

**SIMEON CABANG, VIRGINIA CABANG AND VENANCIO CABANG
ALIAS “DONDON”; PETITIONERS, VS. MR. & MRS.
GUILLERMO BASAY, RESPONDENTS.**

G.R. No. 180587. March 20, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Decision of the Court of Appeals in CA-G.R. CV No. 76755[1] dated May 31, 2007[2] which reversed the Order[3] of the Regional Trial Court of Molave, Zamboanga Del Sur, Branch 23 in Civil Case No. 99-20-127 which denied respondents' motion for execution on the ground that petitioners' family home was still subsisting. Also assailed is the Resolution dated September 21, 2007 denying the motion for reconsideration.

The facts as summarized by the appellate court:

Deceased Felix Odong was the registered owner of Lot No. 7777, Ts- 222 located in Molave, Zamboanga del Sur. Said lot was covered by Original Certificate of Title No. 0-2,768 pursuant to Decree No. N-64 and issued on March 9, 1966. However, Felix Odong and his heirs never occupied nor took possession of the lot.

On June 16, 1987, plaintiff-appellants bought said real property from the heirs of Felix Odong for P8,000.00. Consequently, OCT No. 0-2,768 was cancelled and in its stead, Transfer Certificate of Title No. T-22,048 was issued on August 6, 1987 in the name of plaintiff-appellants. The latter also did not occupy the said property.

Defendant-appellees, on the other hand, had been in continuous, open, peaceful and adverse possession of the same parcel of land since 1956 up to the present. They were the awardees in the cadastral proceedings of Lot No. 7778 of the Molave Townsite, Ts-222. During the said cadastral proceedings, defendant-appellees claimed Lot No. 7778 on the belief that the area they were actually occupying was Lot No. 7778. As it turned out, however, when the Municipality of Molave relocated the townsite lots in the area in 1992 as a big portion of Lot No. 7778 was used by the government as a public road and as there were many discrepancies in the areas occupied, it was then discovered that defendant-appellees were actually occupying Lot No. 7777.

On June 23, 1992, plaintiff-appellants filed a Complaint docketed as Civil Case No. 92-20-127 for Recovery of Property against defendant-appellees.

On July 19, 1996, the trial court rendered its decision, the dispositive portion of which reads, thus:

WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff -

- Holding that the rights of the plaintiffs to recover the land registered in their names, have been effectively barred by laches; and
- Ordering the dismissal of the above-entitled case.

No pronouncement as to cost.

SO ORDERED.

Aggrieved, plaintiff-appellants filed an appeal before the Court of Appeals assailing the above-decision. Said appeal was docketed as CA-G.R. CV No. 55207.

On December 23, 1998, the Court of Appeals, through the then Second Division, rendered a Decision reversing the assailed decision and decreed as follows:

WHEREFORE, the judgment herein appealed from is hereby REVERSED, and judgment is hereby rendered declaring the plaintiffs-appellants to be entitled to the possession of Lot No. 7777 of the Molave Townsite, subject to the rights of the defendants-appellees under Article (sic) 448, 546, 547 and 548 of the New Civil Code.

The records of this case are hereby ordered remanded to the court of origin for further proceedings to determine the rights of the defendants-appellees under the aforesaid article (sic) of the New Civil Code, and to render judgment thereon in accordance with the evidence and this decision.

No pronouncement as to costs.

SO ORDERED.

Defendant-appellees thereafter filed a petition for review on certiorari under Rule 45 of the Rules of Court before the Supreme Court docketed as G.R. No. 139601. On October 18, 1999, the Supreme Court issued a Resolution denying the petition for late filing and lack of appropriate service.

Subsequently, or on February 15, 2000, the Supreme Court Resolution had become final and executory.

Consequently, the case was remanded to the court a quo and the latter commissioned the Municipal Assessor of Molave, Zamboanga del Sur to determine the value of the improvements introduced by the defendant-appellees.

The Commissioner's Report determined that at the time of ocular inspection, there were three (3) residential buildings constructed on the property in litigation. During the ocular inspection, plaintiff-appellants' son, Gil Basay, defendant-appellee Virginia Cabang, and one Bernardo Mendez, an occupant of the lot, were present. In the report, the following appraised value of the improvements were determined, thus:

Owner

Lot No.

Area (sq.m.)

Improvement

Appraised Value

Virginia Cabang

7777

32.55

Building

P21,580.65

Jovencio Capuno

7777

15.75

Building

18,663.75

Amelito Mata

7777

14.00

Building

5,658.10

Toilet

1,500.00

Plants & Trees

2,164.00

TOTAL

P49,566.50

Thereafter, upon verbal request of defendant-appellees, the court a quo in its Order declared that the tie point of the survey should be the BLLM (Bureau of Lands Location Monument) and authorized the official surveyor of the Bureau of Lands to conduct the survey of the litigated property.

