

GLICERIO ROMULO AND ROQUE V. DESQUITADO, PLAINTIFFS AND APPELLEES VS. ESTEBAN DASALLA AND ERIBERTO A. UNSON, AS PROVINCIAL SHERIFF AND CLERK OF COURT, COURT OF FIRST INSTANCE OF...

G.R. No. 13153. May 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Appeal involving questions of law from the decision of the Court of First Instance of Davao in Civil Case No. 2014.

The following circumstances emerge from the stipulation of facts entered into by the parties:

In Civil Case No. 564 of the Court of First Instance of Davao, entitled "Esteban Dasalla and Basilisa Budas, plaintiffs, versus Romeo Alisna, Hilaria Tamos and Glicerio Romulo, defendants", the Court of Appeals rendered judgment on August 30, 1954, reversing the lower court's decision and declaring "the plaintiffs-appellants to be entitled to recover from defendants-appellees the possession of the property described in the complaint with costs". On January 15, 1955, Dasalla petitioned (Exhibit A) the lower court for execution of the judgment of the appellate court, to which petition was attached a verified bill of costs in the sum of P387.50 (Exhibit B), and asking, among others, that the three defendants in said case be ordered to pay jointly and severally said costs. On February 14, 1955, the court ordered the issuance of a writ of execution (Exhibit C). On February 22, 1955, the clerk of court issued a writ of execution in accordance with Dasalla's petition for execution and for costs.

To satisfy the payment of costs in the sum of P387.50, the provincial sheriff of Davao, in pursuance of the writ of execution, attached two parcels of land owned by Glicerio Romulo. These two parcels of land are located in Babac, Samal, Davao, and, together with another parcel not included in the attachment, are covered by T.C.T. No. T-168, Register of Deeds of Davao. After levy and publication of the proper notices in the Davao Sentinel, the two parcels of land were sold at public auction on June 16, 1955 to Esteban Dasalla, the sole bidder, for the sum of P592.50 (Exhibit E) which covered costs of suit of P387.50, expenses of publication of P150.00 and sheriff's fees and other expenses of P55.00. The sale was annotated at the back of T.C.T. No. T-168 as per entry No. 7525.

On March 27, 1956, Glicerio Romulo sold to Roque V. Desquitado the three parcels of land covered by T. C. T. No. T-168 for the sum of P7,000.00 (Exhibit D). The vendee took possession of the three parcels of land on March 27, 1956.

The year of redemption having expired without Romulo having redeemed the property, the provincial sheriff, on June 16, 1956, executed in favor of Dasalla an absolute deed of sale of the aforementioned two parcels of land (Exhibit F), which sale was duly registered in the office of the Register of Deeds of Davao. On July 14, 1956, the lower court issued in Dasalla's favor a writ of possession. Romulo filed two motions for reconsideration of this

writ, while Desquitado moved to intervene in the proceedings. Upon denial of all three motions, Romulo and Desquitado appealed to the Court of Appeals (Exhibit G).

On July 5, 1956, Glicerio Romulo and Roque V. Desquitado filed the present action, Civil Case No. 2014, in the Court of First Instance of Davao, against Esteban Dasalla and Eriberto A. Unson, the latter in his capacity as provincial sheriff and clerk of court, praying mainly that the writ of execution issued in Civil Case No. 564, the attachment and sale of the three parcels of land described in the complaint and covered by T.C.T. No. T-168, and the execution of the absolute deed of sale of June 16, 1956, in Dasalla's favor, be declared null and void.

After the parties had submitted their stipulation of facts and had presented additional evidence, the lower court rendered judgment that "the writ of execution prepared and issued by the Clerk of Court for the enforcement of the bill of costs is hereby declared null and void together with the levy on execution, the public auction sale and the absolute deed of sale of the two (2) parcels of land in favor of the defendant Esteban Dasalla, without special pronouncement as to costs."

The case is now before us on appeal with the following issues: (1) whether the costs in Civil Case No. 564 had been properly taxed; (2) whether the writ of execution, the auction sale and the absolute sale are null and void; (3) whether the appellees still have the right to question the validity of said execution after the certificate of absolute sale had been executed in favor of appellant Dasalla; and (4) whether the matter in litigation in Civil Case No. 564 is the same as the matter brought up in the present case.

Appellants claim that the costs in Civil Case No. 564 has been duly taxed, pointing out that the bill of costs was attached to their petition for execution which was set for hearing on January 22, 1955, and which was duly heard on that date in the presence of appellee Romulo.

The Rules outline the mode by which costs are taxed:

"In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and include them in the judgment. In superior courts, costs shall be taxed by the clerk on five days written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney, objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution." (Section 8, Rule 131, Rules of Court).

