

BUENAVENTURA ALANDY AND THE SPOUSES POLICARPO PANDY AND PACIENCIA EDORA, PETITIONERS, VS. EDUARDO GUTIERREZ DAVID, JUDGE OF BRANCH II OF THE COURT OF FIRST INSTANCE OF TAYABAS, ...

G. R. No. 44657. January 14, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for a writ of certiorari filed by Buenaventura Alandy and the spouses Policarpo Pandy and Paciencia Edora against Honorable Eduardo Gutierrez- David, Judge of Branch II of the Court of First Instance of Tayabas, Tan Chay & Co., and Crispo Ella, acting sheriff of the Province of Tayabas, praying that, after proper proceedings, the orders of the respondent judge, of May 25 (Exhibit F) and August 23 (Exhibit I), 1935, respectively, be declared null and void, having been entered in excess of his jurisdiction and against the decision of February 2, 1933 (Exhibit B), in civil case No. 3309 and also against the law, and that the acting sheriff Crispo Ella or his deputy Prudencio Trinidad be enjoined from proceeding with the public sale of the properties of the herein petitioners as advertised in Exhibits J and K, during the pendency of this petition and without an express order of this court.

The pertinent facts necessary to the resolution of the questions raised in this petition are as follows:

In civil case No. 2364 of the Court of First Instance of Tayabas, wherein Tan Chay & Co. was plaintiff and Juan Baldovino and Policarpo Pandy were defendants, judgment was rendered on September 18, 1929, the dispositive part of which reads as follows:

"For the foregoing considerations, the defendant Juan Baldovino is ordered to pay to the plaintiff the sum of P2,602.50 with legal interest thereon from the date of the filing of the complaint, June 19, 1928; and in case of non-payment by the defendant Juan Baldovino of P2,000 of the above sum, the other defendant Policarpo Pandy is also ordered to pay said sum of P2,000 with interest. Both defendants are ordered to pay the costs of the present suit."

As said judgment had become final and the corresponding writ of execution had been issued, the respondent sheriff attached and sold at public auction the properties of the principal debtor Juan Baldovino, as well as two supposed estates of the codefendant surety Policarpo Pandy. In view of said attachment, Paciencia Edora, one of the herein petitioners and wife of the surety Policarpo Pandy, brought an action in the Court of First Instance of Tayabas against Tan Chay & Co. and the provincial sheriff of Tayabas, which was docketed as No. 2721, to annul the sale at public auction of said two parcels of land supposedly of her husband Policarpo Pandy, claiming to be the owner thereof.

After the complaint had been answered, the parties made a compromise dated May 26, 1930 (Exhibit 1), whereby said spouses Policarpo Pandy and Paciencia Edora undertook to pay, upon failure of the debtor Juan Baldovino, not only the sum of P2,000 stated in the judgment rendered in civil case No. 2364, but the whole indebtedness of

said Juan Baldovino, minus certain accrued interest This compromise was approved by the court, and a decision based thereon was rendered in said civil case No. 2721 on May 26, 1932, the dispositive part of which reads as follows:

"Judgment is rendered in accordance with the terms and conditions of the foregoing stipulation, and the parties are ordered to comply therewith, without costs."

Twenty days after this last decision had been rendered, or on June 14, 1930, the compromise (Annex 1), was novated by another (Annex 2) whereby the spouses Policarpo Panday and Paciencia Edora bound themselves subsidiarily as sureties to pay the amounts in question within ten days from the expiration of two years counted from the date of said compromise; with the understanding, however, that the liability of said spouses was limited to the sum of P2,000 of the principal, and that of the surety Buenaventura Alandy, to the balance of the debt after deducting said sum of P2,000; and to secure compliance with these obligations, they constituted the mortgages in question on their respective properties.

The period fixed in the compromise of June 14, 1930 having elapsed, and the herein petitioners having failed to comply with the stipulation therein, Tan Chay & Co., on July 8, 1932, brought an action in the Court of First Instance of Tayabas based on said compromise and mortgage dated June 14, 1930. Said action was docketed as civil case No. 3309, with the herein petitioners as defendants. On February 2, 1933, judgment (Exhibit B) was rendered the dispositive part of which reads:

"For the foregoing considerations the court orders (a) the defendants Juan Baldovino, Policarpo Panday and Paciencia Edora, jointly and severally, to pay to the plaintiff, within three months, the sum of two thousand pesos (P2,000), with legal interest thereon from the date of this judgment until fully paid;

"(b) The defendants Juan Baldovino and Buenaventura Alandy, jointly and severally, to pay to said plaintiff, within the same period and with the same rate of interest, the sum of six hundred two pesos and fifty centavos (P602.50) ;

"(c) That in case of failure to pay the above-stated amount within said period, it is hereby ordered that the properties mortgaged and described in the complaint be sold at public auction in order that the proceeds thereof may be applied to said respective obligations of the defendants, with half of the costs to Juan Baldovino and the spouses Panday and Edora, and the other half to Juan Baldovino and Buenaventura Alandy.

"It is so ordered."

