

**SPOUSES FLORENTINO AND CONSOLACION TABALNO,
PETITIONERS, VS. PAULINO T. DINGAL, SR. AND JUANITA GALOLA
VDA. DE DINGAL, RESPONDENTS.**

G.R. No. 191526. October 05, 2015

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BRION, J.:*

We resolve in this petition for certiorari[1] the challenge to the September 28, 2009,[2] November 9, 2009,[3] and March 1, 2010[4] orders of the Regional Trial Court (RTC), Branch 10, Abuyog, Leyte, in Civil Case No. 563 entitled Paulino T. Dingal, Sr. v. Sps. Florentino Tabalno and Consolacion Tabalno, et al.[5]

The Factual Antecedents

The present petition traces its roots to the Forcible Entry case, docketed as Civil Case No. 3682, filed by Paulino Dingal, Sr. (Paulino) before the Municipal Circuit Trial Court, Abuyog, Leyte (MCTC), against spouses Florentino and Consolacion Tabalno (petitioners), Victoriano Tuale, Dionesio Mansueto, Inego "Dondon" Cabus, and Bienvenido Dinglasa.

In a decision dated March 31, 2008, the MCTC ordered the petitioners, et al., to: vacate the premises and restore its possession to Paulino; demolish any and all structures illegally constructed therein at their expense; and pay Paulino P50,000.00 as damages for the use and occupation of the lot in dispute, P30,000.00 as attorney's fees, and P3,500.00 as litigation expenses.

The petitioners appealed the MCTC decision to the RTC.[6]

Paulino, through his motion dated June 30, 2008, sought the dismissal of the petitioners' appeal and prayed for the issuance of a writ of execution.[7]

On August 20, 2008, the RTC ordered the issuance of a Writ of Execution, in accordance with the MCTC decision, for the petitioners' failure to file a supersedeas bond.

The petitioners sought to reconsider the RTC's August 20, 2008 order, which the RTC denied in its order dated September 30, 2008.[8]

On October 27, 2008, while the forcible entry case was still pending appeal before the RTC, the petitioners filed with the Court of Appeals (CA) a petition for review under Rule 42 of the Rules of Court. The case was docketed as CA-GR CEB-SP No. 03828.

In a resolution dated February 17, 2009, the CA dismissed the petitioners' Rule 42 petition for review. In its November 27, 2009 resolution, the CA subsequently dismissed the petitioners' Rule 42 petition with finality.

Meanwhile, on January 28, 2009, the RTC again issued an order for the issuance of a Writ of Execution, in accordance with the MCTC decision. The RTC Clerk of Court issued the Writ of Execution on February 23, 2009.

On March 26, 2009, the Sheriff submitted a Report stating that the writ of execution was "partially served [on] the defendant, Sps. Tabalno [who] refuses [sic] to demolish the structure inside the property xx x and pay their money judgment,"[9]

On the other hand, the RTC affirmed in toto the March 31, 2008 decision of the MCTC in its order[10] dated July 31, 2009.

The assailed RTC orders

The RTC granted, in its September 28, 2009 order,[11] the manifestation with omnibus ex parte motion for substitution filed by respondent Juanita Galola vda. de Dingal (Juanita); the RTC ordered the substitution of Paulino (who in the interim died) by his surviving spouse Juanita.

In its November 9, 2009 order,[12] the RTC denied, for lack of merit, the motion for reconsideration filed by the petitioners from its September 28, 2009 order. The RTC explained that the appealed forcible entry case was still pending before it, and even before the CA via the petitioners' Rule 42 petition, thus barring Juanita's substitution of her husband. Moreover, their motion for reconsideration lacked the required notice of hearing; hence, it was pro forma.

In its March 1, 2010 order,[13] the RTC denied the petitioners' second motion for reconsideration for lack of merit.

The Petition

The petitioners charge the RTC with grave abuse of discretion in granting the substitution of Paulino by his wife Juanita.

The petitioners argue that, first, under Section 4, Rule 3 of the Rules of Court, the husband and the wife shall sue or be sued jointly, except as may be provided by law.

In this case, Juanita was not joined as a party in Paulino's forcible entry case; hence, her participation in the proceedings is deemed waived. Accordingly, she could no longer be substituted as a party in the case as the MCTC decision had already been executed.

Also, the RTC no longer had jurisdiction over the case when it ordered Juanita's substitution as the case was already then pending appeal before the CA in CA-GR CEB-SP No. 03828.

