

VICENTE Y. REALIZA, PLAINTIFF-APPELLEE, VS. GASPAR DUARTE, DEFENDANT-APPELLANT. VICENTE Y. REALIZA, PLAINTIFF-APPELLEE, VS. URBANO DEBEVAR, DEFENDANT-APPELLANT. VICENTE Y. REALI...

G.R. No. 20527-29. August 31, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

Before Us are separate appeals by the defendants from three decisions of the Court of First Instance of Zamboanga del Norte relating to the possession of certain parcels of land located in the municipality of New Piñan, same province. Since the issues are identical and as the plaintiff-appellee is the same in all three cases, the defendants-appellants were allowed to file a single and joint brief.

In Civil Cases Nos. 932, 951 and 954, which are actions for forcible entry and detainer filed by Vicente Y. Realiza against Jesus Arpa, Gaspar Duarte and Urbano Debevar, respectively, in the Justice of the Peace Court of Dipolog, Zamboanga del Norte, after a trial on the merits, the court rendered decisions ordering the defendant in each case to vacate the parcel of land occupied by him and to pay monthly rentals and costs. Writs of execution were issued after the decisions have become final. The sheriff made returns of the writs with the defendants refusing to vacate the land and remaining in possession thereof.

On April 9, 1957, or more than five years, but before ten years, after the entry of final judgment in each case, Vicente Y. Realiza again filed three separate actions, this time in the Justice of the Peace Court of New Piñan, a newly created municipality under whose jurisdiction the subject matter of the actions fell, for the enforcement and revival of the judgments rendered in the aforementioned Civil Cases Nos. 932, 951 and 954. After trial the court decreed the revival of the judgments.

On separate appeals interposed by the defendants, the cases were elevated to the Court of First Instance of Zamboanga del Norte where the parties submitted in each case identical stipulations of facts, typical of which are the following pertinent clauses:

“3. That Exhibits A and A-1 (decisions) was (were) executed May 20, 1952 as per sheriff's return dated May 24, 1962, a copy of which is hereto attached as Exhibit B;

“4. That owing to the fact that the defendant did not vacate the premises the complaint was filed and that after due hearing and consideration by the justice of the peace court of New Piñan, judgment was rendered for plaintiff reviving the judgments of the justice of the peace court of Dipolog, x x x .”

It was stipulated likewise that the defendants Urbano Debevar, Jesus Arpa and Gaspar Duarte are "homesteaders" of the land; and that Duarte's application for homestead was approved by the Bureau of Lands on May 31, 1954. On the basis of the parties' stipulations, the court affirmed the decisions of the Justice of the Peace Court of New Piñan.

Appellants contend that the judgments in Civil Cases Nos. 932, 951 and 954 having been satisfied, the same cannot be revived. The contention is de-void of factual basis. "In order to constitute a full execution of a writ, both defendant and his personal property must be removed from the premises, and the estate given to plaintiff, unless the removal of the personal property is waived by defendant. Where de-fendant is decreed to be ejected, he must vacate and be ejected from every part of the land included within the area defined by the court in fixing the boundaries in the description of the property involved in the action, x x x." (36 C. J. S. 1209, underscoring supplied) In the cases at bar, it is admitted that "the defendants did not vacate the premises" (par. 4, sti-pulation, supra). The defendants have ignored and dis-obeyed the writs of execution and have contemptuously remained in possession of the land. Indubitably there-fore, the writs have not been fully executed.

No error was committed by the court a quo in hold-ing that the appellee has a right to bring to life the judgments rendered in the forcible entry and detainer cases. Ten years have not passed since final entry of said judgments was made. The right to revive and en-force the judgments by an independent action is a re-medy granted to the prevailing party by Section 6, Rule 39 of the Rules of Court which provides as follows:

"Execution by motion or by inde-pendent action.- A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

It is contended in the second assignment of error that the defendants-appellants Urbano Debevar and Je-sus Arpa are "homesteaders" and as such are entitled to the possession of the land and cannot be ejected therefrom. The contention is untenable. It was not shown that these appellants have filed homestead appli-cations for the portions of the land occupied by them before the governmental agency entrusted with the ad-ministration and disposition of public lands. In the absence of proof that such applications have been filed, much less, approved by competent authority, the reference to them as "Homesteaders" in the stipula-tion of facts, does not legalize their illegal possess-ion of the land or convert them from usurpers into law-ful possessors. Their naked claim of being homestead-ers cannot set at naught the judgment of ouster rendered against them by a competent court.

