

**NATIVIDAD P. NAZARENO, PETITIONER, VS. COURT OF APPEALS,
HON. NAPOLEON V. DILAG, PRESIDING JUDGE, RTC-CAVITE,
BRANCH XV, ROMEO P. NAZARENO AND ELIZA NAZARENO,
RESPONDENTS.**

G.R. No. 131641. February 23, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

A writ of execution must conform to the judgment to be executed; it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life, and in fact exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.[1]

Adjudication of ownership necessarily includes delivery of possession. Indeed, it would be defeating the ends of justice should we require that for the parties to obtain possession of the property duly adjudged to be theirs from those who have no right to remain therein, they must submit to court litigations anew.[2] An exception however exists where the actual possessor has shown a valid right over the property enforceable even against the owner thereof.[3]

On 15 March 1985 Natividad Nazareno filed a Complaint for Annulment of Sale and Damages against spouses Romeo and Eliza Nazareno. Natividad avers in her complaint that she is the sole and absolute owner of a parcel of land located in Naic, Cavite, covered by TCT No. 51798 of the Registry of Deeds of Cavite. Sometime in April 1981 Natividad's brother, Romeo, and his wife Eliza convinced Natividad to lend them TCT No. 51798 to be used as collateral to a loan the proceeds of which would be used in the completion of the construction of the Naic Cinema on the subject property. Natividad agreed on the condition that title to her property would be returned within one (1) year from the completion of the construction of the cinema. Accordingly, Natividad executed a Deed of Absolute Sale in favor of spouses Romeo and Eliza over the lot covered by TCT No. 51798. The sale, however, was simulated because Natividad did not receive any consideration therefor.

The cinema was completed in November 1981 but despite several demands by Natividad, spouses Romeo and Eliza failed and refused to return Natividad's title to the property; instead, they had the property transferred in their name. Consequently, TCT No. T-118276 was issued in their name in lieu of TCT No. 51798.

Spouses Romeo and Eliza denied that the property belonged to Natividad. On the contrary, they averred that it originally formed part of the estate of the late Maximino Nazareno, Jr., father of Romeo and Natividad. According to Romeo, the property was his share in their inheritance. As regards the deed of sale, he explained that it was only resorted to for the purpose of carrying out and implementing the transfer of the property forming part of the estate of Maximino Nazareno Jr., the distribution of which was entrusted to Natividad.

The trial court found for the spouses Romeo and Eliza and ruled that although the Deed of Absolute Sale was simulated, the same could be treated as an adjudication and a conveyance to Romeo of his share in the estate of his father.

But the Court of Appeals ruled otherwise. It found that during pre-trial, the parties stipulated that the Deed of Absolute Sale between Natividad and spouses Romeo and Eliza was simulated as there was in fact no money consideration. Consequently, the burden of proof was shifted to Romeo to prove that the transfer was in reality a conveyance of his share in the estate of his father. But during trial, Romeo failed to prove this so-called conveyance of his share. On the other hand, Natividad satisfactorily showed that the property was previously sold to her by their late father. Romeo failed to disprove this fact. Neither did he successfully cause the deed of sale executed by Maximino Nazareno Jr. in favor of Natividad to be declared null and void. Resultingly, its authenticity and validity remained un rebutted.

In short, the Court of Appeals did not sustain the trial court and set aside its Decision. The Deed of Absolute Sale executed by Natividad in favor of the spouses Romeo and Eliza as well as TCT No. 118276 was declared null and void. Hence, the Register of Deeds was ordered to restore TCT No. 51798 under the name of Natividad. The case was brought to us on a Petition for Review on Certiorari but we denied the petition after having ascertained that the appellate court committed no reversible error. Thus, the Court of Appeals' decision became final and executory on 13 June 1996.

On 7 November 1996 Natividad filed a Manifestation and Motion with the Regional Trial Court of Naic praying for the issuance of a writ of execution as well as a writ of possession. The spouses Romeo and Eliza filed an Opposition contending that in her Complaint Natividad never prayed that she be placed in possession of the subject premises. Neither did the Court of Appeals order that petitioner be placed in possession of the property.

On 21 February 1997 the trial court granted the writ of execution prayed for but denied the issuance of a writ of possession as it was not included in the decision of the Court of Appeals. Natividad's Motion for Reconsideration was denied. Hence, recourse was made to the Court of Appeals.

On 9 September 1997 the Court of Appeals denied the petition thus -

Execution not in harmony with the judgment has no validity. It must conform more particularly to that ordained or decreed in the dispositive portion of the decision, as the only portion of the decision that becomes the subject of execution.

Therefore, to issue a writ of possession in favor of petitioner in this case where possession was never decreed in favor of petitioner, would be void x x x

Moreover, it is a settled rule that a writ of possession is improper to eject another from possession unless sought in connection with (1) a land registration proceeding; (2) an extrajudicial foreclosure of real property; (3) in a judicial foreclosure of property provided that the mortgagor has possession and no third party has intervened; and (4) in execution sales.

It is an undisputed fact that this case is for the annulment of a private sale made by petitioner to private respondent. This action is not a land registration case nor a foreclosure of mortgage whether judicially or extrajudicially nor was the subject property sold in execution. Petitioner sought for the issuance of a writ of possession in connection with a decision in a civil action for annulment of a private sale and damages.[4]

A Motion for Reconsideration was filed but the same was denied; hence, the instant petition.

