

URBANO DE VENECIA, ET AL., PLAINTIFFS AND APPELLEES, VS. AQUILINO DEL ROSARIO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 18405. September 30, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the order dated November 3, 1959 of the Court of First Instance of Pangasinan, Dagupan Branch, Hon. Emmanuel M. Munoz, Presiding Judge, denying defendants' motion to quash the writ of execution. The appeal, originally brought to the Court of Appeals, was certified to this Court on the ground that only questions of law are involved.

In an action for the collection of a sum of money in the lower court, the parties hereto entered into a compromise agreement which reads:

"Now come the parties, assisted by their respective attorneys, and to this Hon. Court respectfully submit the following agreement and settlement of his case:

1. That the defendants herein admit having been indebted to the plaintiffs in the amount of P6,475.26 and hereby confess judgment thereto in favor of the plaintiffs;

2. That herein defendants agree and covenant to effect payment of said obligation on the following terms:

- (a) That the sum of P1,000.00 should be paid by the defendants to the plaintiffs on or about January 20, 1959;
- (b) That the defendants likewise should pay to the plaintiffs the sum of P475.26 on or about March 20
- (c) That the remaining balance of P5,000.00 shall be paid by the defendants to the plaintiffs within a period of one (1) year at 12% interest from March 20, 1951) in equal monthly installments with corresponding interest as computed.

3. That to secure the faithful compliance and performance of said obligation, defendants herein, by those presents, cede and convey by way of security, free from any lien the following real properties which are owned by them, and all and whatever proprietary rights, interest, or participation which they have therein: (Here follows a description of the parcel of land.)

4. In the event defendants fail to pay the above-mentioned obligation under the terms herein set forth, or in default of two of the installments, whatever balance remaining shall immediately become due and payable and herein plaintiffs can secure the immediate execution of the judgment in the case, and the defendants waive whatever right a mortgagor may have short of foreclosure proceedings. A penal clause is inserted in this agreement to the effect that if defendants fail to perform their obligation an additional 10% shall be charged in addition to the interest, agreed upon, to cover damages of plaintiffs."

This agreement was approved by the lower court in its decision dated December 12, 1959 in which it enjoined the parties to comply with the terms of the agreement.

After paying the first two installments of P1,000 and P475.26, however, the defendants failed to make further payments, prompting the plaintiff's to ask for the execution of the decision.

The trial court granted the motion and directed the issuance of a writ of execution. For some reason, the Writ expired without being served and so, an alias writ of execution was later issued, commanding the sheriff to cause the satisfaction of the balance of P5,000, plus P300 as interest and P500 as penalty, out of the three parcels of land given as security and providing that "if the three (3) above described real properties are not sufficient or cannot be found whereof to satisfy this execution and lawful fees thereon, then we command you, that of the other goods and chattels of the said defendants, to make the said sum of money in the manner required by law * * *,"

Defendants moved to quash the writ on the ground that the above quoted portion varies the decision of the court and, when their motion was denied, they appealed.

The main issue hinges on the interpretation of the judgment of the court based upon the compromise of the parties. Is the writ of execution issued by the court in accordance with the judgment?

Defendants contend that it must first be shown that the three lots are insufficient before the sheriff may be authorized to levy on other properties. In support of their stand, defendants cite Section 34 of Rule 39 of the Rules of Court which provides:

"When an execution issued in accordance with law against the property of a judgment debtor, or any of several debtors in the same judgment, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the Court of First Instance of the province in which the judgment was rendered or from which the execution was returned, requiring such judgment debtor to appear and answer concerning his property and income before such judge of the Court of First Instance, or before a commissioner appointed by him, at a specified time and place; and such proceedings may thereupon be had for the application of the property and income of the judgment debtor towards the satisfaction of the judgment. But no judgment debtor shall be so required to appear before a judge of first instance or commissioner but of the province in which such debtor resides or is found."

The above- quoted provision applies to a situation where execution cannot be satisfied because the judgment debtor has concealed all his properties in order to prevent execution. Here there is no concealment of properties.

While it is true that the compromise agreement refers to the three parcels of land given as security for the satisfaction of the judgment, yet the said judgment did not state or limit that if the said properties are found insufficient the other properties of the defendants may not be held liable.

We believe that the order of writ of execution substantially conforms with the judgment. However, execution should first be directed against the three parcels of land before the other properties of the defendants may be levied.

Wherefore, the order appealed from is affirmed with costs against the defendants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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