

PO SUN TUN, PETITIONER, VS. EMILIO MAPA AND MARIANO ALBERT, JUDGES-AT-LARGE, ACTING AS JUDGES OF FIRST INSTANCE OF MANILA, AND THE NATIONAL EXCHANGE CO., INC., RESPONDENTS.

G. R. No. 41072. February 07, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is a petition for a writ of certiorari to set aside two orders issued by the Court of First Instance of Manila on April 15 and August 19, 1933, respectively, whereby the sum of P1,197.16 was paid and delivered to the respondent the National Exchange Company, Inc.

The amended petition was admitted but the motion for postponement of the hearing of the case was denied.

From the pleadings and memorandum submitted by the respondents, the following facts appear:

In civil case No. 30642 of the Court of First Instance of Manila, the herein respondent the National Exchange Company, Inc., obtained judgment against Jose H. Katigbak, as principal, and Gavino Barretto, as surety, for the sum of P19,897.85 with interest thereon at the rate of 12 per cent per annum from January 1, 1922, with the costs.

In civil case No. 31998 of the same court, Jose H. Katigbak obtained judgment against Po Sun Suy and Po Ching in the sum of ₱28,500 with legal interest thereon.

In civil case No. 33096 of the same court, the herein petitioner obtained judgment against Concepcion Martinez in the sum of P1,960.

Jose H. Katigbak transferred all his rights and interest in the judgment obtained by him in said civil case No. 31998 in favor of the petitioner Po Sun Tun.

Believing that such transfer was fraudulent, the respondent the National Exchange Company, Inc., instituted civil case No. 33474 in the same court against Jose H. Katigbak and Po Sun Tun. In that case judgment was rendered declaring said transfer fraudulent, which judgment was affirmed on appeal by this court in case G. R. No. 31871.[1] The dispositive part of the afore-cited judgment as rendered by the trial court reads as follows:

"The transfer made by Jose H. Katigbak in favor of his co-defendant Po Sun Tun is hereby declared rescinded. All property of Po Sun Suy and Po Ching liable to execution in civil case No. 31998, should be subject to the result of the judgment obtained by the National Exchange Company, Inc., against Jose H. Katigbak and Gavino Barretto for the sum of nineteen thousand eight hundred ninety-seven pesos and eighty-five centavos (P19,897.85) with the corresponding interest thereon in civil case No. 31998 of this court, with the costs' of this case."

In civil case No. 33474, the respondent herein filed a motion praying the court to order the clerk of court to deliver to it the sum of P909.16 which Concepcion Martinez had deposited as partial payment of the judgment

rendered against her in civil case No. 33096. The court granted said motion and the sum in question was delivered to the herein respondent the National Exchange Company, Inc. After the order issued to that effect had become final on April 15, 1933, the herein petitioner filed several motions for reconsideration which were denied. Notwithstanding the denial thereof, he did not appeal.

In civil case No. 33096 the herein respondent the National Exchange Company, Inc., without being a party thereto, filed a motion praying the court to order the clerk thereof to pay to it the sum of P288 which Concepcion Martinez had deposited with him to satisfy the judgment rendered against her. In an order dated August 19, 1933, the court granted said petition and the said clerk delivered the amount in question to the respondent. Neither did the petitioner appeal therefrom.

It clearly appears from the above stated facts that the orders dated April 15 and August 19, 1933, respectively, are by nature writs of execution issued by the court to satisfy the judgment rendered by it in favor of the National Exchange Company, Inc., in civil case No. 34474. Therefore, the validity of such writs depends entirely upon the existence in said case of a judgment for the payment of a certain sum of money to the herein respondent. Upon examination of the judgment in question it appears that the only thing decided against the petitioner consisted in the rescission of the transfer of rights made therein. It did not order the payment of any sum of money by Po Sun Tun to the National Exchange Company, Inc. Therefore, the appealed orders are untenable and null and void on the ground that they have been issued by a court which lacked jurisdiction. If judgment has been rendered, a writ of execution thereof may be issued by the court which rendered the said judgment but the writ should have no other purpose than to comply with or execute such judgment.

Notwithstanding the above conclusion, this court, however, is compelled to decide the petition for a writ of certiorari adversely to the petitioner in view of the fact that he has not diligently exercised the right of appeal which he had against the orders which he now seeks to set aside. There is no question that he could appeal from said orders, but he lost such right by reason of his negligence. Furthermore, we find that said petitioner had incurred in an unreasonable delay by his failure to file this petition sooner and to take any step to that effect more than four months from the issuance of the latter order and more than eight months from the promulgation of the former, without any justifiable cause whatsoever.

"It has already been stated that the general rule is that the writ does not lie until the proceedings are terminated. Thereafter, unreasonable delay or failure to apply within the time limited by statute or established by the local practice is good ground for refusing the writ, in the absence of exceptional circumstances. Nor can a void application be renewed within the time limited for the renewal of applications for the writ. The court may refuse to grant the writ: (1) Where the time to apply for the writ is fixed by statute and such time has expired; (2) where the time is regulated by the time to appeal or take out a writ of error, and such time has expired; or (3) where the applicant has delayed for an unreasonable time, there being no statute limiting the time, and the circumstances are such as to warrant the denial of the writ because of such delay." (11 C. J., p. 143.)

"Where the question is not regulated by statute or the fixed procedure, it may be stated as a general rule that the writ must be applied for within a reasonable time, or the same will be refused or dismissed if improvidently issued. * * * " (Ibid., p. 146.)

Another aspect of the case is that the respondent herein has already been in possession of the amount of money in question for several months due to the petitioner's negligence and inaction.

In view of the foregoing considerations, the petition is hereby dismissed, with the costs against the petitioner. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

[1]National Exchange Co. vs. Katigbak, 54 Phil., 599.

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