Obviously, we have no choice but to deny the petition. Section 49 (c) of Rule 39 (now Sec. 47 (c) of Rule 39) of the Rules of Court provides:

Sec. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x x

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

From the aforestated, it is clear that a judgment is not confined to what appears on the face of the decision, but also to those necessarily included therein or necessary thereto.[5] Thus although the dispositive portion of the decision of the Court of Appeals in CA-GR CV No. 12856 provides -

WHEREFORE, judgment is hereby rendered REVERSING the Decision appealed from and another is hereby rendered as follows:

1. The "Deed of Absolute Sale of Registered Land" (Exhibit "B") and Transfer Certificate of Title No. 118276 (Exhibit "F") under the name of the appellees are hereby declared null and void;
2. The Register of Deeds is hereby ordered to restore Transfer Certificate of Title No. 51798 under the name of the appellant.[6]

it is clear that the same resulted from the adjudication of ownership over the disputed lot which is necessarily included in the discussion. Thus, as explained by the Court of Appeals -

In sum, then, Lot 504-A-3 covered by Transfer Certificate of Title No. 51798 was owned by the appellant in her own right as vendee and not appellee's share in the estate of their deceased father. Consequently, appellee's claim that the appellant executed the "Deed of Absolute Sale" (Exhibit "B") for the purpose of conveying to the appellee the latter's share in the estate of their deceased father is utterly bereft of factual basis x x x

Evidently, the decision of the Court of Appeals required no writ of possession as the writ of execution would suffice to place Natividad in possession of Lot 504-A-3. A case in point is *Perez v. Evite*[7] wherein the lower court declared Evite as owner of the disputed land. When the judgment became final and executory, Evite moved for the issuance of a writ of execution which the trial court granted. Perez moved to quash the writ arguing that the writ was at variance with the decision as the decision sought to be executed merely declared Evite owner of the property and did not order its delivery to him. Perez argued citing the cases of *Jabon v. Alo*[8] and *Talens v. Garcia*[9] which held that adjudication of ownership of the land did not include possession thereof. In resolving in favor of Evite this Court held -

x x x Considering that herein plaintiff-appellants have no other claim to possession of the property apart from their claim of ownership which was rejected by the lower court and, consequently, has no right to remain thereon after such ownership was adjudged to defendant-appellees, the delivery of possession of the land should be considered included in the decision. Indeed, it would be defeating the ends of justice should we require that for herein appellees to obtain possession of the property duly adjudged to be theirs, from those who have no right to remain therein, they must submit to court litigations anew.

In the instant case, spouses Romeo and Eliza could not use *Jabon v. Alo* and *Talens v. Garcia* to support their contention that the adjudication of ownership over the land does not necessarily include possession. As already decreed in *Perez v. Evite* -

It may be observed that in both decisions (*Jabon v. Alo* and *Talens v. Garcia*), this Court underscored the possibility that the actual possessor has some rights which must be respected and defined. It is thus evident that the pronouncement was made having in mind cases wherein the actual possessor has a valid right over the

property enforceable even against the owner thereof. As example, we gave the cases of tenants and lessees. However, it is our view that that above doctrine may not be invoked in instances where no such right may be appreciated in favor of the possessor. In the instant case there appears in the appealed order of June 30, 1959, the specific finding of the trial court that "the plaintiffs have not given any reason why they are retaining the possession of the property" x x x x This factual finding cannot be reviewed in this instance as the appeal has been taken to us directly on a question of law x x x x

The same ruling would apply in the instant case. The Court of Appeals categorically declared that the claim of spouses Romeo and Eliza over the disputed lot has utterly no factual basis. Therefore, they have no reason to remain in possession of the property.

But the same could not be said of the Naic Cinema. The matter of ownership and possession of the Naic Cinema was never put in issue. Consequently, petitioner cannot ask for a writ of possession to place her in physical occupancy of the Naic Cinema. Being declared owner of subject lot does not also mean that she is automatically entitled to possession of all the improvements therein. Otherwise, the actual possessor would be deprived of his property without due process of law.

Finally, petitioner cannot validly claim possession over the Naic Cinema since in her complaint and subsequent pleadings, she has admitted not being the owner thereof. On the contrary, she claims that the Naic Cinema belongs to the estate of her father. On the other hand, respondent spouses have asserted dominion over the Naic Cinema. Plainly, petitioner cannot wrest possession of the moviehouse from respondent spouses through a mere writ of possession as she herself even disclaims being the owner thereof. Ownership over the Naic Cinema must be threshed out in a proper proceeding. A mere prayer for the issuance of a writ of possession will not suffice.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals denying the issuance of a writ of possession is AFFIRMED. Costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.
Buena, J., on leave.

[1] Matuguina Integrated Wood Products, Inc. v. Court of Appeals, G.R. No. 98310, 24 October 1996, 263 SCRA 491.

[2] Perez v. Evite, No. L-16003, 29 March 1961, 1 SCRA 953.

[3] Id., p. 952.

[4] Decision, pp. 4-6, CA Records, pp. 122-124.

[5] See Note 2.

[6] CA Decision, p. 5; Rollo, p. 52.

[7] See Note 2.

[8] 91 Phil. 753 (1952).

[9] 87 Phil. 175 (1950).

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