

PRIMO QUETULIO, PETITIONER VS. HON. DELFIN B. FLORES AND DESIDERO SEGUNDO, RESPONDENTS.

G.R. No. 16406. November 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for certiorari to annul an order dated June 3, 1959, of the Court of First Instance of Ilocos Norte, Hon. Delfin B. Flores, presiding, issuing an alias writ of execution in G. R. No. L-6831, entitled "Primo Quetulio, plaintiff-appellant, versus Teresa Dimaya, et al., intervenors."

On November 6, 1956, the Supreme Court promulgated a "Resolution on the Motion to Reconsider" in G.R. No. L-6831, amending the dispositive part of its original decision. The amended dispositive part reads as follows:

"In view of all the foregoing, the decision appealed from is modified in the sense that any share in Parcels 67 and 68 of Exhibit 'K' (In San Juan and San Leon, Banna, Ilocos Norte) that would correspond to the heirs of the late Juan Ver, that is to say, to Maria Ver, and to Florentina Ver, and their successors, in interest, (Vicente Ver, Natividad Ver, Geronimo Florentino Ver, and intervenors-appellees, surnamed Tesoro, children of Carmen Ver) as heirs of the late D. Leon Ver, is hereby declared to be the property of appellant herein, Primo Quetulio, and the value of the fruits corresponding to such undivided, interest, shall be determined and deducted from the damages awarded against said appellant. In all other respects, the decision appealed from is affirmed.

"Let the records be remanded to the court below for further proceedings in conformity with this opinion. No costs in this instance." (Par. 3, Petition for Certiorari)

(An examination of the original decision promulgated on June 29, 1956 reveals that Primo Quetulio, petitioner herein, was ordered to pay the defendants and the intervenors the sum of P11,500 per annum from 1945 onwards). The records of G.R. No. L-6831, supra, having been remanded to the Court of First Instance, this court, upon motion of respondent herein Evaristo Ver, issued a writ of execution against all the properties of petitioner herein. Subsequently, on July 15, 1958, upon petition of Quetulio, the court set the case for hearing and cancelled the writ of execution. But on June 1, 1959, upon motion of counsel for defendants and the intervenors, the lower court issued another order continuing the writ of execution previously issued and including in the levy against the properties of petitioner his undivided interests in Lots 67 and 68. Reason for this order is as follows:

"For the proper determination of the shares of the plaintiff Primo Quetulio and (the value of the fruits of the portion corresponding to him in lot 67 and 68, there is, therefore, a need for partition proceedings. But assuming that after the partition proceedings, the share of Primo Quetulio shall have been determined, just the same, it will be attached to be sold at public auction to satisfy the damages. Therefore, in order to avoid multiplicity of suits, that is, to do away with the filing of a partition proceedings between plaintiff Primo Quetulio on one hand and the co-heirs of Juan Ver on the other, so as to determine the corresponding shares of each in these two lots, it is the considered opinion of this Court to continue the writ of execution and to include in the levied properties of the plaintiff's undivided share in lots 67 and 68. If the defendants and intervenors

will purchase the said interest of Quetulio in these two lots, being relatives, they will know what to do with the same."

After a hearing on Quetulio's motion for reconsideration of said order, the court ordered on June 3, 1959, the issuance of the alias writ of execution. The ex-parte motion for reconsideration of the last order having been denied, petitioner filed this petition.

The sole issue is whether or not the decision of the Supreme Court in G. R. No. L-6831 is final and executory. The issue should be decided in the negative because: (1) The decision of the Supreme Court itself orders further proceedings by the lower court; (2) A partition proceedings in the court below is still necessary to determine Quetulio's interest in Lots Nos. 67 and 68; (3) The value of the fruits of said lots should be determined, as the same will be deducted from the damages awarded against Quetulio. (According to petitioner herein, respondents have been in possession of said lots for nine years already in September, 1959). The lower court cannot assume that the fruits of said lots will not completely pay for or reduce the damages awarded; and (4) Execution is being issued also against properties of Quetulio, other than said Lots No. 67 and 68. How will the lower court know how much of said properties should be sold to satisfy the damages, if the actual amount of said damages is not first determined?

The above-enumerated circumstances indicate that there are still matters in the case left to be determined and settled before the judgment can be executed. The decision of the Supreme Court in G.R. No. L-6831 did not yet acquire finality and is, therefore, not yet executory (*Ignacio, et al., vs. Hilario, et al.*, 76 Phil., 605; *Cu Unjieng e Hijos vs. Mabalacat Sugar Co.*, 70 Phil., 380).

Wherefore, the order of the lower court dated June 3, 1959 issuing the alias writ of execution, is hereby set aside. No costs. So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order set aside.

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