Pursuant to the above Order, the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR)-Region XI designated Geodetic Engineer Diosdado L. de Guzman to [act] as the official surveyor. On March 2002, Engr. De Guzman submitted his survey report which stated, inter alia:

- That on September 18, 2001, the undersigned had conducted verification survey of Lot 7777, Ts-222 and the adjacent lots for reference purposes-with both parties present on the survey;
- That the survey was started from BLLM #34, as directed by the Order, taking sideshots of lot corners, existing concrete fence, road and going back to BLLM #34, a point of reference;
- Considering that there was only one BLLM existing on the ground, the undersigned conducted astronomical observation on December 27, 2001 in order to check the carried Azimuth of the traverse;
- That per result of the survey conducted, it was found out and ascertained that the area occupied by Mrs. Virginia Cabang is a portion of Lot 7777, with lot assignment to be known as Lot 7777-A with an area of 303 square meters and portion of Lot 7778 with lot assignment to be known as Lot 7778-A with an area of 76 square meters. On the same lot, portion of which is also occupied by Mr. Bernardo Mendez with lot assignment to be known as

Lot 7777-B with an area of 236 square meters and Lot 7778-B with an area of 243 square meters as shown on the attached sketch for ready reference;

- That there were three (3) houses made of light material erected inside Lot No. 7777-A, which is owned by Mrs. Virginia Cabang and also a concrete house erected both on portion of Lot No. 7777-B and Lot No. 7778-B, which is owned by Mr. Bernardo Mendez. x x x;

- That the existing road had been traversing on a portion of Lot 7778 to be know (sic) as Lot 7778-CA-G.R. SP No. with an area of 116 square meters as shown on attached sketch plan.

During the hearing on May 10, 2002, plaintiff-appellants' offer to pay P21,000.00 for the improvement of the lot in question was rejected by defendant-appellees. The court a quo disclosed its difficulty in resolving whether or not the houses may be subject of an order of execution it being a family home.

On June 18, 2002, plaintiff-appellants filed their Manifestation and Motion for Execution alleging therein that defendant-appellees refused to accept payment of the improvements as determined by the court appointed Commissioner, thus, they should now be ordered to remove said improvements at their expense or if they refused, an Order of Demolition be issued.

On September 6, 2002, the court a quo issued the herein assailed Order denying the motion for execution.[4]

Respondents thereafter elevated their cause to the appellate court which reversed the trial court in its May 31, 2007 Decision in CA-G.R. CV No. 76755. Petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution[5] dated September 21, 2007.

Hence, this petition.

Petitioners insist that the property subject of the controversy is a duly constituted family home which is not subject to execution, thus, they argue that the appellate tribunal erred in reversing the judgment of the trial court.

The petition lacks merit.

It bears stressing that the purpose for which the records of the case were remanded to the court of origin was for the enforcement of the appellate court's final and executory judgment[6] in CA-G.R. CV No. 55207 which, among others, declared herein respondents entitled to the possession of Lot No. 7777 of the Molave Townsite subject to the provisions of Articles 448,[7] 546,[8] 547[9] and 548[10] of the Civil Code. Indeed, the decision explicitly decreed that the remand of the records of the case was for the court of origin "[t]o determine the rights of the defendants-appellees under the aforesaid article[s] of the New Civil Code, and to render judgment thereon in accordance with the evidence and this decision."

A final and executory judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court in the land.[11] The only exceptions to this rule are the correction of (1) clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party, and (3) void judgments.[12]

Well-settled is the rule that there can be no execution until and unless the judgment has become final and executory, i.e. the period of appeal has lapsed without an appeal having been taken, or, having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution shall issue as a matter of right.[13] In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty.[14]

Furthermore, as a matter of settled legal principle, a writ of execution must adhere to every essential particulars of

the judgment sought to be executed.[15] An order of execution may not vary or go beyond the terms of the judgment it seeks to enforce.[16] A writ of execution must conform to the judgment and if it is different from, goes beyond or varies the tenor of the judgment which gives it life, it is a nullity.[17] Otherwise stated, when the order of execution and the corresponding writ issued pursuant thereto is not in harmony with and exceeds the judgment which gives it life, they have pro tanto no validity[18] - to maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.[19]

