

**DOMINGO T. JACINTO, PETITIONER, VS. HON. AGUSTIN P. MONTESA,
IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF
MANILA, THE SHERIFF OF MANILA, ALPHA INVESTMENTS AND
FINA...**

G.R. No. 23098. February 28, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an original petition for certiorari and prohi-bition with preliminary injunction seeking to enjoin and prohibit respondents from enforcing an alias writ of exe-cution issued against herein petitioner in Civil Case No. 39990, entitled "Alpha Investments and Finance Corporation, plaintiff, versus Pastor D. Ago and Domingo T. Jacinto, de-fendants", of the Court of First Instance of Manila. Said petition prays that respondents be also enjoined from further proceeding with the levy on execution of herein petitioner's properties.

As gathered from the record, the antecedents of this case are:

On 23 April 1959, Alpha Investments filed a suit in the Court of First Instance of Manila to recover P26,000.00 plus 10% attorneys' fees and court costs from Pastor D. Ago, and from Domingo T. Jacinto, who had guaranteed Ago's solvency in a separate document. Only Pastor D. Ago answered the complaint, but Domingo T. Jacinto failed to do so, though duly served with summons. Consequently, upon motion of plaintiff, Jacinto was declared in default.

Subsequently, on 15 November 1960, a pleading entitled "Stipulation of Facts and Compromise Agreement" was executed wherein Pastor Ago admitted joint and several liability with Domingo Jacinto, for the principal sum of P25,654.00 with 12% from 16 March 1960 until fully paid to be paid at the rate of P5,000.00 every two months from 1 December 1960. This stipulation was signed in the following manner:

"ALPHA INVESTMENTS & FINANCE CORPORATION

Plaintiff

By (Sgd) L. L. Reyes

L. L. REYES

Corporate Secretary & Counsel

2nd Floor, M. Tiaoqui Bldg.

Plaza Sta. Cruz, Manila

For Defendants:

(Sgd) Pastor D. Ago

PASTOR D. AGO

508 Roman R. Santos Bldg.

Plaza Goiti, Manila

Assisted by:

(Sgd) Jose M. Luison

JOSE M. LUISON

Counsel for Defendants

Suite 305 Leyba Bldg.

Dasmariñas-David, Manila"

On 18 November 1960, the trial court, through the then presiding Judge (now Court of Appeals' Justice), Hon. Julio Villamor, rendered a decision on the basis of the above-quoted compromise agreement, the dispositive part of which reads:

"WHEREFORE, the stipulation of facts and compromise agreement quoted above is hereby approved; judgment is hereby rendered in accordance therewith, and the parties are hereby enjoined to comply faithfully and well with their corresponding obligations.

"SO ORDERED."

For failure of the defendants to comply with their obligations as enjoined in the above decision, plaintiff moved, on 28 February 1963, for the issuance of a writ of execution. The trial court granted, on 3 March 1963, said writ which expired, however, without being served on, and enforced against, the defendants. Hence, plaintiff, upon application, later secured, on 1 April 1964, an alias writ of execution.

Upon being served with said alias writ, defendant Jacinto presented, on 4 April 1964, a motion to quash the same, alleging as grounds therefor that the judgment based on the compromise agreement is not binding or enforceable against him since he was not a party nor has he authorized his co-defendant Ago or his counsel to represent him in said compromise agreement; and that having been previously declared in default plaintiff, nevertheless, failed to adduce evidence against him; hence, no judgment could have been validly rendered against him; and that he was not notified of the above-stated compromise agreement nor of the judgment and plaintiff's motion for execution. Plaintiff opposed said motion.

On 8 April 1964, the trial court, through the present respondent judge, Hon. Agustin P. Montesa, denied defendant Jacinto's motion for lack of merits.

In the meanwhile, plaintiff, by virtue of said alias writ, levied on Jacinto's personal and real properties and caused a notice of levy on execution to be annotated on his land covered by Transfer Certificate of Title No. 11627 of the Register of Deeds of Caloocan City.

Defendant Jacinto first went to the Court of Appeals on a petition for certiorari and prohibition with preliminary injunction which was docketed therein as its CA-G.R. No. 33884-R. Upon its filing, said appellate court issued the writ of preliminary injunction theretofore prayed. This petition is practically similar as the instant petition before Us. Said court found, however, that the main relief prayed for in said petition was not in aid of its appellate jurisdiction; hence, it dismissed the same, through a decision promulgated on 3 June 1964, on the sole ground that it lacked jurisdiction to grant the relief prayed therein and, accordingly, set aside and dissolved the preliminary

injunction previously issued.

On 29 June 1964, defendant Jacinto resorted to this Court on the present petition, practically reiterating the allegations in his motion to quash in the Court of First Instance. We gave due course to the petition, required respondents to answer and, upon petitioner's (Jacinto) filing of a bond, issued the preliminary injunction prayed for.

