

MIGUEL R. SOCCO, PETITIONER, VS. CONCHITA VDA. DE LEARY AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 19461. October 31, 1964

Ponente: BENGZON, J. P., J.

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BENGZON, J. P., J.:

The petitioner in this case obtained a judgment in the Court of First Instance of Manila in Civil Case No. 23345 against therein defendants Conchita Vda. de Leary and Carlos A. Barretto, who were ordered jointly and severally to pay Miguel R. Socco P10,000.00 in damages and to deliver 225,000 shares of the Gold Star Mining Co., Inc. or pay their par value of P22,500.00.

The defendants appealed said judgment to the Court of Appeals which modified it by obliging the defendants to deliver additional shares or pay their par value, thus:

"The last part of the judgment stating that it is without prejudice to further action with respect to the foe on the remaining 600,000 escrow shares should be modified, in view of our holding that as the defendants by unlawfully dismissing Attorney Socco voluntarily prevented the fulfillment of the suspensive condition, said condition must be deemed fulfilled insofar as fulfillment partly depended upon his will. Said last part of the judgment is, therefore, deleted and in its stead, the defendants arc ordered to deliver, in solidum, to plaintiff an additional 150,000 shares of the Gold Star Mining Company or their par value of P15,000.00 upon the release of the 500,000 remaining escrow shares by the Securities and Exchange Commission.

"Thus modified, the appealed judgment is affirmed. Costs against appellant."

A petition for review of the Court of Appeals' judgment was died in this Court by Conchita Vda. de Leary, but We dismissed it by resolution of May 3, 1961, for lack of merit.

After the case was remanded to the Court of First Instance of Manila, the latter, on proper motion for execution, issued an order, dated July 14, 1961, for Carlos A. Barretto and Conchita Vila, de Leary to deliver 375,000 shares of the Gold Star Mining Co., Inc. or pay their par value of P.17,500.00 within three days from receipt of said order, and upon their failure to do so, for the issuance of a writ of execution against the supersedeas bond and of another writ for the balance of the judgment debt and costs.

After Conchita Vda. de Leary delivered a total of shares of the Cold Star Mining Co., Inc. and paid for the damages and costs, she prayed the court to make of record full satisfaction of the judgment. Petitioner Socco questioned stock certificate No. 220 covering 96,000 shares, and on September 21, 1961, after the reception of evidence on the matter, the court rejected said stock certificate upon the finding that the 96,000 shares covered by it "were registered in the names of third persons and there is no showing that the stockholders indorsed or transferred" their respective stock certificates. Simultaneously, the court ordered the issuance of a writ of execution, against the supersedeas bond, for the sum of P9,600.00 representing the par value of said 96,000 shares.

On September 25, 1961 Conchita Vda. de Leary received at 3 p.m. copy of the order abovementioned and filed an hour later, or at exactly 4:05 p.m., a motion praying that she be allowed to substitute stock certificate No. 220 with stock certificates Nos. 223, 224 and 225 covering 96,000 shares of the Gold Star Mining Co., Inc., attaching the certificates to her motion. But on the following day, September 26, 1961, the writ of execution was issued, and on September 28, 1961 the motion for substitution was denied "for lack of merit". Conchita Vda. de Leary moved to quash the writ of execution, but her motion was denied on September 29, 1961. "for lack of merit".

Whereupon she petitioned for certiorari in the Court of Appeals, contending that the order of execution was at variance with the judgment. On January 13, 1962 the Court of Appeals rendered its decision, stating in the dispositive portion:

"It appearing that the court a quo has acted in abuse of its discretion in the issuance of the 'order of execution and in denying the substitution of the stock certificates No. 223, 224 and 225 with stock certificate No. 220 of the Gold Star Mining Co., Inc.. it is hereby declared that the order of the respondent Judge dated September 21, 1961 ordering the issuance of a writ of execution for P9,600.00 against supersedeas bond and also the writ of execution Issued in accordance therewith be set aside with costs against respondent Miguel R. Socco and the writ of preliminary injunction issued heretofore be made permanent."

It is the above decision which Miguel R. Socco has brought before Us for review in this petition.

Petitioner contends that without a previous motion for reconsideration in the Court of First Instance of Manila, certiorari would not lie. While generally motion for reconsideration should precede recourse* to certiorari, the same may be dispensed with in cases like this where execution had been ordered and the need for relief was extremely urgent (*Luzon Surety Co. vs. Marbella*, 109 Phil., 734).

Petitioner contends the Court of First Instance acted with authority in denying substitution of the rejected shares and ordering payment of their par value. The action of the Court of First Instance in effect rejected not the particular shares but the choice to deliver shares or pay their par value in accordance with the judgment. This was already varying the terms of the executory judgment, which the court no longer had the power to do. It nullified the freedom of choice granted to the defendants by the judgment sought to be executed.

Petitioner further contends that the Court of Appeals had no authority to take cognizance of the petition for certiorari since the writ sought therein would not be in aid of its appellate jurisdiction. A twofold reason is given: First, that the decision in Civil Case No. 23345, as modified by the Court of Appeals, has already become final and executory, and that the order of execution issued is not appealable. Secondly, even if appeal from the order of execution is allowable, it would perforce involve questions purely of law, and fall within the jurisdiction of this Court, not the Court of Appeals.

Indeed, ordinarily no appeal is allowed from an order of execution of a final and executory judgment, on the theory that otherwise there would be no end to a case. However, an exception to this rule has been recognized. Where, as in this case, the order of execution would substantially vary the terms of the judgment, the same is appealable (*Castro vs. Surtida*, 87 Phil., 166; *Manaois-Salonga vs. Natividad*, 107 Phil., 268).

The order of execution in this case was issued after presentation of evidence, and the Court of First Instance made a finding that stock certificate No. 220 represented shares which belonged to third persons and that its transfer to Carlos A. Barretto was not authorized. This presented a factual question which could be raised on appeal. In fact such question has already been mentioned in the pleadings filed by the parties in the certiorari action before the Court of Appeals, for the petition alleged that shares under stock certificate No. 220 belonged to Carlos A. Barretto and also the answer contended that their transfer to Carlos A. Barretto was illegal, invalid and fraudulent.

Since the acceptance, rejection or substitution of the shares of stock offered in satisfaction of the judgment involved questions of fact, the appeal from (he orders thereon issued by the Court of First Instance could be made, by virtue of its nature and the amount involved, to the Court of Appeals. There, in this case, the writ of certiorari sought from that Court is "in aid of its appellate jurisdiction."

Petitioner cites *Grey Vda. de Alba vs. Fabie de Carandang*, L-18003, September 29, 1962, holding, that the Court of Appeals could not issue a writ of certiorari in aid of an appellate jurisdiction it had already exercised. But in that case We noted that "there cam be no reason to say that the Court of Appeals still had jurisdiction to review the final orders and decision of the Court of First Instance in said case, by appeal or writ of error" and that "assuming the orders complained of are appealable, they could only be appealed to Us because the appeal would have necessarily involved nothing more than a question of law".

Petitioner lastly argues that the motion for substitution stated no time and place of hearing and was served without three days notice. Considering its urgency, the motion could be heard on shorter notice (Sec. 4, Rule 26 now Sec. 4, Rule 15, Rules of Court). As to the time and place of hearing, these were substantially indicated in its notice which asked for "immediate consideration" of the motion by the "Court of First Instance [of] Manila."

Wherefore, the decision appealed from is hereby affirmed with costs against petitioner. So ordered.

Bengzon C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

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