

**EPIFANIO J. ALANO AND CECILIA PADING DE ALANO, PLAINTIFFS
AND APPELLANTS VS. CLARO CORTES, DEFENDANT AND APPELLEE.***G.R. No. 15276. November 28, 1960*

Ponente: BAUTISTA ANGELO, J.

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On April 6, 1953, the spouses Epifanio J. Alano and Cecilia Pading de Alano executed a promissory note in consideration of a loan of P65,000.00 they obtained from Claro Cortes. As security for said loan, they mortgaged several parcels of land owned by them situated in Bulacan empowering the mortgagee to extra judicially foreclose the mortgage. On January 29, 1954, Cortes foreclosed the mortgage and the properties were sold to him at an auction, sale for the sum of P15,000.00. Subsequently, Cortes filed a complaint in the Court of First Instance of Rizal for the collection of the balance.

To avoid embarrassment caused by the filing of the complaint, the Alanos requested Cortes to withdraw the same and increase the loan to P74,000.00. The latter having acceded to said request, the former drew a new promissory note wherein they promised to pay the above amount plus 12% interest on or before July 21, 1954, and executed at the same time a deed of mortgage over the same properties to secure payment of their indebtedness.

On January 5, 1955, Cortes obtained from the Provincial Sheriff of Bulacan a deed of sale of the lands mortgaged to him after consolidating his ownership over the same, and registered the document with the register of deeds causing the latter to issue new certificates of title in his name. This act prompted the Alanos to institute a complaint on February 4, 1958 before the Court of First Instance of Bulacan (Case No. 1652) praying, among others, for the cancellation of the certificates of title issued to Cortes and the issuance of another in their names. Before trial, however, the parties filed with the court a motion for amicable settlement, the pertinent portions of which are as follows:

"The parties, assisted by their respective counsel, most respectfully manifest that they agree to an amicable settlement of this case, subject to approval by this Hon. Court, in accordance with the stipulations agreed upon at the resumption of pretrial this morning, as follows:

"1. That plaintiffs shall pay unto defendant the total sum of One Hundred Thirty One Thousand (P131,000.00) Pesos, Philippine Currency, in full settlement of any and all claims which defendant has or may have against plaintiffs under the mortgages dated April 6, 1953 and March 22, 1954, mentioned in the complaint;

"2. That for and in consideration of such settlement, defendant shall reconvey unto plaintiffs the properties subject of the complaint, covered by Transfer Certificates of Title Nos. T-14492, T-14493, T-14494, T-14495, and T-14496 (formerly Nos. T-8666, T-9763, T-8807, T-9610, and T-9637, respectively) of the land records of Bulacan, free from any and all liens and encumbrances of whatsoever kind and nature, and with warranty against adverse claims of third parties howsoever arising;

"3. That the amount of P131,000.00 to be paid by plaintiffs as hereinabove mentioned is understood to absorb and include payment of attorney's fees for defendant's counsel, Atty. Jose C. Colayco, as well as payment of a

claim of Lina S. Cortes against plaintiffs for the sum of P4,500.00, representing value of jewelries, so that defendant shall assume payment of these two minor items for his own account;

Wherefore, it is most respectfully prayed that judgment be rendered in accordance with the foregoing stipulations, without pronouncement as to costs."

In conformity with the above amicable settlement, the trial court on July 29, 1958 rendered decision ordering "the parties to comply with the terms and conditions therein set forth, without costs." Plaintiffs having failed to pay the above amount on September 2, 1958, defendant filed a motion asking the court to fix a date on which they shall settle the same on condition that upon their failure to do so the complaint shall be considered dismissed with prejudice. Plaintiffs filed their opposition and the court, treating defendant's motion as, a motion for execution, issued a writ of execution on September 13, 1958. But before receipt by plaintiffs of a copy of said order, defendant on September 15, 1958, filed a motion praying that an order be issued directing the sale at public auction of the right of plaintiffs to pay the sum of P131,000.00 awarded to him, but the court deferred consideration of said motion in order to give the parties an opportunity to settle their differences.

On October 7, 1958, defendant filed a second motion reiterating the prayer in his motion of September 15, 1958. On October 13, 1958, the court issued an order directing plaintiffs either to pay defendant or to deposit with the clerk of court the amount of P131,000.00 within a period of 30 days from receipt of a copy of the order failing in which their right over the properties will be deemed forfeited thereby relieving defendant of his obligation to execute the deed of reconveyance as ordered in the decision of July 29, 1958. Their motion for reconsideration having been denied, plaintiffs appealed to this Court contending that (1) the court a quo erred in amending the judgment dated July 29, 1958, by fixing a term for the payment of plaintiffs' obligation and adding a forfeiture clause in favor of defendant; (2) the court a quo erred in not requiring defendant to comply first with the judgment before demanding plaintiffs' performance; and (3) the court a quo erred in not enforcing the judgment as it is without amendment.

There is no dispute that in the compromise agreement entered into by the parties which was submitted to the trial court appellants bound themselves to pay appellee the sum of P131,000.00 in full settlement of the dispute existing between them and that the latter agreed to reconvey the lands in question.. It is also clear that conformably with such agreement the court rendered decision enjoining the parties to comply with its terms and conditions but because neither the compromise agreement nor the court specified the time within which they should make good their commitments, upon motion of appellee the court fixed a period of 30 days within which appellants should pay the amount of P131,000.00 awarded to defendant. This we believe the court has power to do, firstly, because the judgment being based on a compromise is immediately executory,^[1] and the obligations of the parties demandable at once, »o that what the court did was merely to implement its decision. Secondly, wttile no period was fixed in the amicable settlement it does not follow that no period was intended by the parties, for it, is preposterous to presume that when they entered into such agreement they intended to leave the performance of their undertaking to the whim of either party thereby frustrating the very purpose of the agreement. The court, therefore, was justified in issuing the order in question, it being- a sstep necessary to give force and effect to its decision (Section 6, Rule 124, Rules of Court; Article 1197, liew Civil Code; Barretto vs. The City of Manila,, 7 Phil., 416; Concepcion vs. People, 74 Phil., 63; Yacapin vs. Neri, 40 Phil., 61, 67.)

As regards the forfeiture clause, we also believe that the same is justified. It should be noted that appellants obliged themselves to pay appellee the sum of P131,000.00 as a condition for the latter to reconvey the properties to them, This is a reciprocal obligation which can only be enforced if one party is willing- to do its share in the undertaking (Article 1169; Civil Code), and in order that appellants may be induced to do their share which apparently they are reluctant to undertake, the court found it necessary to include the forfeiture clause in its

decision. This the court can do under our rules (Section 6, Rule in view of the supervening circumstances.

"Obviously a prevailing party in a civil action is entitled to a of execution of the final judgment obtained by him within five years from its entry (section 443 of the Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts." (De la Costa vs. Cleofas, 67 Phil., 686; Ocampo vs. Sanchez, 97 Phil., 472; 51 Off. Gaz., No. 9, 4542, 4548. Italics supplied.)

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon, Padilla, Labrador, Barrera, Gutierrez David, Paredes and Dizon, JJ., concur, .

Paras, C.J., Conception and Reyes, JJ., concur in the result.

Order affirmed.

[1] De los Reyes vs. De Ugarte, 75 Phil. 505.

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