

VICENTE PENUELA AND LUIS PEDREGOSA, PLAINTIFFS AND APPELLEES, VS. ERNESTO HORNADA, DEFENDANT AND APPELLANT.

G.R. No. 16739. April 20, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

On May 17, 1955, the Court of First Instance of Iloilo rendered against defendant Ernesto Hornada a decision (in Civil Case No. 2571), in favor of plaintiffs Vicente Penuela and Luis Pedregosa, the dispositive part of which reads:

"Por Tanto, el Juzgado falla este asunto:

"(a) Condenando al demandado que remueva el dique y la presa construidos en la parte sur y sureste, respectivamente, de su terreno;

"(b) Condenando al demandado que pague al demandante Luis Pedregosa, en concepto de daños actuales, 10 bultos de palay al año, equivalente a 20 cavanos, a contar desde 1949 a 1952, ambos inclusiva;

"(c) Condenando al demandado que pague al demandante Vicente Penuela, en concepto de daños actuales, 10 bultos de palay al año, equivalente a 20 cavanos, contar desde 1953 hasta que este asunto este decidido definitivamente;

"(d) Condenando al demandado que pague a los demandantes la suma de P1,000.00 en concepto de daños morales; y

"(e) Condenando, además al demandado que pague las costas del juicio.

"Asi se ordena."

Dissatisfied with said decision, defendant appealed to the Court of Appeals (docketed as CA-G. R. No. 15871-R). Said court, on December 20, 1957, affirmed said decision in toto, except as to paragraph (d) of the abovequoted dispositive part, which it modified by eliminating the sum of P1,000.00 awarded as moral damages by the trial court.

On January 27, 1959, plaintiffs filed with the trial court a motion for execution (of said decision) and bill of costs. Said motion was set for the court's consideration on January 31, 1959. On said date, however, defendant moved for postponement to February 7, 1959 on the ground that he would file a written opposition thereto, and except to the bill of costs. Postponement was duly granted by the court. Notwithstanding said postponement, however, the court, on February 3, 1959, issued a writ of execution in favor of plaintiffs, which states:

"To: The Provincial Sheriff of Iloilo or any of his lawful Deputies:

"GREETINGS:

"Pursuant to the Decision of this Honorable Court dated May 17, 1955 which was modified by the resolution

of the Honorable Court of Appeals dated December 20, 1957 eliminating payment of any moral damages, you are hereby commanded to cause the defendant to remove the dike and dam constructed in the southern and southeastern part of his land; to pay the plaintiff Luis Pedregosa, in concept of actual damages, 10 bultos of palay per year, equivalent to 20 cavanos, counting from 1949 to 1952, both inclusive; to pay plaintiff Vicente Penuela, in concept of actual damages, 10 bultos of palay, equivalent to 20 cavanos, counting from 1953 until this case is finally decided; and to pay the costs of suit in the sum of P41.10 only in the Court of First Instance of Iloilo; and return this writ into Court within 60 days from date with your proceedings endorsed hereon;

"But, if sufficient personal property cannot be found whereof to satisfy this writ and lawful fees thereon, then we command you, that of the lands and buildings of the said defendant, you make the said sums of money in the manner required by law, and do likewise make return of your proceedings with this writ into Court within 60 days after its receipt by you."

Before receiving said writ of execution, defendant, on February 4, 1959, within the time granted by the court, filed the following opposition to plaintiffs' aforesaid motion for execution and bill of costs (of January 27, 1959):

"Comes now defendant in the above-entitled case, by his undersigned counsel, and in opposition to the motion for execution and bill of costs dated January 27, 1959, to this Honorable Court respectfully represents:

"1. That the decision of this Honorable Court requires the defendant to remove 'l dique y la presa construidos en la parte sur y sureste respectivamente', but the defendant does not know which dike or dam are to be removed, because there is a 'pilapil' or 'cajon' which is the boundary line between defendant's property and that of Federico Hornada and that of defendant; and that this dike cannot be removed or destroyed without the consent of Federico Hornada;

"2. That the small dam which is opened and closed by means of a board which is situated on the land of defendant will not impede the flow of the water to the Abaangay River, but is opened and closed to utilize the water to irrigate defendant's rice land;

"3. That with regards to ten bultos of palay to be paid to Luis Pedregosa beginning with the year 1949 to 1952, Luis Pedregosa is already dead, and the defendant does not know who are his heirs administrators or assigns who are not parties to this case, and Atty. Gemarino is not representing them;

"4. That as regards to the ten bultos of palay beginning with the year 1953 to be paid to Vicente Penuela, the latter ceased to be its lessee in the year 1955 when the said property was sold to the brother and sister of Vicente Penuela's wife, and, therefore, he has no right to receive the said palay beyond the crop year 1954-55; moreover, beginning with the crop year 1953-54, Vicente Penuela had not suffered any damage because beginning that year there was little water coming from his land to the property of the defendant due to the long draught; and

"5. That the defendant is willing to present evidence to prove the observation and objections above mentioned on the date that may be fixed by the court.

