

EPIFANIO J. ALANO, ET AL., PETITIONERS, VS. COURT OF FIRST INSTANCE OF BULACAN (BRANCH I) AND MIGUEL CAMPOS, RESPONDENTS.*G. R. No. 14557. October 30, 1959*

Ponente: BARRERA, J.

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Petitioners have presented this original special civil action of certiorari seeking the annulment of (1) the order for issuance of alias writ of execution dated September 7, 1953 (as well as the alias writ itself dated September 11, 1953); (2) the order dated September 11, 1953 setting aside a previous order of August 1, 1958; and (3) the order of September 30, 1958 denying: petitioners motion for reconsideration, all issued, allegedly without or in excess of jurisdiction or with grave abuse of discretion, by the respondent Court of First Instance of Bulacan in Civil Case No. 694 concerning the foreclosure, of a mortgage executed by petitioners in favor of respondent Miguel Campos.

The foreclosure suit, it appear went to trial after defendants (herein petitioners) have been duly declared in default for failure to appear and answer the complaint. On January 12, 1953, judgment was rendered sentencing the defendants jointly and severally to pay plaintiff (herein respondent Campos), within ninety (90) days from notice of the decision, the sum of P25,000.00 with the stipulated interest, and a sum equivalent to 15% of the total amount due, as attorney's fees, and the costs. The usual order to sell the mortgaged properties at public auction in case of default, and the application of the proceeds thereof to the payment of the judgment appears in the dispositive part of the decision.

The defendants-petitioners having failed to pay the amount adjudged, the mortgaged properties were sold in public auction to respondent Campos himself, who was the lone bidder, for the amount of P10,000.00. On July 3, 1953 the respondent court confirmed the auction sale. On August 25, 1953, respondent Campos filed an ex-parte motion-in the following tenor:

"1. That on 12 January 1953 judgment was rendered against defendants, jointly and severally, to pay plaintiff the sum of P25,000.00 with interest at the rate of twelve (12%) per cent per annum from 3 July 1952 until fully paid, and the sum equivalent to fifteen (15%) per cent of the total amount due as attorney's fees and the costs;

"2. That on 22 June 1953 said judgment was partially executed when the Provincial Sheriff of Bulacan sold to plaintiff, as the highest bidder the mortgaged properties of defendants for the sum of P10,000.00;

"3. That as of 22 June 1953 the total amount of the judgment against defendants was in the sum of P32,375.21 consisting of the following:

Capital

P25,000.00

Interest at 12%

2,824.70

Attorney's fees at 15%.

4,173.71

Publication

300.00

Sheriff's fee

6.80

Costs

70.00

Total

P32,375.21

"4. That out of the total amount of the judgment in the sum of P32,375.21, only the sum of P10,000.00 has been satisfied by the sale of the mortgaged properties to the plaintiff, leaving unpaid the sum of P22,375.21;

"5. That plaintiff has discovered properties registered in defendants names and situated in the Province of Rizal, which properties may properly answer for the balance of the judgment in the said sum of P22,375.21 against the defendants. "Wherefore, pursuant to Rule 70, Section 6, of the Rules of Court, it is respectfully prayed that a first alias writ of execution be issued against the defendants and that said alias writ of execution be addressed to the Provincial Sheriff of Rizal for the proper enforcement of the terms thereof."

On September 7, 1953, respondent court granted the petition, stating:

"Considering as well founded the ex parte motion dated August 25, 1953 filed by the plaintiff through counsel, let alias writ of execution be issued in this case directed to the Provincial Sheriff of Rizal."

Accordingly, an alias writ was issued on September 11, 1953.

On June 21, 1958, that is, more than 4 years after the issuance of the said alias writ of execution, the petitioners filed a motion to set aside the aforementioned order of the respondent court (of September 7, 1953) for the

issuance of the alias writ of execution and all proceedings taken thereunder alleging that the said order had no basis, there being no deficiency judgment, and the respondent court had, therefore, no jurisdiction to issue the same. On July 7, 1958, respondent Campos opposed the motion stating that the same was filed out of time and did not conform, in form or substance, to a petition for relief under Rule 38 of the Rules of Court.

On August 1, 1958, the respondent court issued an order, setting aside the alias writ of execution issued on September 11, 1953, to wit:

"Considering the motion to set aside the order for issuance of alias writ of execution and all proceedings taken thereunder filed by the defendants thru their counsel and the opposition thereto and it appearing that the alias writ of execution was issued without any basis at all for no deficiency judgment has been rendered pursuant to the provisions of Sec. 6, Rule 70 of the Rules of Court;

"AS PRAYED FOR, the alias writ of execution dated September 11, 1953 is hereby set aside as it has no leg upon which to stand."