In fact, per the Sheriffs certification, the MCTC decision was already final and had been executed. Thus, following the Court's ruling in *Temic Semi-Conductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW)*, et al.[14] and *Mocorro, Jr. v. Ramirez*,[15] the MCTC decision in this case has acquired finality; no changes could therefore be made in the MCTC decision, especially by way of substitution of the deceased plaintiff as the decision was already immutable and unalterable. Accordingly, Juanita's substitution for her deceased husband, Paulino, was legally improper.

As a side issue, the petitioners question the writ of execution issued by the RTC which they argue was issued when the case was already pending before the CA.

The Case for the Respondent

Juanita argues in defense that the RTC correctly issued the assailed orders granting her substitution as plaintiff, in place of her deceased husband Paulino, pursuant to Section 16, Rule 3 of the Rules of Court.[16]

She adds that the cases cited by the petitioners - *Temic Semi-conductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW) et al.*, and *Mocorro, Jr. v. Ramirez* - are misplaced. These cases speak

of decisions which have already attained finality, hence, immutable and unalterable. Here, the RTC issued the assailed orders while the forcible entry case was still on appeal before it, as well as before the CA.

The Issues

The core issue for the Court's resolution is whether the substitution of Juanita, in place of her deceased husband, was legally proper.

The Court's Ruling

We resolve to DISMISS the petition.

The principle of immutability of final judgments presupposes a final and executory judgment.

The principle of immutability of a final judgment stands as one of the pillars supporting a strong, credible, and effective court.[17] The principle prohibits any alteration, modification, or correction of final and executory judgments as what remains to be done is the purely ministerial enforcement or execution of the judgment.

On this point, the Court has repeatedly declared:

It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.

The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. [x x x], the Supreme Court reiterated that the doctrine of immutability of judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would be even more intolerable than the wrong and injustice it is designed to protect, [emphases and underscoring supplied]

Once a judgment is issued by the court in a case, and that judgment becomes final and executory, the principle of immutability of judgments automatically operates to bar any modification of the judgment. The modification of a judgment requires the exercise of the court's discretion. At that stage - when the judgment has become final and executory - the court is barred from exercising discretion on the case; the bar exists even if the modification is only meant to correct an erroneous conclusion of fact or law as these are discretionary acts that rest outside of the court's purely ministerial jurisdiction.

Before the finality of the judgment, however, a court has plenary power to alter, modify, or altogether set aside its own decision. Thus, in situations where the judgment has not yet become final and executory, the principle of immutability of judgments will not and cannot apply.

Obviously, therefore, the principle of immutability of judgments presupposes the existence of a final and executory judgment. Where no final and executory judgment exists - because the case is still under review by the appellate or higher court or there still are incidental matters under consideration by the court — the principle simply cannot operate. The court would have plenary power not only to modify its judgment, but also to address all matters incidental to the case.

In the present case, we find that, notwithstanding the petitioners' assertion, the forcible entry case was, in fact, still under the RTC's review when it issued the assailed orders. In fact, as the petitioners no less pointed out, the

forcible entry case was also simultaneously then under the CA review (when they filed the Rule 42 petition before the CA on October 27, 2008) while the case was still pending before the RTC.

In addition, the sheriffs report did not state that the MCTC decision was already final and executed as the petitioners insist. To accurately quote the sheriffs report, the writ of execution was "partially served [on] the defendant, Sps. Tabalno [who] refuses [sic] to demolish the structure inside the property xxx and pay their money judgment. " In other words, the writ of execution had not yet been fully executed; something still remained to be done to fully carry out the MCTC decision. Hence, the MCTC decision was not, contrary to the petitioner's position, final and executory.

Of course, we are aware of the Court's rulings in Temic Semi-conductors and Mocerro whose facts, unfortunately for the petitioners, do not squarely fit the facts and circumstances of the present case. Unlike in Temic Semi-Conductors and Mocerro,[18] the present case does not question a final and executory judgment. Rather, as discussed, the MCTC decision is not yet been final and executory and hence does not trigger the application of the immutability of judgments principle.

Accordingly, as the MCTC judgement was clearly not yet final and executory, the immutability of judgments principle cannot apply.

A forcible entry case survives the death of

a party; hence, Juanita properly substituted

for her deceased husband Paulino.

In this jurisdiction, there are three kinds of actions available for the recovery of possession of real property: (1) accion interdictal or ejectment case; (b) accion publiciana; and (3) accion reivindicatoria. These actions survive the death of a party. Under Section 16, Rule 3[19] of the Rules of Court, the heirs of a deceased party may be substituted for the latter on a pending action where the claim is not thereby extinguished.

Forcible entry, as well as unlawful detainer, belongs to the class of action known as accion interdictal - where the issue is the right of physical or material possession of the subject real property that, therefore, survives the death of a party.

