

JUANA ORDOÑEZ ET AL., PLAINTIFFS AND APPELLEES, VS. AQUILINO CALVO ET AL., DEFENDANTS. AQUILINO CALVO, APPELLANT,

G.R. No. 24711. October 14, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

In the present case the Court of First Instance of Pangasinan on December 12, 1923, rendered the following judgment:

"The defendants are jointly and severally sentenced to pay the plaintiffs, the sum of three thousand seven hundred sixty-five pesos (P3,765), the value of the products not received by the plaintiffs during the agricultural years 1914-1915 and 1915-1916, with costs."

From this judgment the defendant Calvo appealed to this court where the case was docketed as G. R. No. 23251. On December 16, 1924, the appeal was dismissed on motion of the appellees, and the case was remanded to the Court of First Instance for execution.

Upon the return of the case to the Court of First Instance, a writ of execution was issued and demand made upon the defendant Calvo by the sheriff for the satisfaction of the writ. Shortly thereafter, on April 18, 1925, the following motion was presented by counsel for said defendant:

"Comes now the undersigned attorney for defendant Aquilino Calvo in the above entitled case and to the court shows:

"1. That on the 15th instant defendant Aquilino Calvo received a demand from the provincial sheriff for the deposit in his office, within ten days from the date of said demand, which was made on the 13th instant, of the amount of the judgment rendered by the court jointly and severally against him and his codefendant Manuel de Bosch.

"2. That the disposing clause of said judgment is as follows:

(Here follows judgment as above quoted.)

"At the trial of this case the attorneys for both parties entered into a stipulation of facts to the effect that the documentary evidence of the defendant Aquilino Calvo should be admitted without objection on the part of the plaintiff, a part of which evidence is the personal bond given by the other defendant Manuel de Bosch to have the sheriff proceed with the attachment, said bond having been executed by two sureties sufficiently solvent to answer for the acts of the sheriff. Said documents are attached to the record as exhibits of the defendant Aquilino Calvo.

"3. That in accordance with the spirit of the judgment, it was strictly to be subject to the provisions of section 451 of the Code of Civil Procedure to the effect that while the sheriff may be considered as liable with the sureties, yet the latter must be the first upon whom demand must be made for the fulfillment of their obligation; for the bond given for the levying of the attachment stands precisely as a security for all the

ministerial acts of the sheriff, and in case they should later prove to be insolvent, then the fulfillment of the obligation of the sheriff may be demanded.

"4. That the provincial sheriff in accordance with the judgment and the law must in the first place require the other defendant Manuel de Bosch and his sureties to comply with the judgment and then the other defendant Aquilino Calvo.

"5. That the demand of the sheriff, in the date it was sent is to be considered, shall mature on the 22d instant; and if the date of the receipt thereof is taken into consideration, then it will mature on the 24th, an admonition having been made in said demand that if said period should elapse without the defendant Aquilino Calvo having deposited the required amount, the provincial sheriff will proceed with the attachment of the property of the defendant Aquilino Calvo.

"For all of the foregoing the defendant Aquilino Calvo through his undersigned attorney respectfully prays the Honorable Court to pass upon this motion, (a) ordering the provincial sheriff to suspend every proceeding for the attachment of the property of the defendant Aquilino Calvo, pending the final resolution of this petition; (b) that it be decided that demand must first be made upon the defendant Manuel de Bosch and his sureties for compliance with the judgment."

The motion was denied by the court below on the ground that the decision having become final, the court was without jurisdiction to modify the judgment or to interfere with its execution. From this order the defendant Calvo again appealed to this court. On September 7, 1925, the appellees filed a motion with this court praying that the appeal be dismissed on the ground that its evident purpose was merely to secure the modification of the original judgment which had already become final and enforceable by execution. This motion was granted by a "minute order" dated September 19, 1925, and the record ordered remanded to the court below. The appellant has now filed a motion for the reconsideration of the order of September 19th and insists that the question raised by him in his motion of April 18, 1925, and which forms the subject matter of this appeal, is of sufficient importance to merit the special attention of the court and a more extended discussion.

If we understand the appellant correctly, his contention is that the judgment to be executed though clear in its terms should nevertheless in the light of the circumstances shown by the original record be given a special interpretation and that the liability of the appellant should be regarded as subsidiary to that of his codefendant instead of joint and several as stated in the judgment.

From a legal standpoint this contention seems absurd. It calls for what amounts to a modification of a judgment which became final long ago and which suffers from no ambiguity. That is clearly beyond the jurisdiction of this court as well as that of the court below and there is no lack of precedents for so holding. In the case of *Molina vs. De la Riva* (8 Phil., 569), this court held:

"After judgment is rendered and the case returned to the lower court for execution, the party liable under the judgment will not be permitted, in opposition to the execution, to present for consideration new issues of fact and law upon the question of his liability."

Neither will an appeal lie from the refusal by the Court of First Instance to interfere with a final judgment. (*Gonzalez Quiros vs. Palanca Tan-Guinlay*, 17 Phil., 357.)

Under the judgment here in question the defendants are jointly and severally liable and execution may issue against either of them for the full amount of the judgment. No other interpretation is possible.

We may say further, that the appellant evidently misinterprets section 451 of the Code of Civil Procedure. If the property of a stranger to the action is attached and he presents his claim thereto in the manner and form prescribed by said section, the sheriff himself is liable in damages and an action for such damages may be maintained against

him without joining the attaching creditor or the latter's sureties as defendants. (35 Cyc., 1646; Quesada vs. Artacho, 9 Phil., 104.)

From as much of the record as is now before us, it may be inferred that the appellant's liability derives from a wrongful attachment. If so, there is probably an indemnity bond upon which the appellant may still maintain an action for reimbursement if the judgment is paid by him.

The motion for reconsideration is denied and the record will be forthwith remanded to the court below. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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