

LEE KIM PIO, PETITIONER, VS. FRANCISCO DY CHIN AND HON. GREGORIO T. LANTIN, PRESIDING JUDGE OF BRANCH VII, COURT OF FIRST INSTANCE OF MANILA, RESPONDENTS.

G.R. No. 18852. December 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This case concerns the enforcement or execution of a final judgment obtained by petitioner Lee Kim Pio in Civil Case No. 31335 of the Court of First Instance of Manila against respondent Francisco Dy Chin, the dispositive part of which reads:

"WHEREFORE, the court hereby orders defendant Francisco Dy Chin to deliver to plaintiff Lee Kim Pio, within 30 days from the date this decision becomes final, Stock Certificate No. 280 for ten shares of Mariano Uy Chaco Sons & Co., Inc., valued at P10,000.00 or the equivalent amount of P10,000.00 with interest in either case, at the rate of 6% per annum, from the date of the filing of the complaint until delivery, plus attorney's fees in the sum of P300.00, and to pay the costs.

"The counterclaim is hereby dismissed for insufficiency of evidence.

"SO ORDERED."

modified on appeal in the Court of Appeals as follows:

"FOR ALL THE FOREGOING, we believe that the plaintiff is entitled to 8:333 shares of stock of Mariano Uy Chaco Sons & Company, Inc., or its equivalent of P8,333.33, and with only this modification, the decision appealed from is hereby affirmed, with costs against the appellant."

After the case was returned to the court a quo a writ of execution was issued, on November 4, 1960, and upon notification by the Sheriff of Manila of said writ, respondent Dy Chin executed a Deed of Assignment of the shares mentioned in said writ, in the following tenor:

"Deed of Assignment

"KNOW ALL MEN BY THESE PRESENTS:

"That the undersigned, FRANCISCO DY CHIN, of legal age, a Chinese citizen, married, and residing in the City of Manila, Philippines, for and in consideration of the settlement entered into by and between the undersigned, LEE KIM PIO, and others, as Parties of the First Part, and SERAFIN LEE, acting for and in behalf of the estate of the deceased LI BUN PIN, as Party of the second Part, which instrument is entered in the Notarial Book of Notary Public CEFERINO M. GERALDEZ, as Doc No. 4996, Page 99, Book 11, Series of 1955, dated April 4, 1955, involving 50 shares of the Mariano Uy Chaco Sons & Co., Inc., transferred by the Party of the Second Part to the Party of the First Part and which has been the subject of a court suit filed by LEE KIM PIO against the undersigned in the Court of First Instance of Manila, known as Civil Case No. 31335, which case has been decided against the undersigned and in favor of LEE KIM PIO, ordering the

undersigned to deliver to said LEE KIM PIO 8.333 shares of stock of the Mariano Uy Chaco Sons & Co., Inc., out of the 50 shares of stock transferred to the Party of the First Part in the Settlement agreed upon on April 4, 1955, and in compliance with the said order of the Court which has already become final and executory;

"WHEREFORE, the undersigned, in consideration of the above premises, by these presents does hereby convey, transfer, cede and assign to Mr. LEE KIM PIO, his heirs, assigns, or successors in interest, forever, free from any lien or encumbrance, 8.333 shares of stock of the Mariano Uy Chaco Sons & Company, Inc., out of the 50 shares mentioned in the settlement.

"IN WITNESS WHEREOF, I hereunto set my hand and sign this instrument, this 26th day of November, 1960, in Manila, Philippines.

"FRANCISCO DY CHIN
(Assignor)

"SIGNED IN THE PRESENCE OF:

"JOSE C. MAGAT

ANTONIO GONZALES, JR."

Petitioner Lee Kim Pio's counsel, Atty. Jose C. Magat, who signed the above-quoted Deed of Assignment together with respondent Dy Chin's counsel (Atty. Antonio Gonzales, Jr.), received the original thereof, and days later, upon being paid the interest and attorneys fees, executed the following receipt:

"RECEIPT OF PAYMENT

"Received from Mr. Francisco Dy Chin, the sum of P2,299.92, as full payment of the interests and attorney's fees mentioned in the judgment and writ of execution in Civil Case No. 31335.

"JOSE C. MAGAT

"Counsel for Mr. Lee Kim Pio."

Claiming that he had thus fully satisfied the judgment, respondent refused to heed the demands of the sheriff who on April 14, 1961, returned the writ with the following comment:

"That having elapsed the statutory period of sixty (60) days without any such instruction from neither the plaintiff nor his, counsel as to whatever steps to be taken in connection with the writ of execution, I am returning same to the Court of origin, to be filed with the records of the case, unsatisfied.

"I further certify that upon telephone conversation today with said defendant, Francisco Dy Chin, he stated that he could not and is not willing to deliver to the plaintiff, the shares of stock object of this writ."

