

**TRINIDAD MANAOIS-SALONGA AND ISAIAS REYES SALONGA,
PLAINTIFFS AND APPELLANTS, VS. IMELDA V. NATIVIDAD AND
MARCIANO NATIVIDAD, DEFENDANTS AND APPELLEES.**

G.R. No. 13927. February 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Appeal from an order of the Court of First Instance of Manila to the Court of Appeals but certified here by that court on the ground that the question involved is purely legal.

The record shows that on November 12, 1954, plaintiffs filed a complaint against the defendants Imelda V. Natividad and Marciano Natividad, the latter being "joined in this suit as husband of the former", to collect the sum of P10,000 with interest, plus moral damages, attorney's fees and costs. The complaint is based upon a promissory note dated March 5, 1954 executed by defendant Imelda V. Natividad in favor of plaintiff Trinidad M. Salonga in the following tenor:

"For consideration received, I promise to pay Mrs. Salonga the sum of Ten Thousand Pesos (P10,000.00) on or before March 28, 1964.

(Sgd.) Imelda V. Natividad

Witnesses:

(Sgd.) Illegible

(Sgd.) Illegible"

Answering the complaint, defendants, through counsel, admitted the execution of the promissory note by defendant Imelda V. Natividad. They claimed, however, that said defendant had already paid the amount of P1,000.00 of the indebtedness. They, likewise, expressed willingness to pay the balance of P9,000.00 but pleaded for time to comply with said obligation in view of business reverses and the fact that defendant Imelda V. Natividad had been ill of tumor and was confined in a hospital.

At the hearing held on November 17, 1955, plaintiffs admitted, the payment of P1,000.00 and the defendant Imelda V. Natividad "confessed judgment assuming the payment of the balance of P9,000.00." On that same date, the lower court rendered a decision as follows:

"After hearing the argument of both parties in this case, the Court finds that the complaint is based on a promissory note on a loan of Ten Thousand (P10,000.00) Pesos without any interest and the defendant admitted that the accounting having been paid thereon is the amount of One Thousand (P1,000.00) Pesos which is also admitted by the plaintiff.

"Wherefore, judgment is hereby rendered condemning the herein defendant to pay. Nine Thousand (P9,000.00)

Pesos without interest as there is no such thing stated in the promissory note signed by the defendant, to pay attorney's fees in the sum of Two Hundred (P200.00) Pesos and' to pay the costs."

After the above decision had become final and executory, or on January 3, 1956, plaintiffs moved to execute the judgment. The motion was granted, but the writ of execution issued by the clerk of court, ostensibly pursuant to the dispositive part of the judgment, referred only to defendant Imelda V. Natividad to the exclusion of her husband. On January 16, 1956, after the writ was returned unsatisfied, plaintiffs filed with the court an ex parte motion for correction of a clerical error in the decision. It was argued that the word "defendant" in the dispositive part of the judgment should have been in plural or "defendants" since the case was lodged against the defendant spouses and not merely against one of them. Plaintiffs thus prayed for the issuance of another writ of execution which would include defendant Marciano Natividad therein.

Acting upon the motion, the trial court on January 31, 1956 issued the following order:

"Finding the motion of Atty. Salonga & Associates, in representation of the plaintiffs, dated January 16, 1956 to be well taken, this Court hereby amends its decision dated November 17, 1955 in the sense that the word defendant in the second (2) line as well as in the fourth (4) line of second, (2) paragraph thereon should be changed to 'defendants'. Let another writ of execution be issued so as to include the husband of the defendant, Imelda Natividad for the enforcement of the judgment in this case."

On September 14, 1956, defendant spouses, by counsel, filed a petition to set aside the alias writ of execution on the grounds that plaintiffs' ex parte motion for correction of the supposed clerical error was filed out of time, and that original decision which referred singularly to defendant Imelda V. Natividad was correct as the latter's husband was merely joined in the suit as such husband and the complaint was based on a promissory note executed solely by defendant Imelda V. Natividad. On September 19, defendant Marciano Natividad alone and by new counsel, lodged a verified petition to set aside the court's order of January 31, 1956, to recall the writ of execution thereunder and to lift the garnishment effected on his salary in pursuance thereof. This defendant's petition alleged that plaintiffs' complaint states no cause of action against him, the same being based upon the promissory note executed by his wife alone; that the decision plaintiffs sought to amend had become final and executory; and that the amendment thus prayed for was not merely to correct a clerical but a substantial error. Defendant Marciano Natividad also contended that the amendatory order was unwarranted as it aimed to make him solidarily liable with his wife for a debt incurred exclusively by the latter without his knowledge' and consent, and that the obligation involved in the promissory note is not a proper charge against the conjugal partnership.

