

LUISA BRIONES-VASQUEZ, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF MARIA MENDOZA VDA. DE OCAMPO, RESPONDENTS.

G.R. NO. 144882. February 04, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Civil Procedure, assailing the Resolution of the Court of Appeals in CA-G.R. CV No. 39025, dated June 9, 2000, which denied petitioner's motion for clarificatory judgment and the Resolution of the Court of Appeals, dated August 3, 2000, which denied the motion for reconsideration.

Under an agreement denominated as a pacto de retro sale, Maria Mendoza Vda. De Ocampo acquired a parcel of land from Luisa Briones. The latter thereunder reserved the right to repurchase the parcel of land up to December 31, 1970.[1]

Maria Mendoza Vda. De Ocampo passed away on May 27, 1979.[2] On June 14, 1990, Hipolita Ocampo Paulite and Eusebio Mendoza Ocampo, the heirs of Maria Mendoza Vda. De Ocampo, filed a petition for consolidation of ownership, alleging that the seller was not able to exercise her privilege to redeem the property on or before December 31, 1970.[3]

The Regional Trial Court (RTC) of Pili, Camarines Sur, Branch 32 rendered a Decision[4] on January 30, 1992 as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- declaring that exh. "A " is a true pacto de retro sale;
- declaring that the defendant can still redeem the property within 30 days from the finality of this judgment, subject to the provisions of Art. 1616 of the New Civil Code;
- No costs.

SO ORDERED.[5]

Plaintiffs therein -- herein private respondents -- appealed the RTC Decision to the Court of Appeals.[6] On June 29, 1995, the Court of Appeals promulgated a Decision[7] and disposed of the case in the following manner:

THE FOREGOING CONSIDERED, the contested decision is hereby set aside; and declaring the 1970 sale with right of repurchase, Exhibit "A," as one of an equitable mortgage.

SO ORDERED.[8]

Respondents filed a motion for reconsideration which the Court of Appeals denied through a Resolution,[9] dated

December 15, 1995. The Court of Appeals Decision became final and executory and entry of judgment was made on July 17, 1996.[10]

Subsequently, at the RTC, both petitioner and respondents filed their respective motions for a writ of execution. The RTC issued a writ of execution. However, the writ was returned unserved per sheriff's return which reads as follows:

Respectfully returned to this Court thru the Clerk of Court VI, RTC, Pili, Camarines Sur the herein attached original copy of the Writ of Execution issued in the above-entitled case with the following information, to wit:

That the plaintiffs [herein private respondents] were informed that the writ of execution was already issued for implementation and that they should pay the necessary sheriff's and kilometrage fees;

That [one of] the plaintiff[s] came to the Office of the Clerk of Court VI but did not deposit any amount for the kilometrage fee and for the expenses in the implementation of the said writ, but instead plaintiff said that he is not interested to implement such writ;

That the 60-day period within which the said writ should be implemented has already expired.

WHEREFORE, the original copy of the Writ of Execution is hereby returned unserved.

Cadlan, Pili, Camarines Sur – July 8, 1997

For the Clerk of Court VI and

Ex-Officio Provincial Sheriff

by:

(signed)

EDDIE M. ROSERO

Sheriff IV[11]

Petitioner thereafter filed a motion for an alias writ of execution. This was granted by the RTC:[12]

ALIAS WRIT OF EXECUTION

T O : The Sheriff or any person authorized
to serve process, RTC, Br. 32, Pili, C.s.

THRU : THE CLERK OF COURT VI and EX-OFFICIO
PROVINCIAL SHERIFF
Regional Trial Court
Pili, Camarines Sur

G R E E T I N G S :

WHEREAS, on January 20, 1992, a decision was rendered by this Court, the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered as follows:

- declaring that Exh. “A” is a true pacto de retro sale;
- declaring that the defendant can still redeem the property within 30 days from the finality of this judgment,

subject to the provisions of Art. 1616 of the New Civil Code.

