

## LOREÑO TERRY, PETITIONER VS. PEOPLE OF THE PHILLIPPINES, RESPONDENT.

*G.R. No. 136203. September 16, 1999*

Ponente: PARDO, J.

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### PARDO, J.:

The case before the Court is an appeal via certiorari from a decision of the Court of Appeals[1] affirming with modification the [amended] order of the Regional Trial Court[2] declaring petitioner guilty of contempt of court for re-entering Lot No. 13118 subject of Civil Case No. 740, after being evicted therefrom and sentencing him to suffer two (2) months imprisonment and a fine of five hundred (P500.00) pesos, and to vacate Lot Nos. 13118 and 10627.

The facts are as follows:

On August 13, 1979, the Court of First Instance of Virac, Catanduanes, in Civil Case No. 740, entitled "Eugenio Arcilla vs. Pedro Arcilla" decided the case in favor of Pedro and Leoncia Arcilla and against plaintiffs Eugenio and Maria Arcilla and third party defendant Loreño Terry, declaring Pedro and Leoncia Arcilla the lawful owners of Lot Nos. 13118 and 10627. Petitioner did not appeal from the decision and on November 22, 1979, the trial court issued a writ of execution against petitioner. Apparently, the writ was not served on petitioner and became stale by operation of law five years thereafter.

On December 9, 1985, after the lapse of more than six (6) years, the trial court, reorganized into a regional trial court, issued an alias writ of execution.

On January 13, 1986, Deputy Sheriff Carlos M. Ubalde submitted his sheriff's return stating that upon service of the alias writ upon petitioner, "he learned that petitioner was no longer in occupation over the aforesaid Lot Nos. 13118 and 10627." Sheriff Ubalde further stated in his return "that petitioner is allegedly not in possession of any land or real estate property declared in his name as per certification issued by the Office of the Provincial Assessor of Catanduanes."

On the same date, January 13, 1986, Deputy Sheriff Ubalde certified that pursuant to the alias writ of execution, possession of the lots was turned over to Leoncia S. Arcilla "for and in behalf of the heirs of Pedro S. Arcilla." Leoncia S. Arcilla acknowledged the turn-over of the lots.

On July 5, 1991, Leoncia S. Arcilla filed with the Regional Trial Court, Virac, Catanduanes an action for reconveyance or annulment of sale, recovery of possession and damages against petitioner, docketed as Civil Case No. 1586, entitled Leoncia Vda. de Arcilla vs. Loreño and Violeta Terry, involving one of the lots subject of Civil Case No. 740.

On October 27, 1992, the trial court dismissed the case.

By filing such action for reconveyance and recovery of possession, Leoncia Arcilla acknowledged that petitioner

was occupying the lots in question.

On March 27, 1995, Leoncia Arcilla filed with the trial court in Civil Case No. 740, a motion for contempt against petitioner for re-occupying Lot No. 13118.

On March 19, 1996, the trial court issued an order finding petitioner guilty of contempt and sentencing him to suffer the penalty of two (2) months imprisonment and to pay a fine of P500.00. However, on May 2, 1996, the trial court reduced the penalty to one (1) month imprisonment and a fine of P100.00 and to vacate Lot Nos. 13118 and 19627.

In due time, respondents appealed from the aforesaid order to the Court of Appeals.

After due proceedings, on October 30, 1998, the Court of Appeals promulgated its decision affirming with modification the trial court's order and sentencing petitioner to two (2) months imprisonment and a fine of P500.00. The appellate court likewise affirmed the trial court's order for petitioner to vacate Lot Nos. 13118 and 10627.

Hence, this appeal.

On February 3, 1999, the Court resolved to require respondent to comment on the petition, not to file a motion to dismiss, within ten (10) days from notice.[3]

On May 28, 1999, the Solicitor General filed his comment.[4] In brief, the Solicitor General submits that "even if indeed there was no effective service of the writ and alias writ of execution on him,"[5] as he was admittedly served with a copy of the decision, petitioner's re-entry upon the land is contemptuous and punishable.

At issue in this petition is whether or not petitioner's re-entry on the disputed lots and exercise of acts of ownership constitute indirect contempt.

We find the petition meritorious and give due course thereto. We resolve the issue in favor of petitioner. Even if it be a fact that petitioner re-entered the lots in question after he was judicially evicted therefrom, there can be no contempt of court because the case below for eviction has become *functus officio*.

Let us restate the essential facts.

On August 13, 1979, the Court of First Instance of Virac, Catanduanes, rendered judgment in Civil Case No. 740, against petitioner, declaring Pedro and Leoncia Arcilla owners of Lot Nos. 13118 and 10627.

On November 22, 1979, the trial court issued a writ of execution as against petitioner. This writ was not served on him which implies that petitioner remained in possession of the disputed lots.