To be sure, forcible entry cases are actions in personam - affecting only the particular person sought to be held liable - that generally do not survive a party's death. Nonetheless, because it is a real action that primarily and principally affects property and property rights, it survives the death of either party.[20]

On this point, the Court in Cruz v. Cruz[21] explained:

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property, and rights of property affected being incidental.[22] [emphasis supplied]

Based on these considerations, the forcible entry case filed by Paulino against the Sps. Tabalno, et al, survived Paulino's death. Hence, pursuant to Section 16, Rule 3 of the Rules of Court, Juanita, the surviving spouse and heir of Paulino, could have and had properly been substituted for him in the forcible entry case.

We are of course aware of Section 4, Rule 3 of the Rules of Court that requires the husband and the wife to sue jointly, otherwise, the non-joining spouse is deemed to have waived his or her participation in the proceeding.

We note, however, that Juanita did not join the proceeding pursuant to Section 4 of Rule 3 when she, as Paulino's wife, should have sued jointly with Paulino. Rather, Juanita joined the proceeding pursuant to Section 16 of Rule 3 which allows her, as her husband's heir, to substitute for Paulino in the case. In other words, she was merely taking over her husband's place, not belatedly joining as an additional party, to protect Paulino's rights and interests that the proceedings may affect.

In this regard, the Court explained in *Edwino A. Torres (deceased) v. Rodellas*:^[23] the purpose for allowing the heirs to substitute for the deceased litigant proceeds from "the right to due process of every party to a litigation who may be affected by the intervening death. The deceased litigant is himself or herself protected, as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate. The spirit behind the general rule requiring a formal substitution of heirs is not really because substitution of heirs is a jurisdictional requirement, but because noncompliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein."^[24]

Accordingly, the RTC correctly allowed Juanita to substitute for Paulino upon the latter's death.

Execution of the MCTC decision in the
forcible entry case pending appeal before
the RTC is allowed by the Rules of Court.

A collateral issue that the petitioners raised is the legal correctness of the RTC orders allowing the execution of the MCTC decision pending appeal.

Based on the facts and the rules, we also find these RTC orders proper. In point is Section 19, Rule 70 of the Rules of Court, which reads:

SEC. 19. Immediate execution of judgment; how to stay same. — If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed, [emphasis and underscoring supplied]

We note, in this case, that Paulino prayed for the issuance of a writ of execution (through the Motion to Dismiss the Appeal dated June 30, 2008) just a few days after the petitioners appealed the case before the RTC. The petitioners, however, failed to file the required supersedeas bond; thus, the RTC issued the August 20, 2008 Order for the issuance of a writ of execution.

Significantly, this August 20, 2008 RTC Order for the issuance of a writ of execution was not immediately carried out as the petitioners sought its reconsideration and opposed the issuance of the writ of execution. The RTC, at that point, properly recognized the petitioners' arguments, as the records show, but still found no reason to deviate from its position, as the petitioners still had not filed the required supersedeas bond. For these reasons, the RTC, on January 28, 2009, again ordered the issuance of a writ of execution.

Thus, the RTC acted within the rules and within its jurisdiction in ordering the issuance of the writ of execution. Under the facts, rules, and jurisprudence, execution of the MCTC's decision in this case was proper.

Since Juanita properly substituted for Paulino, the RTC did not commit grave abuse of discretion in issuing the assailed orders.

Time and again, we have discussed the nature of a certiorari petition as an extraordinary remedy intended to correct errors of jurisdiction where the court or tribunal has acted with grave abuse of discretion or such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough; the abuse of discretion must be so patent and gross that it amounts to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[25]

The Court's supervisory jurisdiction over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. As long as the lower court has jurisdiction over the case, the certiorari writ will not issue even when the lower court's findings are incorrect. More so when, as in this case, the RTC did not commit any error when it allowed Juanita's substitution for her deceased husband Paulino.

WHEREFORE, in the light of these considerations, we hereby DISMISS the petition and AFFIRM the September 28, 2009 order of the Regional Trial Court, Branch 10, Abuyog, Leyte, in Civil Case No. 563 granting the substitution of Paulino Dingal, Sr. by Juanita Galola vda. de Dingal; and its November 9, 2009 and March 1, 2010 orders denying the petitioners' motions for reconsideration.

SO ORDERED.

Peralta,[**] Del Castillo, Leonen, and Jardeleza,[***] JJ., concur.

[*] Designated as Acting Chairperson, per Special Order No. 2222 dated September 29, 2015.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2223 dated September 29, 2015.

