

ESTEFANIA SILVESTRE ET AL., PETITIONERS, VS. LUIS P. TORRES, JUDGE OF FIRST INSTANCE OF MANILA, AND CRISPIN OBEN, RESPONDENTS.

G.R. No. 38952. February 21, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In this original petition for a writ of certiorari, it is prayed that, after proper proceedings, the orders issued by the respondent judge, Luis P. Torres, of the Court of First Instance of Manila, on June 15, 1932 and January 3, 1933, in civil case No. 37327 of said court, be held null and void, upon the following grounds:

"1. That the lower court cannot issue a writ of execution upon only a part of the judgment, to wit, that referring to the sale of the land, disregarding the right granted the petitioners to agree upon a new lease, which right, moreover, must be exercised before the sale (*Bank of the Philippine Islands vs. Green*, 48 Phil., 284, cited in our argument), and because the court, in the execution of judgments, has no more than merely ministerial functions (*Hidalgo vs. Crossfield*, 17 Phil., 466).

"2. That the lower court cannot order the sale of the land free from any encumbrance, inasmuch as it was not so decreed either by the Supreme Court or by the trial court which originally took cognizance of the case, even though plaintiff Crispin Oben made a prayer to that effect in his complaint; for after final judgment, the duty of the court is limited to the execution and enforcement of the said final judgment in all of its parts and in accordance with the express terms thereof. (*Behn, Meyer & Co. vs. McMicking*, 11 Phil., 276.)

"3. That for the same reason, the lower court cannot order the cancellation of any mortgage, for to do so would be tantamount to the reopening of the case for a new trial and decision upon a matter which, at this stage of the proceeding, has become *res judicata*.

"4. That the court cannot order Francisco Gabriel, personally, to execute a deed cancelling the mortgage in his favor, because petitioner Francisco Gabriel was sued as the Administrator of the Testamentary Estate of Antonio Martin Silvestre, and consequently, not having been personally sued as such mortgagee, the court has never acquired jurisdiction over his person. (Sec. 114 of C. C. P.; *Lichauco vs. Limjuco and Gonzalo*, 19 Phil., 12.)"

The following uncontroverted facts appear from the pleadings and other documents of record:

In civil case No. 37327 of the Court of First Instance of Manila, entitled "*Crispin Oben, plaintiff, vs. Estefania Silvestre, Quintina Silvestre (now deceased), Anselma Silvestre, Victorino Silvestre, Inocencio Silvestre, Jose Silvestre, and Francisco Gabriel, the last named as judicial administrator of the testamentary estate of the late Antonio Martin Silvestre (now guardian of the property of the minor Concepcion Silvestre, a daughter of the said Antonio Martin Silvestre), defendants*", and at present respondents, the said court, presided over by Judge Simplicio del Rosario, rendered judgment on November 29, 1930, the dispositive part of which reads as follows:

"The defendants are hereby ordered to sell the parcels of land described in the complaint to Mr. Crispin Oben

for P3,216, which is deposited in the office of the clerk of this court with the understanding that if both parties prefer to allow the plaintiff to further continue as lessee, he shall be bound to pay the rents agreed upon within the newly stipulated period. Without costs."

The case was brought up on appeal to this court as G. R. No. 35039, and on November 3, 1931[1] the judgment of the trial court was affirmed.

The case having been remanded the court a quo, through the herein respondent, Judge Luis P. Torres, on June 6, 1932 issued a writ of execution which was amended on June 15, 1932, as follows:

"The undersigned having noticed certain errors and omissions in the resolution rendered in this case on the sixth instant, it is hereby amended to read as follows:

"Considering the motions filed by the plaintiff for the execution of the judgment rendered by this court in the present case, as affirmed by the Supreme Court on the 27th of last November, as well as the answer filed by counsel for the defendants, the court, having heard the arguments submitted upon this point both orally and in writing, resolves :

"That the judgment rendered in this case must be executed, and it is hereby ordered:

"1. That the defendants execute a deed of sale of their respective lots involved in this litigation, in favor of the plaintiff Crispin Oben.

"2. That the defendant, Francisco Gabriel, execute in favor of the plaintiff a deed of cancellation of the mortgage executed in his favor, and noted in certificate of title No. 20969 of the registry of deeds of the City of Manila.

