the applicable rule should have been Section 15, Rule 39 and not Section 13, Rule 39 of the Revised Rules of Court.

Petitioners' contention has merit.

When the parties entered into a compromise agreement, the original action for ejectment was set aside and the action was changed to a monetary obligation.

A perusal of the compromise agreement signed by the parties and approved by the inferior court merely provided that in case the defendants (petitioners herein) failed to pay three monthly installments, the plaintiffs (private respondents herein) would be entitled to a writ of execution, without specifying what the subject of execution would be. Said agreement did not state that petitioners would be evicted from the premises subject of the suit in

case of any default in complying with their obligation thereunder. This was the result of the careless drafting thereof for which only private respondents were to be blamed.

A judgment is the foundation of a writ of execution which draws its vitality therefrom (*Monaghon v. Monaghon*, 25 Ohio St. 325). An officer issuing a writ of execution is required to look to the judgment for his immediate authority (*Sydnor v. Roberts*, 12 Tex. 598).

An execution must conform to and be warranted by the judgment on which it was issued (*Francisco*, The Revised Rules of Court 641 [1966]; *Kramer v. Montgomery*, 206 Okla. 190, 242 P. 2d 414 [1952]). There should not be a substantial variance between the judgment and the writ of execution (*Avery v. Lewis*, 10 Vt. 332). Thus, an execution is fatally defective if the judgment was for a sum of money and the writ of execution was for the sale of mortgaged property (*Bank of Philippine Islands v. Green*, 48 Phil. 284 [1925]).

As petitioners' obligation under the compromise agreement as approved by the court was monetary in nature, private respondents can avail only of the writ of execution provided in Section 15, Rule 39 of the Revised Rules of Court, and not that provided in Section 13.

Section 15, Rule 39 provides:

"Execution of money judgments. - The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment."

On the other hand, Section 13, Rule 39 provides:

"How execution for the delivery or restitution of property enforced.- The officer must enforce an execution for the delivery or restitution of property by ousting therefrom the person against whom the judgment is rendered and placing the judgment creditor in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the judgment and costs included in the writ of execution."

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the Sheriff is directed to enforce the execution only of the money judgment in accordance with Section 15, Rule 39 of the Revised Rules of Court.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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