As aptly pointed out by the appellate court, from the inception of Civil Case No. 99-20-127, it was already of judicial notice that the improvements introduced by petitioners on the litigated property are residential houses not family homes. Belatedly interposing such an extraneous issue at such a late stage of the proceeding is tantamount to interfering with and varying the terms of the final and executory judgment and a violation of respondents' right to due process because -

As a general rule, points of law, theories and issues not brought to the attention of the trial court cannot be raised for the first time on appeal. For a contrary rule would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of if at the time of the hearing before the trial court.[20]

The refusal, therefore, of the trial court to enforce the execution on the ground that the improvements introduced on the litigated property are family homes goes beyond the pale of what it had been expressly tasked to do, i.e. its ministerial duty of executing the judgment in accordance with its essential particulars. The foregoing factual, legal and jurisprudential scenario reduces the raising of the issue of whether or not the improvements introduced by petitioners are family homes into a mere afterthought.

Even squarely addressing the issue of whether or not the improvements introduced by petitioners on the subject land are family homes will not extricate them from their predicament.

As defined, "[T]he family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.[21] It is the dwelling house where the husband and wife, or an unmarried head of a family reside, including the land on which it is situated.[22] It is constituted jointly by the husband and the wife or by an unmarried head of a family." [23] Article 153 of the Family Code provides that -

The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

The actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000.00 in urban areas and P200,000.00 in rural areas.[24] Under the afore-quoted provision, a family home is deemed constituted on a house and a lot from the time it is occupied as a family residence. There is no need to constitute the same judicially or extra-judicially.[25]

There can be no question that a family home is generally exempt from execution,[26] provided it was duly constituted as such. It is likewise a given that the family home must be constituted on property owned by the persons constituting it. Indeed as pointed out in *Kelley, Jr. v. Planters Products, Inc.*[27] "[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family." [28] In other words:

The family home must be established on the properties of (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. It cannot be established on property held in co-ownership with third persons. However, it can be established partly on community

property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter.

If constituted by an unmarried head of a family, where there is no communal or conjugal property existing, it can be constituted only on his or her own property.[29] (Emphasis and italics supplied)

Therein lies the fatal flaw in the postulate of petitioners. For all their arguments to the contrary, the stark and immutable fact is that the property on which their alleged family home stands is owned by respondents and the question of ownership had been long laid to rest with the finality of the appellate court's judgment in CA-G.R. CV No. 55207. Thus, petitioners' continued stay on the subject land is only by mere tolerance of respondents.

All told, it is too late in the day for petitioners to raise this issue. Without doubt, the instant case where the family home issue has been vigorously pursued by petitioners is but a clear-cut ploy meant to forestall the enforcement of an otherwise final and executory decision. The execution of a final judgment is a matter of right on the part of the prevailing party whose implementation is mandatory and ministerial on the court or tribunal issuing the judgment.[30]

The most important phase of any proceeding is the execution of judgment.[31] Once a judgment becomes final, the prevailing party should not, through some clever maneuvers devised by an unsporting loser, be deprived of the fruits of the verdict.[32] An unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing of justiciable controversies with finality.[33] Furthermore, a judgment if not executed would just be an empty victory for the prevailing party because execution is the fruit and end of the suit and very aptly called the life of the law.[34]

The issue is moreover factual and, to repeat that trite refrain, the Supreme Court is not a trier of facts. It is not the function of the Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Questions of fact cannot be raised in an appeal via certiorari before the Supreme Court and are not proper for its consideration.[35] The rationale behind this doctrine is that a review of the findings of fact of the appellate tribunal is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[36] Although there are recognized exceptions[37] to this rule, none exists in this case to justify a departure therefrom.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated May 31, 2007 in CA-G.R. CV No. 76755 declaring respondents entitled to the writ of execution and ordering petitioners to vacate the subject property, as well as the Resolution dated September 21, 2007 denying the motion for reconsideration, are AFFIRMED. Costs against petitioners.

SO ORDERED.

Austria-Martinez, Tinga*, Nachura, and Peralta, JJ., concur.

[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 590 dated March 17, 2009.

[1] Entitled Mr. & Mrs. Guillermo Basay v. Simeon Cabang, Virginia Cabang and Venancio Cabang @ "Dondon."

[2]Rollo, pp. 17-33; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion.

[3] Id. at 13-15, issued by Presiding Judge Camilo E. Tamin.

[4] Id. at 18-23, citations omitted.

[5] Id. at 35-36.

[6] Whose dispositive portion reads:

"WHEREFORE, the judgment herein appealed from is hereby REVERSED, and judgment is hereby rendered declaring the plaintiffs-appellants to be entitled to the possession of Lot No. 7777 of the Molave Townsite, subject to the rights of the defendants-appellees under Article[s] 448, 546 and 548 of the New Civil Code.