In view of this return, petitioner Lee Kim Pio, through 5 his new attorneys in place of Atty. Magat whom he had relieved filed a motion to declare respondent Dy Chin in contempt of court, for failure to deliver the certificate of stock and shares in question. To this motion, respondent Dy Chin duly filed an answer alleging that he had already executed a Deed of Assignment of the shares of stock, in compliance with the judgment rendered by the court; and that, also, in compliance with said judgment, he had already paid to petitioner Lee Kim Pio's counsel, Atty. Jose C. Magat, all the sums of money covering interests, attorney's fees, and costs. To this answer, petitioner Lee Kim Pio, on April 27, 1961, filed a reply stating that said Deed of Assignment is not in compliance with the decision of the court, because it was signed by respondent Dy Chin alone, and its execution was without his (Lee Kim Pio's) knowledge or consent, nor was he a signatory thereto, thereby making said deed a mere self-serving evidence on the part of respondent Dy Chin; that assuming that said deed is valid, yet the shares of stock

mentioned therein were never delivered by respondent Dy Chin to him, nor were said shares transferred in his name, in the books of Mariano Uy Chaco Sons Co., Inc.; consequently, said assignment was not in compliance with the decision of the court.

Acting on said motion for contempt, the court, on June 1, 1961, issued the following order:

"ORDER

"Upon consideration of the motion to declare defendant in contempt of court and the answer thereto, as well as the reply to defendant's answer, and the reply to the motion of the plaintiff dated May 15, 1961, the said motion is hereby denied, on the ground that the defendant had already complied with the decision, it appearing that the defendant had already executed a deed of assignment of the shares of stock, as shown in Exhibit 'A' attached to the answer, a copy of which must be in the possession of Atty. Jose C. Magat, one of the counsel for the plaintiff, and had delivered the sum of P2,299.92 to said counsel, and delivery to counsel is delivery to the plaintiff (Exhs. A and B, attached to the Answer). The decision does not require the defendant to deliver the shares, interest and attorney's fees personally to the plaintiff. It is incumbent upon the plaintiff to demand from said counsel, Atty. Jose C. Magat, the delivery to him of the deed of assignment, so that he could present the same to Mariano Uy Chaco Sons & Company, Inc., in order that he may get the corresponding shares of stock. Plaintiff also can demand from his counsel the delivery to him of the interest, which was paid to him by the defendant.

"SO ORDERED."

From this order, petitioner Lee Kim Pio filed a motion for reconsideration, but the same was denied by the court.

Thereafter petitioner filed a motion for issuance of alias writ of execution on the ground that the decision rendered by the court was not fully and completely satisfied by respondent, for the reason that the aforementioned Deed of Assignment is null and void, it being in violation of Article 1624, in relation to Article 1475 of the new Civil Code. To this motion, respondent Dy Chin filed an opposition.

On July 22, 1961, the court issued an order denying said motion for issuance of alias writ of execution. Petitioner Lee Kim Pio filed a motion for reconsideration of said order, on August 16, but the same was denied by the court on August 26, 1961.

Whereupon, petitioner Lee Kim Pio, on September 11, 1961, filed with us the present petition for certiorari to set aside the orders denying the petition for contempt, and mandamus to compel the respondent judge to issue an alias writ of execution.

The contention of petitioner that the deed of assignment is null and void because he did not sign it nor consented to its execution, is without merit. The assignment in question is not in the nature of a bilateral contract to be consented to by the parties, but one executed in compliance with the judgment ordering the transfer to petitioner of 8.333 shares of stock or the payment of their value (P8,333.00), plus interest and attorney's fees. And both the transfer of these shares by means of the deed assignment and the payment of the interests and attorney's fees to the attorney of record of petitioner while still acting as such attorney are equivalent to delivery and payment to petitioner himself. As pointed out by the court a quo, petitioner's remedy is to demand from his lawyer the delivery to him of the said deed of assignment and the amount paid as interest and received by the lawyer.

In one point, however, the respondent has yet to comply with the judgment, and that is, the delivery of the Stock Certificate No. 280 covering ten shares of stock of Mariano Uy Chaco Sons & Co., Inc., from which the 8.333 shares adjudicated to petitioner would be taken. While this has been specifically ordered in the judgment, it is not clear in the return of the sheriff that an express demand therefor has been made by the sheriff who merely stated

that respondent Francisco Dy Chin could not and is not willing to deliver the shares of stock object of the writ of execution. No reference is made to the stock certificate. Since the transfer of the shares of stock was already covered by the deed of assignment, we agree with the trial court that under the circumstances, respondent was not guilty of contempt. He may, however, be compelled to deliver the stock certificate called for in the judgment and for this purpose an alias writ of execution may be issued.

Wherefore, in consonance with the foregoing, the order denying the petition for contempt is affirmed, while the order denying the alias writ of execution is set aside, and the respondent judge directed to issue an alias writ of execution only with respect to the delivery to petitioner of Stock Certificate No. 280 in pursuance of the final judgment rendered in Civil Case No. 31335 aforesaid. No costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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