The situation of appellant Gaspar Duarte, however, is different. On May 31, 1954, or after the entry of judgment, his homestead application was approved by the Director of Lands. In view of this supervening event which occurred after the entry of judgment, it behooved the court a quo to have ascertained if the re-relationship between appellee and Duarte was changed. In the case of *Compañia General de Tabacos vs. Marti-nez, et al.*, 29 Phil. 515, 521, which involved an act-ion for revival of judgment, this Court, through Just-ice Trent, stated:

"There is by no means any pre-sumption in his (judgment creditor) favor that he is entitled to no less than the exact relief set forth in the first judgment. Dur-ing a period of five years or more, many events or transactions may have transpired to change the relations of the parties or the right of the judgment creditor to de-mand the enforcement of his judgment. It is the duty of the court before which the second action is tried to examine any such defenses presented by the defendant and allow their just effect."

The foregoing pronouncement was substantially repeated in the case of *Francisco, et al. vs. Borja*, L-7953, February 27, 1956, when this Court, through Justice Montemayor, stated:

"Aside from the defenses of prescription, in an action for revival of a judgment, defenses based on facts occurring after the judgment, such as satisfac-tion thereof by the losing party or counterclaims arising out of transactions not connected with the former controversy, may be set off."

The land on which Duarte settled may be initially presumed as public land, his homestead application over it having been approved by the Director of Lands. It is our considered opinion that the approval of his homestead application legalized his possession, and such approval constitutes a justiciable defense against the action for

revival of judgment as it necessarily affects the appellee's right of possession of the land from which Duarte was ordered ejected.

In the case of *Hernandez, et al. vs. Clapis, et al.*, 98 Phil. 684, a judgment in favor of the plaintiffs in a forcible entry and detainer case was appealed to this Court which affirmed the same. The decision of this Court having become final and executory, the plaintiffs, in the court below, moved for execution thereof. The motion was opposed by the defendants on the ground that while the case was on appeal here, the Secretary of Agriculture and Natural Resources, in a conflict involving the same parcel of land, decided to reject the sales application of the plaintiff and to allow the defendants, as veterans of the last world war, to possess the land. The motion for execution was, nevertheless, granted by the lower court. In reversing the order of execution, this Court, through then Chief Justice Paras, ruled:

"x x x While the decision in the forcible entry and detainer case is final, it can no longer be executed at least in so far as the possession of the land in question is concerned, because, under section 4 of Commonwealth Act No. 141, the Director of Lands has direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact are conclusive when approved by the Secretary of Agriculture; and because the latter had already cancelled the right of plaintiff Maria L. Hernandez to administer the land in question and rejected both her sales application and that of her husband, plaintiff, Antonio Hernandez, at the same time giving the defendants the preferential right to apply for said land in virtue of the provisions of Republic Act No. 65. The correctness of the final decision of the Secretary of Agriculture is not herein involved, but it is valid and binding until reversed in a proper proceeding by the court. The situation is not that the judgment in the forcible entry and detainer case has lost its virtuality, but that the plaintiffs had subsequently ceased to be entitled to the relief awarded by said judgment.

"However, the money judgment in favor of the plaintiffs not being within the scope of the administrative control granted by law to the Director of Lands with reference to public land, may still be enforced by execution."

In conformity with the above ruling, We cannot sustain the revival of judgment as against Duarte in so far as his possession of the land is concerned. The money judgment, however, may still be revived or enforced it being a matter which could not be affected by the approval of defendant's application for homestead.

WHEREFORE, the decision against Gaspar Duarte is hereby reversed with respect to his possession of the land but affirmed as to his monetary liability; judgments as against the other defendants-appellants are affirmed. On equitable considerations, no pronouncement as to costs.

Concepcion, C.J, Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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