The records of this case are hereby remanded to the court of origin for further proceedings to determine the rights of the defendants-appellees under the aforesaid article[s] of the New Civil Code, and to render judgment thereon in accordance with the evidence and this decision.

No pronouncement as to costs.

SO ORDERED." (Emphasis and italics supplied)

[7] ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[8] ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[9] ART. 547. If the useful improvement can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.

[10] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby and if his successor in the possession does not prefer to refund the amount expended.

[11] *Biglang-awa v. Philippine Trust Company*, G.R. No. 158998, March 28, 2008, 550 SCRA 160, 177, citing *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562.

[12] *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380; *Ramos v. Ramos*, 447 Phil. 114 (2003).

[13] *Air Materiel Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, October 9, 2007, 535 SCRA 356, 370.

[14] *Government Service Insurance System v. Pacquing*, A.M. No. RTJ-04-1831, February 2, 2007, 514 SCRA 1, 11; *Mangahas v. Paredes*, G.R. No. 157866, February 14, 2007, 515 SCRA 709, 718; *Abaga v. Panes*, G.R. No.

147044, August 24, 2007, 531 SCRA 56, 63.

[15] Florez v. UBS Marketing Corporation, G.R. No. 169747, July 27, 2007, 528 SCRA 396, 401.

[16] Lao v. King, G.R. No. 160358, August 31, 2006, 500 SCRA 599, 605.

[17] B.E. San Diego, Inc. v. Alzul, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433.

[18] Florentino v. Rivera, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 530; Ingles v. Cantos, G.R. No. 125202, January 31, 2006, 481 SCRA 140, 149.

[19] QBE Insurance Phils., Inc. v. Laviña, A.M. No. RTJ-06-1971, October 17, 2007, 536 SCRA 372, 386; KKK Foundation, Inc. v. Calderon-Bargas, G.R. No. 163785, December 27, 2007, 541 SCRA 432, 442.

[20] Aluad v. Aluad, G.R. No. 176943, October 17, 2008.

[21] A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I (1990 ed.), p. 508, citing the Code Commission of 1947, pp. 18-19, 20.

[22] CIVIL CODE, Article 152.

[23] Patricio v. Dario III, G.R. No. 170829, November 20, 2006, 507 SCRA 438, 444, citing Article 152, Civil Code.

[24] FAMILY CODE, Art. 157.

[25] Manacop v. Court of Appeals, 342 Phil. 735, 741 (1997).

[26] RULES OF COURT, Rule 39, Section 13(a).

[27] G.R. No. 172263, July 9, 2008, 557 SCRA 499, 502.

[28] Id., citing FAMILY CODE, Art. 156.

[29] Pineda E.L., The Family Code of the Philippines, Annotated, (1999 ed.), p. 288.

[30] Suyat v. Gonzales-Tesoro, G.R. No. 162277, December 7, 2005, 476 SCRA 615, 623.

[31] Bautista v. Orque, Jr., A.M. No. P-05-2099, October 31, 2006, 506 SCRA 309, 313.

[32] Rigor v. Tenth Division of the Court of Appeals, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 383.

[33] Aguilar v. Manila Banking Corporation, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 382.

[34] Bergonia v. Gatcheco, Jr., A.M. No. P-05-1976, September 9, 2005, 469 SCRA 479, 484.

[35] Buenaventura v. Pascual, G.R. No. 168819, November 27, 2008, citing Heirs of Simeon Borlado v. Court of Appeals, 416 Phil. 257, 262 (2001).

[36] Pacific Airways Corporation v. Tonda, 441 Phil. 156, 162 (2002).

[37] These recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are

based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record (*Marita C. Bernaldo v. The Ombudsman and the Department of Public Highways*, G.R. No. 156286, August 13, 2008); and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Superlines Transportation Co., Inc. v. PNCC*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441, citing *Insular Life Assurance Co., Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86); see also *Grand Placement and Services Corporation v. Court of Appeals*, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 202, citing *Mayon Hotel & Restaurant v. Adama*, G.R. No. 157634, March 16, 2005, 458 SCRA 609, 624; *Castillo v. NLRC*, 367 Phil. 603, 619 (1999) & *The Insular Life Assurance Co. Ltd. v. CA*, supra; *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229, citing *The Insular Life Assurance Co. Ltd. v. CA*, supra, citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356 (2000); *Nokom v. NLRC*, 390 Phil. 1228, 1242-1243 (2000) & *Sta. Maria v. CA*, 349 Phil. 275, 282-283 (2000); *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; *C & S Fishfarm Corporation v. CA*, 442 Phil. 279, 278 (2002).

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