On March 24, 1933, the court, deciding the motion for reconsideration filed by the plaintiff company, entered the following order (Exhibit C):

"The plaintiff prays that the decision rendered in this case be reconsidered and modified by ordering the defendants Juan Baldovino and Buenaventura Alandy, jointly and severally, to pay within three (3) months P602.50 plus legal interest on P2,602.50 from June 19, 1928, to the date of the complaint and legal interest on P602.50 from the date of the complaint until paid, and P56.84 as costs in the former case.

"Inasmuch as the grounds of this motion for reconsideration appear from the pronouncements of said decision, the court hereby grants the motion and modifies the said decision as above indicated and prayed for.

"It is so ordered."

The latter judgment, as modified, having become final, it was executed by the public sale of the properties mortgaged by Buenaventura Alandy and the spouses Policarpo Panday and Paciencia Edora to secure the payment of the respective amounts assumed by them, the proceeds of which proved insufficient to cover said amounts. In

view whereof, the plaintiff Tan Chay & Co. filed a motion for the issuance of a deficiency judgment which was granted in the court's order of May 25, 1935 (Exhibit F), reading:

"Granting the motion of Attorney Godofredo Reyes, it is ordered that an ordinary writ of execution be issued as prayed for therein. So ordered."

The petitioner Buenaventura Alandy as well as the petitioner-spouses Policarpo Panday and Paciencia Edora respectively filed motions for reconsideration praying that the deficiency judgment rendered against them be set aside alleging that their liability was limited to the proceeds of their mortgaged properties.

The Court of First Instance of Tayabas, in an order dated August 28, 1935, denied the motion for reconsideration dated June 6, 1935, filed by Buenaventura Alandy, as well as that of the spouses Policarpo Panday and Paciencia Edora dated June 8, 1935.

None of the herein petitioners excepted to this order denying the above stated motions for reconsideration.

After about two months and twenty days, and after the order of August 23, 1935, in question had become final, said defendants, filed the present petition with this court.

The first question to be decided, which is raised in the answer filed by the respondents, is whether or not the present petition should be granted.

Section 514 of the Code of Civil Procedure provides as follows:

"Sec. 514. Procedure in certiorari.—The Supreme Court shall have concurrent jurisdiction with the Court of First Instance in certiorari proceedings over any other inferior tribunal, board, or officer exercising judicial functions that has exceeded the jurisdiction of such tribunal, board, or officer and where there is no appeal or any plain, speedy, or adequate remedy; and shall likewise have original jurisdiction by certiorari proceedings over the proceedings of Courts of First Instance wherever said courts have exceeded their jurisdiction, and there is no plain, speedy, and adequate remedy by bill of exceptions, or appeal, or otherwise. The proceedings of the Supreme Court in certiorari proceedings shall be the same as those provided for such proceedings for Courts of First Instance in sections two hundred and seventeen, two hundred and eighteen, two hundred and nineteen, two hundred and twenty, and two hundred and twenty-one."

As stated above the orders dated May 23, 25 (Exhibit F), and August 23, 1935 (Exhibit I), which the petitioners seek to annul, were issued in civil case No. 3309 wherein Tan Chay & Co. was plaintiff and Juan Baldovino, Buenaventura Alandy, Policarpo Panday and Paciencia Edora were defendants, to require said defendants to comply with their bond obligation under the compromise of June 14, 1930. The petitioners, as defendants in said case prejudiced by said orders, had the right to appeal therefrom, but they did not do so. Inasmuch as the lack of an appeal or of another plain, speedy and adequate remedy is an indispensable requisite in order that the remedy of certiorari may be availed of against an inferior tribunal when the latter has exceeded its jurisdiction and abused its discretion, there being such remedy and it not having been availed of in this case, certiorari does not lie.

The second question to be decided is whether or not the Court of First Instance of Tayabas exceeded its jurisdiction in issuing the order of May 25, 1935, granting the motion for the issuance of a deficiency judgment.

The jurisdiction of the Court of First Instance of Tayabas to try the case in which the order of May 25, 1935, was issued, and to decide it on the merits, is not attacked. If the Court of First Instance of Tayabas, in the exercise of its jurisdiction, committed an error of law, as claimed, said error does not constitute excess of jurisdiction. Inasmuch as the remedy of certiorari is available only in case of excess of jurisdiction and abuse of discretion, there being no such excess of jurisdiction or abuse of discretion on the part of the Court of First Instance of

Tayabas, the petition under consideration is without merit.

For the foregoing considerations, we are of the opinion and so hold: (1) That a deficiency judgment is final and conclusive in character and is, therefore, appealable; (2) that a party entitled to appeal from a deficiency judgment, who neither excepts thereto nor appeals therefrom, cannot resort to the remedy of certiorari to annul said order; and (3) that a judge, who renders a deficiency judgment because of the insufficiency of the proceeds of the property mortgaged to secure a bond, commits, if at all, a mere error of law which does not constitute excess of jurisdiction and, therefore, may not be the subject of a petition for certiorari.

Wherefore, the remedy of certiorari applied for is denied and the petition is hereby dismissed, with costs to the petitioners. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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