

SERGIO CAPALLA, PETITIONER, VS. FERNANDO SALAS, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND TEODORO DEL ROSARIO, RESPONDENTS.

G.R. No. 29105. March 03, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for a writ of certiorari filed by Sergio Capalla against the Honorable Fernando Salas, Judge of the Court of First Instance of Iloilo, and Teodoro del Rosario, praying, that in view of the facts alleged therein, the respondent judge be required to forward the record in civil case No. 6954 of the Court of First Instance of Iloilo to this court, in which the other respondent, Teodoro del Rosario, is the plaintiff and petitioner Sergio Capalla is the defendant, and that after an examination of the said record, the orders dated November 25, December 1, and December 22, 1927, be declared void and of no effect.

The pertinent facts necessary for the solution of the question raised in the present proceeding, briefly stated, are as follows:

On May 11, 1927, Teodoro del Rosario filed a complaint against Sergio Capalla and the provincial sheriff of Iloilo praying that the defendants be ordered to return a truck to the plaintiff, or else to pay P1,200, the value of said truck, plus the sum of P500 for damages, with the costs. The truck referred to had been sold at public auction by the said sheriff in pursuance of a writ of execution issued in favor of the said Sergio Capalla, in spite of the third party claim filed by the plaintiff Teodoro del Rosario, the highest bidder having been the judgment creditor himself, to whom the sale was made.

After going through all the proceedings in the case, the respondent judge rendered a decision on July 30, 1927, the dispositive part of which reads as follows:

"In view of the facts proven and the discussion set forth, the court hereby decides this cause:

"Ordering the defendant Sergio Capalla to return the auto truck with motor No. 3834269 to the plaintiff Teodoro del Rosario in the same condition as it was when attached on April 13th of this year, or in default thereof, to pay plaintiff the sum of P1,200, the value of the truck;

"Ordering the defendant Sergio Capalla to pay plaintiff the sum of P500 as damages;

"With costs against the said defendant."

Upon consideration of the motion of the defendant Sergio Capalla, the respondent judge issued an amendatory judgment, the dispositive part of which is as follows:

"The court hereby relieves the defendant Sergio Capalla of the obligation to pay plaintiff the sum of P500 damages, as well as the costs of the action.

"The court ratifies all other pronouncements in the decision rendered in this cause on July 30th last in all other

respects; and orders that the defendant Sergio Capalla deliver the auto-truck in question to the provincial sheriff or any of the latter's deputies, for its immediate return to the plaintiff."

Complying with the order contained in the amendatory judgment above quoted, defendant Sergio Capalla delivered the truck in question to the provincial sheriff of Iloilo, who in turn offered its delivery to the plaintiff Teodoro del Rosario, but the latter refused to accept it, alleging that it was not in the same condition as when attached.

In view of the useless state of the truck, and upon motion of the plaintiff, the respondent judge issued a supplementary writ of execution (Exhibit J) the dispositive part of which is as follows:

"To this end the sheriff of Iloilo is hereby authorized to sell the truck, motor No. 3834269, at public auction, and to pay the proceeds of the sale to the plaintiff; should this amount not cover the sum already mentioned, it is ordered that the other property of the defendant be levied upon to cover the remaining portion of the judgment; and in case the proceeds of this execution on the property of the defendant be not sufficient to satisfy the full amount of the judgment, let said judgment be enforced upon the bond executed jointly and severally by the sureties Potenciano Canillas, Leon Cajilig, Agustin Benas, and Tirso Vazquez, to the amount necessary to satisfy the whole of the said P1,200, the value of said truck, motor No. 3834269."

The defendant Sergio Capalla filed a motion for the reconsideration of the former order, but the respondent judge denied it by an order of December 22, 1927 (Exhibit 6).

The only question to decide in this instance is whether or not the respondent judge exceeded his jurisdiction in ordering the sale of the truck at public auction.

As we have seen from the above statement of facts, the respondent judge rendered an alternative judgment, requiring either the return of the truck in the same condition in which it was when attached, or the payment of its value, P1,200. The petitioner does not question the respondent judge's jurisdiction to render an alternative judgment, nor can he do so. If, then, the respondent judge had jurisdiction to render an alternative judgment, it is natural and logical that he had jurisdiction to order its execution alternatively, which is what he did. The respondent judge, then, did not exceed his jurisdiction in issuing the supplementary writ of execution.

If the petitioner considered himself prejudiced by the forcible sale of the truck at public auction, he could have avoided the prejudice by preventing the sale through an offer of the amount of the judgment.

Summarizing all that has been said, it is held that a judge of the Court of First Instance acts within his jurisdiction in issuing a supplementary writ of execution authorizing the sale of the personal property sought to be recovered, the return of which is not accepted by the owner on account of its poor condition, in order that a part of the alternative pecuniary judgment of the court may be satisfied with the proceeds thereof.

For all of the foregoing, and not finding sufficient grounds for granting the petition for the writ of certiorari prayed for, the same is hereby denied, with costs against the petitioner. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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