On December 9, 1985, the trial court issued an alias writ of execution. At that time, this could no longer be lawfully done. The rule is that the court could issue a writ of execution by motion within five (5) years from finality of the decision, which in this case was in 1979.[6] A writ of execution issued after the expiration of that period is null and void.[7] There is a need for the interested party to file an independent action for revival of judgment. The judgment may be enforced after the lapse of this period and before the same is barred by the statute of limitations, by instituting an ordinary civil action.[8] "The reason is that after the lapse of the five-year period, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form. Such action must be filed within ten (10) years from the date the judgment became final." [9] Assuming that the decision became final and executory on November 22, 1979, when the trial court issued the original writ of execution, the court could no longer issue an alias writ of execution, by motion, on December 5, 1985, six (6) years later. And the Sheriff could not lawfully enforce and

execute such invalid writ on January 13, 1986.

Indeed, even the trial court's original decision dated August 13, 1979 had become stale in September, 1989, ten (10) years after its finality.

Consequently, on March 27, 1995, when Leoncia Arcilla filed with the trial court a motion for contempt in Civil Case No. 740, the trial court no longer had jurisdiction over the case.[10] Its orders dated March 19, 1996, and May 2, 1996 are void.

There can be no contempt for disobedience of an order issued without authority, [11] or which is void for want of jurisdiction.[12]

The disobedience which the law punishes as constructive contempt implies willful disobedience to a valid order. For, at bottom, contempt is a willful disregard or disobedience.[13]

The court must exercise the power of contempt judiciously and sparingly with utmost self-restraint.[14]

Finally, in the order declaring petitioner in contempt, the trial court and the Court of Appeals likewise ordered petitioner to vacate Lot Nos. 13118 and 10627, subject of Civil Case No. 740.

That case was stale since 1989. It was seven (7) long years a dead case when in the guise of a contempt order, the trial court practically revived the judgment by ordering petitioner to vacate the contested lots, without the institution of an independent action for revival of judgment. Such an order is improper in a judgment for contempt. In contempt, the sentence is limited to the penalty prescribed in the Revised Rules of Court.

WHEREFORE, the Court hereby GRANTS the petition for review on certiorari and REVERSES the decision of the Court of Appeals in CA-G.R. CR No. 20214, promulgated on October 30, 1998.

The Court ACQUITS petitioner of the charge of contempt in Civil Case No. 740, Regional Trial Court, Virac, Catanduanes.

No costs.

### **SO ORDERED.**

Davide, Jr., C.J. (Chairman), Puno, Kapunan and Ynares-Santiago, JJ., concur.

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[1] In CA-G.R. CR No. 20214, promulgated on October 30, 1998.

[2] In Civil Case No. 740, RTC Virac, Catanduanes.

[3] Rollo, p. 29.

[4] Rollo, pp. 38-48.

[5] On p. 42.

[6] Rule 39, Section 6, 1964 Revised Rules of Court; Villaruel vs. Court of Appeals, 172 SCRA 305, 313 [1989]; Republic vs. Court of Appeals, 137 SCRA 220, 227 [1985].

[7] 2 Moran, Comments on the Rules of Court, 1979 ed. p. 270, citing Arambulo vs. CFI Laguna, 53 Phil. 302 [1929].

[8] Republic vs. Court of Appeals, supra; Prudence Realty and Development Corporation vs. Court of Appeals,

231 SCRA 379 [1994]; Camacho vs. Court of Appeals, 287 SCRA 611 [1998]; Salientes vs. Intermediate Appellate Court, 246 SCRA 150 [1995]; Gonzales vs. Court of Appeals, 212 SCRA 595 [1992].

[9] 2 Moran, Comments on the Rules of Court, 1979 ed. pp. 266-267, citing cases; Caiña vs. Court of Appeals, 239 SCRA 252 [1994]; Continental Bank vs. Tiongco, 94 SCRA 715, 718 [1979]; Luzon Surety Co. vs. IAC, 151 SCRA 652 [1987]; PNB vs. Deloso, 32 SCRA 266 [1970].

[10] Bolaños vs. Intermediate Appellate Court, 138 SCRA 99 [1985]; Pfleider vs. Victoriano, 98 SCRA 491 [1980]; Olympia International, Inc. vs. Court of Appeals, 180 SCRA 354 [1989]; Paz Bacabac vs. Delfin, 1 SCRA 1194 [1961]; Aquizap vs. Basilio, 21 SCRA 1435 [1967]; Isasi vs. Republic, 101 Phil. 405 [1957]; Ortigas & Co., Ltd. vs. Velasco, 234 SCRA 455 [1994].

[11] Dee vs. Securities and Exchange Commission, 199 SCRA 238 [1991].

[12] Weigall vs. Shuster, 11 Phil. 340 [1908]; San Diego vs. Villagrancia, 22 SCRA 592 [1968].

[13] Commissioner of Immigration vs. Cloribel, 127 Phil. 716 [1967].

[14] De Guia vs. Guerrero, 234 SCRA 625 [1994]; Fontelera vs. Amores, 70 SCRA 37, 43 [1976]; Pacuribot vs. Lim, Jr., 275 SCRA 543 [1997].

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