- No costs.”

WHEREAS, in an order of this Court dated June 16, 1992, the notice of appeal filed by counsel for the defendant has been granted and the Clerk of Court V of this Court transmitted the entire records of the case to the Court of Appeals, Manila;

WHEREAS, on June 29, 1995, a decision was rendered by the Court of Appeals, Manila, the dispositive portion of which reads as follows:

“THE FOREGOING CONSIDERED, the contested decision is hereby set aside; and declaring the 1970 sale with right of repurchase, “Exh. “A” as one of an equitable mortgage.”

WHEREAS, on March 5, 1997, the Hon. Nilo A. Malanyaon, Presiding Judge of this Court issued an order granting the issuance of a writ of execution, hereunder quoted as follows:

“It appearing that the decision of the Court of Appeals had become final and executory, and an entry of final judgment had already been issued by the Honorable Court of Appeals, let a writ of execution issue.”

WHEREAS, on July 10, 1997, Sheriff Eddie M. Rosero submitted his return:

“WHEREFORE, the original copy of the Writ of execution is hereby returned unserved.”

WHEREAS, on July 18, 1997, the Hon. Nilo A. Malanyaon issued an Order:

“The motion for issuance of alias writ of execution filed by counsel for the defendant, Atty. Lucille Fe R. Maggay-Principe, is hereby granted.

Consequently, the Clerk of Court of this Court is directed to issue alias writ of execution.”

WHEREFORE, you the Provincial Sheriff of Camarines Sur or his lawful deputy is hereby commanded to effect the satisfaction of the above-quoted decision of the Honorable Court of Appeals, Manila. Return this writ to this Court within sixty (60) days from your receipt hereof.

WITNESS THE HON. NILO A. MALANYAON, Judge of this Court, this 21[st] day of July, 1997, at Cadlan, Pili, Camarines Sur.

(Sgd.) LALAIN P. MONSERATE

Officer-In-Charge

Legal Researcher II

The Sheriff was unable to effect the satisfaction of the alias writ as stated in the sheriff’s report, which is worded thus:

This is to report on the status of the implementation of the Alias Writ of Execution issued in the above-entitled case, to wit:

That on August 6, 1997 the plaintiff[s] represented by Sps. Policarpio Paulite and Hipolita Ocampo and Eusebio M. Ocampo personally received copy of the Alias Writ of Execution but they refused to sign on the original copy of the said writ, together with the letter of advise informing them to withdraw at any time the amount deposited to the Office of the Clerk of Court VI, RTC, Pili, Camarines Sur by defendant Luisa Briones so that the mortgage may now be deemed released or cancelled.

That until this time the said plaintiff[s] failed and or did not bother to withdraw the said amount deposited by

defendant Luisa Briones despite letter of advice and the alias writ of execution having been personally received by them.

Cadlan, Pili, Camarines Sur – September 9, 1997.

For the Clerk of Court and
Ex-Officio Sheriff
by:

(signed)

EDDIE M. ROSERO
Sheriff IV[13]

Unable to effect the execution of the Court of Appeals decision, petitioner filed with the RTC an omnibus motion, dated May 25, 1999, praying:

WHEREFORE, it is respectfully prayed that an order issue:

- a) Declaring the equitable mortgage, Exhibit “A”, discharged;
- b) Directing the issuance of a Writ of Possession against the plaintiffs for the delivery of possession of the land in question to the defendant.[14]

The RTC denied the omnibus motion in an Order dated November 16, 1999, which states:

Acting on the omnibus motion of plaintiff dated 25 May 1999 and the opposition thereto of defendant, and considering that the decision of the Court of Appeals referring the decision of this Court has become final and executory, hence, this Court can no longer alter, modify or add anything thereto, the prayers set forth in the omnibus motion is, as it is, hereby denied.