On August 18, 1958, respondent Campos asked for new trial and/or reconsideration of this last order, contending that the court had lost its jurisdiction over the case, as the proceedings, thereunder were "definitively closed in October 1953", when the full amount of the judgment in his favor was satisfied and, therefore, the aforementioned order of August 1, 1958 was issued by the respondent court without or in excess of its jurisdiction; and that there was in fact a deficiency Judgment in his favor as shown in the respondent court's order of September 7, 1953. An opposition to the said motion was filed by the petitioners on August 25, 1958. On August 30, 1958, respondent Campos submitted a memorandum in amplification of oral argument contending that since the judgment rendered on January 12, 1953 against the petitioners was by default, said petitioners had no standing whatsoever before the court and, therefore, all pleadings that they had filed should be stricken from the record. In a reply to the said memorandum, dated September 5, 1958, the petitioners claimed that the respondent Campos had waived the petitioners' alleged default. On September 11, 1958, the respondent court issued an order, setting aside its order of August 1, 1958, as follows:

"Acting upon the 'motion for new trial and/or reconsideration' filed by the plaintiff (respondent Campos herein) and the opposition thereto, and it appearing that the herein defendants (petitioners herein) have no standing whatsoever before this court as the judgment rendered in this case on January 12, 1953 against them was by default;

"AS prayed FOR, the order of the Court dated August" 1, 1958, is hereby reconsidered and set aside." On September 17, 1958, the petitioners filed a motion for reconsideration which was denied on September 30, 1958. Hence, this petition for certiorari. The two legal issues to be determined in this case are (1) whether the respondent court acted without or in excess of its jurisdiction in issuing, in the first place, its order dated September 7, 1953 granting an alias writ of execution; and (2) whether the respondent court also acted with grave abuse of discretion in reversing its order of August 1, 1958 (which in turn set aside the alias writ of Execution dated September 11, 1953), on the ground that the petitioners had no standing in court as they had been previously declared in default.

As to the first issue, the petitioners claim that there was no basis for the order of September 7, 1953 granting the issuance of the alias writ of execution, because no deficiency judgment had been rendered in the foreclosure suit, pursuant to Section 6, Rule 70 of the Rules of Court, which reads:

"SEC. 6. Judgment for balance after sale of property.—Upon the sale of any real property, under an order for a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall render judgment against the defendant for any such

balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the judgment; otherwise the plaintiff shall be entitled to execution at such time as the balance remaining would have become due by, the terms of the original contract, which time shall be stated in the judgment."

Respondent Campos, on the other hand, contends that the order in question, considered in conjunction with his ex parte motion dated August 25, 1953, "constitutes a deficiency judgment" within the meaning of the aforementioned provisions of the Rules of Court. We agree substantially with respondent. It will be observed that in his said ex parte motion, he alleged that "out of the total amount of the judgment in the sum of P32,375.21, only the sum of P10,000.00 has been satisfied by the sales of the mortgaged properties" to him, "leaving unpaid the sum of P22,375.21"; that he "has discovered properties" registered in the petitioners' name, situated in the province of Rizal, "which properties may properly answer for the balance of the judgment in the said sum of P22,375.21" against the petitioners. He, therefore, prayed "that a first alias writ of execution be issued" against the petitioners pursuant to Section 6, Rule 70 of the Rules of Court. Acting upon the said motion, the respondent court issued the order in question, granting the alias writ of execution prayed for. Although the said order failed to declare that the petitioners were deficient in regard to the payment of their mortgage indebtedness and the exact amount of the deficiency, or that the petitioners were personally liable to the respondent Campos for the said amount, as shown by the record of the case, it was for all legal purposes, substantially a deficiency judgment within the meaning of Section 6, Rule 70 of the Rules of Court aforementioned. The issuance of the said writ was, precisely, for the purpose of satisfying the deficiency claimed by the respondent Campos. Indeed, there would have been no reason for its issuance, if the alleged deficiency had not existed, in the opinion of the court.

For all the foregoing, we find and so hold that, in issuing the writ in question, the respondent court did not act without or in excess of its jurisdiction.