"3. That the defendant Francisco Gabriel, as guardian of the minor Concepcion Silvestre, heiress of the deceased mortgagor Antonio Martin Silvestre, cannot withdraw from the office of the clerk of this court the sum of P804 belonging to said minor, until he has executed in favor of the plaintiff the aforementioned deed of cancellation; nevertheless, if said defendant so desires, he is hereby authorized to apply said P804 as payment to himself on account of the mortgage debt of P2,000, and to collect it from the office of the clerk of this court.

"4. That the defendant Quintina Silvestre shall execute a deed cancelling the mortgage for P1,000 executed in her favor by Gaudencio Silvestre one-third of lot 7-d, which was the undivided share of said Gaudencio Silvestre in said lot 7-d, at the same time authorizing said Quintina Silvestre, or her children and heirs, defendants herein, to do so, instead of their collecting said amount.

"5. That the defendants shall not take possession of the amount of P3,216 deposited in the office of the clerk as the price of those two lots until said defendants have executed in favor of the plaintiff the corresponding deeds of sale and cancellation of the mortgage.

"6. That as soon as said defendants have executed the two deeds of sale and the cancellation of the mortgage, the transfer certificates of title Nos. 20969 and 20970 shall be detached from the record and delivered to the plaintiff for presentation by him to the office of the registrar of deeds of the City of Manila, and to be cancelled and substituted with new ones in the name of the plaintiff Crispin Oben."

The first question to decide, and which is raised in the answer filed by the respondents, is whether the writ of certiorari is the adequate remedy in the present case.

Section 217 of the Code of Civil Procedure provides the following:

"Sec. 217. Certiorari proceedings.—When the ground of the complaint in an action in a Court of First Instance is that an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor any plain, speedy, and adequate remedy, and the court,

on trial, finds the allegations of the complaint to be true, it shall render a judgment ordering such inferior tribunal, board, or officer, or other person having the custody of the record or proceedings, at a specified time and place, to certify to the court a transcript of the record and the proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed, if, in the judgment of the court, a stay ought to be granted."

According to the foregoing provision of law, two things are required in order that the extraordinary remedy of certiorari may be invoked: (1) That the inferior tribunal, board, or officer whose order or decision is sought to annul has exceeded its or his jurisdiction in entering such order or rendering such decision; and (2) that there is no appeal, nor any plain, speedy, and adequate remedy.

The phrase "adequate remedy" is defined in 11 Corpus Juris, page 113, as follows:

"An adequate remedy has been defined as 'a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the certiorari proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal.' "

Now then, is the first requisite present?

As we have seen, the first ground of the petition under consideration is that the respondent judge acted in excess of his judicial powers in issuing a writ of execution for only a part of the judgment, to wit, that referring to the sale of the land, disregarding entirely the right granted to the petitioners to agree on a new lease which they must be permitted to exercise before they can be compelled to effect the sale.

According to the dispositive part of the judgment, the execution of which is in question, the right to enter into a new contract of lease has been reserved not only to the petitioners, but also to the respondent Crispin Oben. In order that a new contract of lease may take place, the consent of both parties is necessary. The record shows that respondent Crispin Oben told the petitioners before the issuance of the writ of execution in question that he did not desire to continue with the lease. Inasmuch as it is no longer possible to have the consent of the petitioners and the respondent Crispin Oben to a new lease, the right reserved to them was rendered ineffective. The obligation imposed upon the aforesaid petitioners to execute a deed of sale in favor of the respondent Crispin Oben, was therefore the only one subsisting at the time of the issuance of the writ of execution in question.

The respondent judge did not, therefore, act in excess of his judicial powers as the petitioners allege in their first contention.

In the second ground upon which this petition is based, it is also alleged that the respondent judge exceeded his jurisdiction in ordering that in the deed of sale it be made to appear that the property is free from all liens and encumbrances.

The petitioners admit in their second ground, that respondent Crispin Oben prayed in his complaint in case No. 37327 that the deed of sale should recite that the lands were free from all liens and encumbrances. The question as to whether or not in the deed of sale the property was to be free from all liens and encumbrances was therefore involved in the litigation. The courts of justice have constantly held that a judgment determines all the questions necessarily involved in the litigation. If this is so, the question whether in the proposed sale the property was or was not subject to the condition that it should be free from all liens and encumbrances, was included in the judgment with the execution of which we are now concerned, and the respondent judge committed no abuse of judicial power in ordering that the defendants in that case and petitioners herein, execute a deed of sale in favor of the defendant in said case and respondent herein, Crispin Oben, free from all liens and encumbrances.

