

PHILIPPINE TRUST CO., PETITIONER, VS. FRANCISCO SANTAMARIA, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND F. M. YAPTICO & CO., LTD., RESPONDENTS.*G.R. No. 31951. September 04, 1929*

Ponente: JOHNS, J.

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There is no dispute about any material fact. It appears that the judgments in favor of the petitioner and against F. M. Yaptico & Co., Ltd., were rendered in the Court of First Instance of Iloilo on October 19, 1927, from which F. M. Yaptico & Co., Ltd., appealed to this court which affirmed the judgments.[1] It also appears that the petitioner asked for an execution of the judgments pending the appeal to this court, which was denied, and that after the cases were affirmed by this court, it again asked for an execution of those judgments. The petitioner then applied to the court for the appointment of a receiver upon the ground that F. M. Yaptico & Co., Ltd., was fraudulently putting its property beyond the reach of its creditors and the petitioner, in particular. After a hearing, that motion was denied, and the lower court on June 30, 1929, suspended the execution of the judgments for four months from June 30, 1929.

Hence, we have this situation: The petitioner obtained its judgments in the Court of First Instance on October 19, 1927, and although it has made diligent efforts' to obtain an execution and enforce its judgments, from one cause or another, it has been delayed by order of the court, and in its last and final order, the court suspended the right of the petitioner to enforce its judgments until October 30, 1929, which would be more than two years after the judgments were rendered in the lower court, and one year after the judgments were affirmed by this court. In other words', for ten months the petitioner has not been able to obtain and enforce an execution on final judgments" rendered in this court.

We do not know anything about the whys and wherefores, but suffice it to say that such proceedings bring the courts into disrepute and subject them to severe criticism. After a final judgment has been rendered in this court, in particular, or even in the Court of First Instance, it is the duty of the court to enforce the judgment according to its terms, and no court has the power to suspend an execution issued on a final judgment, except as to matters and things which may have arisen after the rendition of the judgment, and which would be a valid defense.

As this court said in *Wolfson (Trustee) vs. Del Rosario (Judge) and Fajardo* (46 Phil., 41):

"An extension of the time fixed by a judgment which has become final for the payment of a certain sum of money is in effect a modification of the judgment and is beyond the jurisdiction of the Court of First Instance."

And on page 43, the opinion says:

"On the facts stated, it seems obvious that the respondent judge exceeded his jurisdiction in recalling the writ of execution in question. It is very true that the court retains a certain amount of control over a writ of execution even after it leaves its hands, but such control is limited and regulated by fairly definite" rules of law

and is not unrestricted. A writ of execution may thus be quashed when it appears that it has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid, or when the writ has been issued without authority, etc. But the writ will not be recalled by reason of any defense which could have been made at the time of the trial of the case, nor can the recall be made so as to practically change the terms of a judgment which has become final".

We are clearly of the opinion that the lower court exceeded its jurisdiction in suspending the execution for the period of four months from June 30, 1929. We are also of the opinion that upon the facts shown in this record, it was the duty of the court to appoint a receiver for the F. M. Yaptico & Co., Ltd., to protect and preserve its property and assets for the use and benefit of its creditors and, in particular, this petitioner, under the provisions of section 483 of the Code of Civil Procedure. The very fact that the judgments in question were rendered on October 19, 1927, and that no part of them has yet been paid, and that F. M. Yaptico & Co., Ltd., has so far been able to defeat the petitioner in the collection of its judgments, is a very strong and cogent reason why a receiver should be appointed.

It is the order of the court that a writ of mandamus be forthwith issued as prayed for in the petition, and that the lower court at once appoint a receiver of all the property and assets of F. M. Yaptico & Co., Ltd., and that petitioner have judgment for costs. So ordered.

Avanceña, C. J., Street, Villamor, and Romualdez, JJ., concur.

Johnson, J., reserves his vote.

[1]52 Phil., 276.

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