SO ORDERED.[15]

Petitioner filed a motion for reconsideration[16] of the above Order, which was denied by the RTC in an Order dated February 23, 2000.[17]

Petitioner then filed a motion for clarificatory judgment, dated April 5, 2000, with the Court of Appeals.[18] The motion was denied in a Resolution, dated June 9, 2000, which reads as follows:

The only issues that reached Us, through an appeal, was whether the 1970 Sale with Right of Repurchase was actually an equitable mortgage. We ruled, it was, necessarily there is nothing to clarify.

If it is a matter however whether the prevailing party should be entitled to a right to repossess the property, then the remedy is not with Us, but with the Court below.

For lack of merit, the Motion for Clarificatory Judgment is hereby DENIED.

SO ORDERED.[19]

Petitioner filed a motion for reconsideration of the above Resolution. The Court of Appeals denied the same in a Resolution dated August 3, 2000.[20]

Petitioner now comes to this Court raising the following issues:

PETITIONER SUBMITS THAT THE PUBLIC RESPONDENT ACTED ARBITRARILY, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE FOLLOWING RESOLUTIONS:

A) RESOLUTION DATED JUNE 9, 2000, DENYING PETITIONER'S MOTION FOR CLARIFICATORY JUDGMENT.

B) RESOLUTION DATED AUGUST 3, 2000, DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[21]

The sole issue is whether or not the Court of Appeals acted with grave abuse of discretion amounting to lack of jurisdiction in refusing to grant petitioner's motion for clarificatory judgment.

It must be noted, as narrated above, that the Decision of the Court of Appeals had already become final and executory at the time that the motion for clarificatory judgment was filed. With regards to final judgments, this Court has pronounced that:

... nothing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called nunc pro tunc entries which cause no prejudice to any party, and, of course, where the judgment is void.[22]

As a general rule, therefore, final and executory judgments are immutable and unalterable except under the three exceptions named above: a) clerical errors; b) nunc pro tunc entries which cause no prejudice to any party; and c) void judgments.

In the present case, petitioner claims the second exception, i.e., that her motion for clarificatory judgment is for the purpose of obtaining a nunc pro tunc amendment of the final and executory Decision of the Court of Appeals.

Nunc pro tunc judgments have been defined and characterized by this Court in the following manner:

The office of a judgment nunc pro tunc is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has been actually taken. It may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken. If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry nunc pro tunc of a proper judgment. Hence a court in entering a judgment nunc pro tunc has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered. In all cases the exercise of the power to enter judgments nunc pro tunc presupposes the actual rendition of a judgment, and a mere right to a judgment will not furnish the basis for such an entry. (15 R. C. L., pp. 622-623.)

...

The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (Wilmerding vs. Corbin Banking Co., 28 South., 640, 641; 126 Ala., 268.)

A nunc pro tunc entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake. (Perkins vs.

Haywood, 31 N. E., 670, 672.)

...

It is competent for the court to make an entry nunc pro tunc after the term at which the transaction occurred, even though the rights of third persons may be affected. But entries nunc pro tunc will not be ordered except where this can be done without injustice to either party, and as a nunc pro tunc order is to supply on the record something which has actually occurred, it cannot supply omitted action by the court . . . (15 C. J., pp. 972-973.)[23]

From the above characterization of a nunc pro tunc judgment it is clear that the judgment petitioner sought through the motion for clarificatory judgment is outside its scope. Petitioners did not allege that the Court of Appeals actually took judicial action and that such action was not included in the Court of Appeals' Decision by inadvertence. A nunc pro tunc judgment cannot correct judicial error nor supply nonaction by the court.[24]

Since the judgment sought through the motion for clarificatory judgment is not a nunc pro tunc one, the general rule regarding final and executory decisions applies. In this case, no motion for reconsideration having been filed after the Court of Appeals rendered its decision on June 29, 1995 and an entry of judgment having been made on July 17, 1996, the same became final and executory and, hence, is no longer susceptible to amendment. It, therefore, follows that the Court of Appeals did not act arbitrarily nor with grave abuse of discretion amounting to lack of jurisdiction when it issued the aforementioned Resolution denying petitioner's motion for clarificatory judgment and the Resolution denying petitioner's motion for reconsideration.