In the third and fourth grounds, it is contended that the respondent judge exceeded his jurisdiction in ordering Francisco Gabriel to personally execute a deed cancelling the mortgage in his favor, inasmuch as in the former case the cancellation of any mortgage in favor of said Francisco Gabriel was not involved nor was he a party to that case in his personal capacity.

It is likewise an established doctrine that courts of justice have jurisdiction to determine only those questions submitted by the parties for adjudication over which they have legally acquired jurisdiction, as well as to order the execution of their judgments. In the former case the respondent judge had jurisdiction only to decide whether plaintiff Crispin Oben had an option to purchase by virtue of the contract of lease, and the defendants, the obligation to sell free from all liens and encumbrances, the lands described in the complaint filed in that case, as that was the only question submitted to him over which he had been requested to exercise his jurisdiction. No question regarding the cancellation of a mortgage was involved in said former case. The respondent judge, then, acted in excess of his jurisdiction in ordering Francisco Gabriel to execute a deed of cancellation of the mortgage in his favor. (*Bank of the Philippine Islands vs. Green*, 148 Phil., 284.)

In view of the fact that the respondent judge has exceeded his judicial powers on some points in his writ of execution of the judgment of June 15, 1932, the question arises as to whether or not the writ of certiorari is the most adequate remedy to correct such an excess of jurisdiction.

The respondents contend that the ordinary recourse of appeal is adequate, and in support of their theory cite the case of *Bank of the Philippine Islands vs. Green*, supra, where, in order to correct an alleged excess of jurisdiction committed through issuance of a writ of execution for the sale of mortgaged property, of which no mention was made in the decision, the defendant appealed from the writ of execution and this court revoked it, holding that said writ was issued in excess of jurisdiction.

Without discussing whether in that case the ordinary remedy of appeal and not the extraordinary remedy of certiorari was adequate, we may state that the fact that a party having more than one remedy at his disposal, elects one of them, and this choice is sanctioned by this court, does not imply necessarily that the remedy elected by him and sanctioned by the court is the most adequate in the case.

In the present case, where the excess of jurisdiction consists in having ordered the execution of acts not included in the judgment by persons who have not been parties to the litigation, the speedy and adequate remedy is the extraordinary writ of certiorari, and not the ordinary recourse of appeal, which is slow and more expensive.

The record also shows that after the execution of the contract of lease with the option to purchase, between the herein petitioners and the respondent Crispin Oben, and its registration in the proper register of deeds, with the corresponding annotation on the owner's certificate of title, the said petitioners mortgaged the land without the knowledge or consent of the lessee. In this case the petitioners may be compelled to liberate the leased land from the encumbrances existing thereon, and in case of their failure to do so, the lessee and vendee may be authorized to release the land from encumbrance by deducting from the sale price the sum he may have disbursed to secure said release.

In view of the foregoing considerations, we are of opinion and so hold: (1) That the availability of the ordinary recourse of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari; but it is necessary, besides, that the ordinary appeal be an adequate remedy, that is, "a remedy which is equally beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment of the lower court complained of in the certiorari proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal"; (2) That a court in ordering a person who has not been a party to a case in his personal

capacity, to execute a deed of cancellation of a mortgage existing in his favor, which has not been the subject matter of litigation, acts in excess of its jurisdiction; (3) That to correct such an excess of jurisdiction, the adequate remedy is the writ of certiorari, and not an appeal; and (4) That one who has already begun an appeal is not barred from applying for the extraordinary remedy of certiorari, if the latter proves to be the adequate remedy.

By virtue whereof, the orders of the respondent judge dated June 15, 1932 and January 3, 1933, are set aside, with the exception of that part thereof requiring the petitioners to execute a deed of sale of the property in favor of the respondent Crispin Oben, free from all liens and encumbrances, without special pronouncement as to costs. So ordered.

Street, Hull, Vickers, and Imperial, JJ., concur.

[1] 56 Phil., 809.

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