This procedure must be strictly complied with before execution as to costs may be had. So, even if the decision wherein costs were granted, had already become final, that does not hold true for the costs, for the payment of which the law prescribes that certain steps be first taken, such as the assessment by the clerk of court, and the appeal, if any, from that assessment to the court, and unless these steps are taken, the judgment as to costs cannot be executed. If the writ of execution of the award for costs was issued by the clerk of court *motu proprio*, before costs were assessed and their amount fixed, and while an appeal from the taxation made by the clerk of court was pending determination by this Court, such writ of execution as well as the sale at public auction made by the sheriff to implement it, are both null and void for having been carried out in contravention of Section 8, Rule 131, Rules of Court [Del Rosario vs. Sandico, et al., 97 Phil., 372; 51 Off. Gaz. (No. 8) p. 4027].

Herein, taxation of the costs was never made by the clerk of court. If costs had been properly taxed, appellants would have submitted the assessment of costs made by the clerk of court, for it, together with the bill of costs, is the proper evidence to prove that the required procedure had been followed (Lilius, et, al. vs. Manila Railroad Co., 62 Phil., 56). Crispiniano Siega, deputy clerk of court, testified that the bill of costs was merely attached to the petition for writ of execution and that he prepared the writ of execution without costs having first been taxed by

the clerk of court. Considering this, the writ of execution, and the sale at public auction and absolute sale grounded thereon, are all null and void.

Nullity of the execution and sale also proceeds from another fact. The appellate court's decision declared "plaintiffs-appellants to be entitled to recover from defendants-appellees the possession of the property described in the complaint with costs" while the writ of execution ordered the sheriff that "of the goods and chattels of Romeo Alisna, Hilaria Tampus and Glicerio Romulo alias Glicerio Romulo (defendants), Bagsac, Samal, Davao, jointly and severally you cause to be made the sum of P387.50 as costs of suit."

The decision simply states that it was "with costs", so the presumption is that the obligation of the three defendants for costs in said Civil Case No. 564, is simply joint (Articles 1207 and 1208, New Civil Code) and not joint and several as expressed by the writ of execution. In this jurisdiction the established rule is that where the judgment in a case does not state that the defendants are liable to pay jointly and severally a given sum of money, none of them may be compelled to satisfy in full said judgment (*Contreras vs. Felix*, 78 Phil., 570).

A similar issue was raised in the case of *De Leon vs. Nepomuceno* (37 Phil., 180) wherein it appears that the judgment in the election protest provided that "the costs and expenses on the contest will be paid by the protestee and the intervenor". As stated by this Court, the sole issue therein "is whether the judgment actually entered by the court below and affirmed upon appeal is or is not a 'joint and several' judgment", which issue was resolved thus:

"Examining the language of the judgment for costs, which is set out in the foregoing statement of facts, it is manifest that it is merely a joint judgment against the protestado y tercerista, and does not permit construction or interpretation as a 'joint and several' judgment. No arguments is necessary. It is sufficient to cite here articles 1137 and 1138 of the Civil Code as to the rule in this jurisdiction." (now articles 1207 and 1208 of the new civil code).

There being a distinct disparity between the appellate court's judgment which provides for joint liability and the writ of execution which made the three defendants solidarity liable, the latter is therefore null and void on that score. The execution order must conform substantially with the decision of the court (*Bank of the Philippine Islands vs. Green*, 48 Phil., 284). It must not vary the terms of the judgment it seeks to enforce (*Ang Liu Chi vs. Castelo, et al.*, 83 Phil., 263). If it fails to harmonize with the judgment which gives it life, it is not valid, for to maintain otherwise would be to violate the constitutional provision against depriving a person of his property without due process of law (*Velez vs. Martinez*, 63 Phil., 231).

Appellant Dasalla also maintains that the judicial sale in his favor can no longer be assailed because the period of redemption has already expired and a writ of possession has been issued to him. The principle of estoppel does not apply herein, because appellees filed this action on July 5, 1956, barely a month from the execution of the deed of sale. Inasmuch as the absolute sale to Dasalla is null and void, Romulo's right to annul it is not barred by his failure to redeem the properties within the redemption period. The redemption sale being null and void there was no need to redeem the property (*Balagtas vs. Arguelles*, 57 Phil., 317). In the case of *Lanci vs. Yangco* (52 Phil., 565), we had occasion to declare null and void the sale under execution made by the sheriff and the sheriff's certificate pursuant thereto, although the action was filed after the lapse of the year of redemption.

Contrary to appellants' contention, the matter litigated herein is not the same as that passed upon in Civil Case No. 564. The appellate court decided in said case that Dasalla was entitled to costs. His right to costs cannot be questioned, nor is it being questioned herein. What Romulo assailed was the amount of costs, the nature of his liability therefor, and the manner in which Dasalla's right to costs had been exercised against him. Neither the plea of *res judicata* nor that pending action is available herein, the subject matter of Civil Case No. 564 being different

from that of the present case.

Wherefore, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., did not take part.

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