Nevertheless, for purposes of guiding the parties in the execution of the aforesaid Decision of the CA, without altering the same, the following should be noted:

The Court of Appeals pronounced in its Decision that the contract between the parties is an equitable mortgage. Since the contract is characterized as a mortgage, the provisions of the Civil Code governing mortgages apply. Article 2088 of the Civil Code states:

The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

This Court has interpreted this provision in the following manner:

The essence of pacto comissorio, which is prohibited by Article 2088 of the Civil Code, is that ownership of the security will pass to the creditor by the mere default of the debtor (*Guerrero v. Yñigo, et al.*, 96 Phil. 37, 41-42; *Puig v. Sellner, et al.*, 45 Phil. 286, 287 – 88) ...[25]

... The only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. The mortgagor's default does not operate to vest in the mortgagee the ownership of the encumbered property, for any such effect is against public policy, as enunciated by the Civil Code ...[26]

Applying the principle of pactum comissorium specifically to equitable mortgages, in *Montevergin v. CA*,[27] the Court enunciated that the consolidation of ownership in the person of the mortgagee in equity, merely upon failure of the mortgagor in equity to pay the obligation, would amount to a pactum comissorium. The Court further articulated that an action for consolidation of ownership is an inappropriate remedy on the part of the mortgagee in equity. The only proper remedy is to cause the foreclosure of the mortgage in equity. And if the mortgagee in equity desires to obtain title to the mortgaged property, the mortgagee in equity may buy it at the foreclosure sale.

The private respondents do not appear to have caused the foreclosure of the mortgage much less have they

purchased the property at a foreclosure sale. Petitioner, therefore, retains ownership of the subject property. The right of ownership necessarily includes the right to possess, particularly where, as in this case, there appears to have been no availing of the remedy of foreclosure of the mortgage on the ground of default or non-payment of the obligation in question.

WHEREFORE, the petition for certiorari is DISMISSED. The parties are directed to proceed upon the basis of the final Decision of the Court of Appeals, dated June 29, 1995, in CA-G.R. CV No. 39025, that the contract in question was an equitable mortgage and not a sale.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] See, RTC Decision, CA Rollo, p. 47, and CA Decision, CA Rollo, pp. 77-78.

[2] Ibid.

[3] Ibid.

[4] Penned by Judge Nilo A. Malanyaon.

[5] RTC Decision, CA Rollo, p. 49.

[6] CA – G.R. CV No. 39025.

[7] Penned by Justice Bernardo LL. Salas and concurred in by Justice Jaime M. Lantin (Chairman, Eighth Division) and Justice Ma. Alicia Austria-Martinez (now Associate Justice of this Court).

[8] CA Rollo, p. 83.

[9] Id., at 100.

[10] Id., at 113.

[11] Rollo, p. 24.

[12] Id., at 25-26.

[13] Rollo, p. 27.

[14] Rollo, p. 28.

[15] Id., at 30.

[16] Id., at 31.

[17] Id., at 36.

[18] Id., at 37.

[19] Rollo, p. 42.

[20] Id., at 43.

[21] Id., at 8.

[22] Nuñal vs. CA, 221 SCRA 26, 32 (1993), citing Manning International Corporation v. NLRC, 195 SCRA 155, 166 (1991).

[23] Lichauco v. Tan Pho, 51 Phil. 862, 879 – 881 (1923). (Emphasis Supplied)

[24] Ibid.

[25] Northern Motors, Inc. v. Herrera, 49 SCRA 392, 399 (1973).

[26] Guanzon v. Argel, 33 SCRA 474, 478 – 479 (1970).

[27] 112 SCRA 641 (1982).

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