"WHEREFORE, it is respectfully prayed that the issuance of execution in consonance with the decision of this Court be deferred until the above observations and objections can be passed upon by the Court."

On February 7, 1959, the date to which the consideration of plaintiffs' motion for execution and bill of costs (of January 27, 1959), has been postponed, the court suggested to defendant that he file a motion for reconsideration, in view of the fact that it (court) had already issued the aforementioned writ of execution (dated February 3, 1959). Complying with the court's suggestion, defendant on February 11, 1959, filed a motion for reconsideration, alleging, *inter alia*, that when plaintiffs' motion for execution and bill of costs (of January 27, 1959) and defendant's opposition thereto (of January 4, 1959) were called for consideration and resolution of the court on February 7, 1959, "the court refused to resolve the same, on the ground that the Writ of Execution has already

been issued"; that considering the grounds of his opposition (as stated in paragraph 4 thereof), "the consideration of plaintiff's motion should have been deferred, or the writ of execution should have been stayed until the matters stated in defendant's opposition shall have been resolved first"; and that he "is willing to present evidence to prove and substantiate the observations and objections" mentioned on the date which may be fixed by the Court. On February 17, 1959, said motion for reconsideration was denied by the court, in an order of this tenor:

"No encontrandola bien fundada, se deniega la moción de reconsideración del demandado de fecha 11 de febrero de 1958 y se mantiene la orden de este Juzgado de fecha 3 de febrero de 1957.

"Asi se ordena."

Hence, this appeal.[1]

The appeal is meritorious. It is not disputed that on January 27, 1959, plaintiffs filed with the trial court a motion for execution of its decision of May 17, 1955 (affirmed with modification by the Court of Appeals in CA-G.R. No. 15871-R on December 20, 1957) and bill of costs. Said motion was set for hearing on January 31, 1959. On said date, defendant moved for postponement of the hearing to February 7, 1959 as he would file a written opposition to the motion for execution and bill of costs. The court duly granted defendant's petition. Despite this grant of postponement, however, and before defendant could file his announced written opposition, the trial court issued the writ of execution prayed for by plaintiffs on February 3, 1959, i.e., one (1) day prior to the filing by defendant of his written opposition on February 4, 1959. On February 7, 1959, when the motion for execution and the opposition thereto came up for hearing, the court suggested that a motion for reconsideration of the order of execution already issued be filed by defendant, which the latter did, only to be denied on February 17, 1959. This actuation of the trial court is, to our mind, a reversible error considering that the opposition and the motion for reconsideration aver facts which, if established as defendant offered to do, would constitute equitable grounds for stay of execution. The defendant sought clarification of the precise dam and water gate ("presa") he was ordered to remove, there being: another dike ("pilapil" or "cajon") on the same portion of his land mentioned in the decision. He, likewise, informed the court of the death of plaintiff Luis Pedregosa subsequent to the decision, and the fact that his heirs or administrator are unknown, for which reason there was uncertainty as to whom to pay the ten bultos of palay mentioned in the decision. Finally, defendant submitted that the other plaintiff, Vicente Penuela, in whose favor as lessee of the land defendant was also sentenced to pay ten bultos of palay annually from 1953 up to the date the case is definitely decided[2] ("hasta que este asunto este decidido definitivamente") had ceased to be such lessee since 1955, long before the case has been definitely decided. Certainly, these facts, especially the last two which have occurred after the decision of the trial court which was affirmed (except for the grant of moral damages) by the Court of Appeals, fully justify the stay of execution until the matter shall have been determined by the court after due hearing thereon.

For all the foregoing, the writ of execution dated February 3, 1959, as well as the order of the trial court dated February 17, 1959 denying defendant's motion for reconsideration of the said writ, are hereby set aside. The case is remanded to the lower court, with direction to receive evidence on and, accordingly, decide defendant's opposition to plaintiff's petition for execution. Without costs. So ordered.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Dizon, JJ., concur.

[1] Originally appealed to the Court of Appeals, but certified to us by said court on January 30, 1960, on jurisdictional ground.

[2] Decided by the trial court on May 17, 1955 and affirmed with modification by the Court of Appeals on

December 20, 1957.

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