Sustaining the petition of defendant Marciano Natividad, the trial court, on September 24, 1956, set aside its order of January 31, 1956 and lifted the garnishment effected on his salary. Motion for reconsideration of this last order having been denied, plaintiffs took the present appeal.

Passing first upon the question of the propriety of the instant appeal, as raised by defendants-appellees in their brief, the rule is that ordinarily, an order of execution of a final judgment is not appealable. Otherwise, as was said in the case of *Molina vs. De la Riva* (18 Phil., 571), a case could never end, for as often as an order for execution of judgment was made it could be excepted to and the case brought here for review. This Court, however, has held that "where such order of execution in the opinion of the defeated party varies the terms of the judgment and does not conform to the essence thereof, or when the terms of the judgment are not entirely clear and there is room for interpretation and the interpretation given by the trial court as contained in its order of execution is wrong in the opinion of the defeated party, the latter should be allowed to appeal from the said order so that this appellate Tribunal may pass upon the legality and the correctness of the said order." (*Castro vs. Surtida, et al.*, 87 Phil., 166; 47 Off. Gaz., Supp. No. 12, p. 351.) Conformably to the above doctrine and considering the circumstances of the case, there can, we think, be no valid objection to the allowance of the present appeal.

Going now into the question of the legality of the writ of execution issued only against the defendant wife, Imelda V. Natividad, we find that the trial court in rendering its decision of November 17, 1955 really intended to hold liable said defendant wife alone to the exclusion of her husband. As stated by the court in its order of September 24, 1956, "the defendant Marciano Natividad has not signed the promissory note jointly with his wife and consequently cannot be made to pay for the value of the note executed and signed by his wife." It is to be observed that plaintiffs' cause of action in their complaint was based solely upon the promissory note, which from the allegations therein appears to be the defendant wife's personal undertaking. No cause of action was alleged against Marciano Natividad, the defendant husband. Neither was there any allegations in the complaint, that the loan was a conjugal partnership liability or, more specifically, that it was incurred by the defendant wife with her husband's consent, or that it was used for the benefit of the family. On the other hand, in the answer to the complaint, it is alleged that the loan, had partially been paid by the defendant wife herself, which allegation was admitted by plaintiffs. And at the hearing of the case, it was also she "who confessed judgment assuming the payment of the balance of P9,000.00." In the circumstances, we do not think the defendant husband could, together with his co-defendant wife, legally be held liable on the promissory note in question. A judgment must conform to the pleadings and proof.

It is argued that defendants in their answer admitted their liability on the promissory note and further expressed their willingness to pay the same. What appears to have actually been admitted, however, was the existence of the indebtedness incurred by the wife as evidenced by the note. Such an admission cannot, of course, be enlarged so as to make the defendant husband liable for the said indebtedness, there being nothing alleged in the complaint to hold him so liable either personally or jointly with his wife.

In any event, the rule is absolute that after a judgment becomes final by the expiration of the time to appeal, no further amendment or correction can be made by the court except for clerical errors or mistakes. (*Marasigan vs. Ronquillo*, 94 Phil., 237. Taking into account the circumstances of the present case, it is apparent that the amendment of the judgment by making plural the word "defendant" in the dispositive portion thereof would not really be a correction of a mere clerical error. For to allow such an amendment would make the defendant husband, Marciano Natividad, who was not included in the judgment, or the conjugal partnership, liable for an obligation for which the defendant wife alone has been held answerable, her authority to bind the partnership not having been alleged or proved. And assuming that the trial court erred in not holding said defendant husband liable on the strength of the alleged admission in the answer already referred to the error is obviously one of judgment, which can only be corrected by appeal, and not by the recourse to the power of the court to correct clerical errors or misprisions. (*Henderson vs. Tan*, 87 Phil., 466.)

In view of the foregoing, the order of the court a quo denying plaintiffs-appellants' motion for reconsideration dated September 24, 1956, is hereby affirmed, with costs against appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

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