In respect to the second issue, it appears that the respondent court, on September 11, 1958, set aside its order of August 1, 1958 (which in turn set aside the alias writ of execution dated September 11, 1953), upon being apprised that petitioners had no standing in court, having been declared in default on November 26, 1952 for failure to appear or file their answer to the foreclosure complaint; and that the judgment rendered against them on January 12, 1953 was likewise, by default. The legal consequences of a default order were succinctly explained by this Court in the case of *Lim Toco vs. Go Fay* (80 Phil., 166). It was held therein that—

"A defendant in default loses his standing in, or is considered out of, court and consequently can not appear in court, adduce evidence, and be heard, and for that reason he is not entitled to notice. If he is not entitled to notice of the proceedings in the case and to be heard, he can not appeal from the judgment rendered by the court on the merits, because he can not file a notice of appeal, for approval by the court. The only exception provided by law is when the defendant in default files a motion to set aside the order of default on the grounds stated in Rule 38 in which event he is entitled to notice of all further proceedings.' That a defendant in default can not be heard in the suit, not only in the trial court but also in the final hearing, that is, on appeal which is a part of the proceedings in a suit, is the ruling laid down for guidance of court, and practitioners by this Court in the case of *Velez vs. Rams*, 40 Phil. 787, * * *.

"The reason why the defaulting defendant is not entitled to notice is because it would be useless or of no purpose to do so, since the defendant can not appear and be heard in the suit in any way * * *. There is absolutely no reason for denying a defaulted defendant the right to be heard before, and granting him that right after, the judgment on the merits. If he is out of or has no standing in court before judgment on the merits, he can not be considered as no longer in default after said judgment.

"There is, therefore; no reason in law or equity for permitting a defaulting defendant, after judgment on the merits, to appear and be heard either in the trial court or on appeal.. * * ." (Italics supplied.)

It is contended, however, by the petitioners that respondent Campos, by filing an opposition to petitioners' motion dated June 21, 1958 to set aside the alias writ issued on September-11,1953, and other pleadings in answer to petitioners' subsequent pleadings, had, in effect, waived the effects of petitioners' default, such that they thereby regained their standing in court. Granting, arguendo that the respondent Campos had waived the effects of the said default, the petitioners could no longer benefit by said waiver because at the time petitioners filed their motion dated June 21, 1958, the judgment rendered in the foreclosure suit had already been fully satisfied since October, 1953, thereby depriving the respondent court of its jurisdiction over the case; Moreover, the aforementioned motion of June 21, 1958 could not be considered as a petition for relief under Rule 38 of the Rules of Court, because it was filed 4 years and 9 months after the issuance of the order of September 7, 1953. Where a defendant was declared in default and later a judgment on the merits was rendered against him, and without praying for the revocation of the order of default he filed a motion for the annulment of the judgment rendered, it has been held that he has no standing in court and he has no right to appeal. (*Isaac vs. Mendoza*, 89 Phil., 279.) In the same case, this Court said that even granting, for the sake of argument that the plaintiff's motion for annulment included the order of default, his motion cannot be sustained, it having been filed too late, beyond the six months period within which applications for relief under Rule 38 may be entertained.

Neither could the petitioners invoke Section 5 (g), Rule 124 of the Rules of Court, relative to the inherent power of the court "to. amend and control its process and orders so as to make them conformable to law and justice' to justify the setting aside of the alias writ in question, as the said provision is applicable only where the court has not yet lost its jurisdiction over the case. (*Veluz vs. Justice of the Peace of Sariaya*, 42 Phil., 557.) [1] It is elementary that final orders and decisions of courts of competent jurisdiction may not be set aside, except in accordance with the express statutory provisions, and upon grounds stated therein and within the time provided therefore. (*Perez vs. Sweeney*, 8 Phil., 157; *Pacific Importing & Exporting Co. vs. Tinio, et al.*, 85 Phil., 239; 47 Off. Gaz., 2910.)

In conclusion, we are of the opinion and so hold that the respondent court, in issuing the order dated September 7, 1953 granting an alias writ of execution and its subsequent order of September 11, 1958 (reversing its order of August 1, 1958) as well as the denial (September 30, 1958) of petitioners' motion for reconsideration did not act with grave abuse of discretion, as to warrant the issuance of a writ of certiorari prayed for by the petitioners.

Wherefore, the petition is hereby dismissed without costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

[1] See also *Beltran vs. Cabrera*, 73 Phil., 666; *Arnedo vs. Llorante*, 18 Phil., 257; *Fiesta vs. Llorente*, 25 Phil., 554; *Lim vs. Singian* 37 Phil., 817; and *Anuran vs. Aquino*, 38 Phil., 29.

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