

FLORENCIO YULO AND GREGORIO SAJO, PETITIONERS, VS. JOHN S. POWELL, JUDGE OF FIRST INSTANCE OF ILOILO, CONSOLACION JAVELONA Y LOPEZ AND BLAS MONTECLARO, RESPONDENTS.

G.R. No. 12769, August 03, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition presented in the Supreme Court for the writ of certiorari.

The only question presented is: Has the Court of First Instance jurisdiction to issue an execution for the recovery of a sum of money for which no final judgment has been rendered?

The facts important for a consideration of that question may be briefly stated as follows:

First. That on the 22d day of May, 1913, the defendants herein, Consolacion Javelbna y Lopez and Bias Monteclaro, commenced an action in the Court of First Instance of the Province of Iloilo against Florencio Yulo, for the purpose of recovering the possession of a certain parcel of land particularly described in the complaint, together with damages for the illegal use and occupation of the land.

Second. That on the 21st day of October, 1913, a judgment was rendered in said case in favor of the plaintiffs and against the defendant for the possession of the land, together with a judgment for the sum of P2,734.50 as damages for the illegal use and occupation of the land.

Third. That from that judgment the defendant appealed to the Supreme Court.

Fourth. That on the 3d day of September, 1915, the Supreme Court, after a consideration of the question presented by the appellant, confirmed that part of the judgment of the lower court giving to the plaintiffs the possession of the land, but reduced the amount of the damages from P2,734.50 to the sum of 72,052.[1]

Fifth. That on the 7th day of October, 1915, the judgment of the Supreme Court having become final was returned to the lower court for execution, and said judgment was duly executed.

Sixth. That on the 12th day of March, 1917, upon the petition of the respondents herein, Consolacion Javelona y Lopez and Bias Monteclaro, an execution was issued to recover the sum of 71,455.

Seventh. That the said P1,455 was alleged to be the value of the use and occupation of the land in question for the agricultural years 1914 and 1915.

Eighth. That no judgment had been rendered by any court for the said sum of P1,455.

Ninth. That on the 19th day of March, 1917, the defendant Florencio Yulo in the original action (petitioner herein) presented a motion in the Court of First Instance of the Province of Iloilo praying that said execution be declared null and void for the reason that the court was without jurisdiction to issue the same. vs. Yulo (31 Phil. Rep., 388.)

Tenth. That on the 24th day of March, 1917, the said motion to have declared null and void the said execution was denied by the respondent judge.

Eleventh. That on the 29th day of March, 1917, the present petition was presented in the Supreme Court.

Section 443 of Act No 190 provides that "the party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement as hereafter provided." That section specifically provides when an execution may be issued. It specifically provides that the party in whose favor a judgment is given may have a writ of execution. There is no provision in the Code of Procedure in Civil Actions which authorizes the issuance of a writ of execution except upon a final judgment. An execution cannot be lawfully issued except upon a final judgment or decree pronounced by a competent court which has determined the respective rights and liabilities of the parties litigant after they have been given an opportunity to be heard. (Cutler vs. Wadsworth, 7 Conn., 5; Piernas vs. Milliet, 10 La. Ann., 286; Van Ness vs. Cantine & Radcliff, 4 Paige [N. Y.], 54; Kingsberry vs. Hutton, 140 111., 603; 17 Cyc., 924.)

This rule is strictly adhered to by the courts. The parties themselves, it has been held, cannot, by agreement, confer jurisdiction or authority upon the clerk to issue an execution for a debt not evidenced by a judgment. (Strother vs. Richardson, 30 La. Ann., 1269.)

The court having no authority or jurisdiction to issue the said execution, for the reason that no judgment had been rendered, the same is null and void.

Therefore, the prayer of the petition is hereby granted; and it is hereby ordered that a judgment be entered annulling the said execution, with costs against Consolacion Javelona y Lopez and Bias Monteclaro. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

[1] Javelona vs. Yulo (31 Phil., Rep., 388.

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