Upon the other hand, respondent Alpha Investments and Finance Corporation in its answer disputes Jacinto's claim that he was not a party to the compromise agreement. Thus, it points out that, although Jacinto was declared in default, this fact did not preclude him from authorizing his co-defendant Ago and his counsel to represent in said agreement as shown and expressed therein that "they have been authorized by their respective parties with full authority to enter freely and voluntarily into a stipulation of facts and conclude a compromise agreement in this case"; and that there were only two (2) defendants in the court below, one of them being Ago who signed said agreement for "defendants", and Atty. Jose M. Luison, who likewise signed it as "counsel for defendants"; that Jacinto having been duly represented in said compromise agreement which was approved by the lower court, there is no necessity of presenting evidence against the defendants (including Jacinto); that the lower court having admittedly acquired jurisdiction, the judgment rendered thereon is valid; that said valid judgment having become final and executory, respondent Judge did not err or commit any grave abuse of discretion in issuing the questioned alias writ of execution.

Alpha also disputes the propriety of the present remedy claiming that Jacinto had other and more appropriate and adequate remedy, such as petition for relief from judgment (Rule 38, Rules of Court), though lost through herein petitioner's inexcusable negligence or deliberate inaction; hence, it prays that the instant petition be dismissed and the writ of preliminary injunction previously issued be dissolved.

In his answer to the petition, respondent Ago, through his counsel, manifested that they did not represent Jacinto in said compromise agreement and in any other incidental proceedings in the lower court; and that the use of the plural word "defendants" therein is a mere clerical or typographical error of their typist.

We are inclined to believe herein petitioner Jacinto's claim that he has not authorized Ago and his counsel, Atty. Jose M. Luison, or even engaged the services of the latter, to represent him in said compromise agreement. Ago and Luison corroborated this claim. It appears from the record of this case that Jacinto is not a signatory party to said agreement, and nothing therein shows that Ago and Luison had any special authority to compromise the case in behalf of herein petitioner, which requirement of special authority is mandatory under the law (Section 23, Rule 138, Revised Rules of Court).

"SEC. 23. Authority of attorneys to bind clients. -- Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."

It is not disputed that Jacinto was declared in default in the lower court and that plaintiff did not adduce evidence to prove his cause of action against him. Under the circumstances prevailing in the case at bar, it is clear that no valid judgment was rendered against Jacinto that may be enforced by execution. As this Court ruled in a case with facts practically identical to the case at bar, a judgment based upon a compromise entered by an attorney without specific authority from the client is null and void, and such judgment may be impugned, and its execution restrained, in any proceeding by the party against whom it is sought to be enforced (*Zafra de Alviar vs. Court of First Instance of La Union*, 64 Phil. 301).

We come now to the issue of propriety of the present petition. As a general rule, special civil actions of certiorari

or prohibition may only be invoked when an inferior court, or any of the entities or officers specified in the Rules, has acted "without or in excess of jurisdiction or with grave abuse of discretion, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law" (Sections 1 and 2, Rule 65, Revised Rules of Court).

While it has already been held that "as a rule, a judgment upon compromise is not appealable and is immediately executory, unless a motion is filed to set aside the compromise on the ground of fraud, mistake, or duress, in which event an appeal may be taken from the order denying the motion, and that is the remedy in this case and not certiorari in this Court" (De los Reyes vs. De Ugarte, 75 Phil. 505; cited in Enriquez vs. Padilla, 77 Phil. 373), Jacinto was not in a position to urge such vices of consent, since he was not a party to the compromise, and never agreed to the same.

Petitioner Jacinto could have availed of the remedy of relief from judgment under Rule 38 of the Rules of Court or appeal from the order issuing the alias writ of execution (Castro vs. Surtida, 87 Phil. 166; Salonga vs. Trinidad, G. R. No. L-13927, February 29, 1960); however, such remedy is rendered inadequate or ineffective in the case at bar where the writ of execution was in the process of being carried out. Hence, certiorari will lie.

"While as a rule, certiorari does not lie when there is an appeal, the rule may be relaxed where, as in the instant case, a writ of execution is in the process of being carried out. Needless to say, the underlying reason for this doctrine is to give a party litigant his day in court and an opportunity to be heard." (Liwanag vs. Castillo, G. R. No. L-13517, October 20, 1959; citing Saludes vs. Pajarillo, 78 Phil. 754, and Woodcraft Works Ltd. vs. Moscoso, 92 Phil. 1021).

This Court has also held that -

"As the judgment in question (on compromise) is null and void ab initio, it is evident that the court acquired no jurisdiction to render it, much less to order the execution thereof. Consequently, certiorari lies in favor of the petitioners as it is clear that against said judgment there is no longer any plain, speedy, and adequate remedy in the ordinary course of law." (Zafra de Alviar vs. Court of First Instance of La Union, supra; citing cases).

It is thus evident from the above-cited authorities that the petition herein was proper. With this conclusion, the orders of the trial court, dated 22 December 1966 and 10 January 1967, cancelling the notice of levy on execution, which respondent corporation questions in this case, are rendered moot and academic, and need not be further discussed.

WHEREFORE, the writ prayed for is hereby granted; the orders of the lower court issuing the original and alias writs of execution are declared null and void and set aside in so far as they affect the petitioner, Domingo T. Jacinto, and the writ of preliminary injunction heretofore issued is made permanent. Costs against private respondent, Alpha Investments and Finance Corporation.

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

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