[***] Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 2246 dated October 5, 2015.

[1] Petition for Certiorari with prayer for Preliminary Injunction and Temporary Restraining Order, rollo, pp. 3-15.

[2] Issued by Judge Buenaventura A. Pajaron in Civil Case No. 563, and Criminal Cases No. 1902 and 1928, rollo, pp. 16-17. Paulino Dingal, Sr. was the plaintiff in Civil Case No. 563; and the private complainant in Criminal Case Nos. 1902 and 1928.

[3] Issued by Judge Buenaventura A. Pajaron in Civil Case No. 563, id. at 18-20.

[4] Id. at 21.

[5] An action for forcible entry with damages and attorney's fees:

[6] Notice of Appeal dated May 19, 2008, rollo, p. 36.

[7] Motion to Dismiss Appeal with Prayer for Issuance of Writ of Execution dated June 30, 2008, rollo, p. 38.

[8] Id.

[9] Quoted in the RTC's July 31, 2009 order, see rollo, p. 39.

[10] Rollo, pp. 37-41.

[11] Supra note 2.

[12] Supra note 3.

[13] Supra note 4.

[14] 577 Phil. 12 (2008).

[15] 582 Phil. 357 (2008).

[16] Respondent Juanita Galola vda. de Dingal stated in her comment "Section 6, Rule 3." We believe this is a typographical error and what she was actually referring to was Section 16, Rule 3 based on the text of the provisions she quoted in her comment. See rollo, p. 30.

[17] Justice Brion's Dissent in Navarro, et al. v. Exec. Secretary Ermita, et al, 663 Phil. 625, 630-631 (2011).

[18] In Temic Semi-Conductors, supra note 14, the subject March 24, 1998 order of the NCR RD, as affirmed by the June 2, 1998 and June 29, 1998 resolutions of the Bureau of Labor Relations, became final and executory. Subsequently, the RD issued, on September 23, 1998, a writ of execution to enforce the final and executory March 24, 1998 NCR RD order. On September 30, 1998, the BLR NCR RD issued an order lifting the notice of garnishment issued by the BLR sheriffs pursuant to writ of execution reasoning that there was a need for prior determination of the actual amounts due. On March 30, 1999, the NCR RD, however, essentially reversed the September 30, 1998 order of the NCR RD. In a resolution dated September 18, 2000, the BLR voided the September 23, 1998 and March 30, 1999 orders of the NCR RD. The Court ultimately affirmed the BLR orders under the principle of immutability of judgments. In essence, the Court ruled that the writ of execution could not go beyond the terms of the March 24, 1998 order of the NCR RD which the writ sought to execute.

Similarly, Mocorro, supra note 15, involved a final and executory judgment - the May 31, 2001

CA decision, per the June 22, 2001 entry of judgment, affirming the February 17, 1995 decision of the RTC in the underlying indirect contempt case. Unlike in Temic, however, the Court in Macorro subsequently granted the modification of the RTC's February 17, 1995 decision on the ground of nunc pro tune entries - an exemption from the immutability of judgments principle.

[19] Section 16, Rule 3 reads:

Sec 16. Death of party; duty of counsel— Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives.

Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a

period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[20] See *Benavidez v. Court of Appeals*, 372 Phil. 615, 624 (1999); and *Limbauan v. Acosta*, 579 Phil. 99, 113-114(2008).

See also *Cahiza v. CA*, 335 Phil. 1107, 1121 (1997), where the Court ruled that ejectment cases are not purely personal actions, which therefore, survives the death of a party. The Court pertinently said:

Caniza's demise did not extinguish the *desahucio* suit instituted by her through her guardian. That action, not being a purely personal one, survived her death; her heirs have taken her place and now represent her interests in the appeal at bar.

[emphasis supplied; citation omitted]

[21] 644 Phil. 67 (2010).

[22] *Id.* at 72, citing *Bonilla v. Barcena*, 163 Phil. 516 (1976). See also *Edwino A. Torres (deceased) v. Rodellas*, 614 Phil. 566, 567 (2009), citing *Bonilla* in *Gonzales v. Philippine Amusement and Gaming Corporation*, 473 Phil. 582, 591 (2004).

[23] *Supra* note 22 [citations omitted].

[24] *Id.* at pp. 584-585 [citations omitted].

[25] See *Mendoza v. COMELEC, et al*, 618 Phil. 706, 721 (2009); *Mayor Varias v. COMELEC et al*. 626 Phil. 292, 314 (2010).

[26] *Goco, et. al. v. Court of Appeals, et. al*, 631 Phil. 394, 401 (2010) [citations omitted].

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