

PANTALEON DEMETRIOU AND AUREA A. MADRID, PETITIONERS, VS. JUAN G. LESACA, JUDGE OF FIRST INSTANCE OF ALBAY, AND CIRIACO CHUNACO, RESPONDENTS.*G. R. No. 44736. March 31, 1936*

Ponente: RECTO, J.

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In civil case No. 4665 of the Court of First Instance of Albay, instituted by Ciriaco Chunaco against Pantaleon Demetriou, judgment was rendered on July 19, 1928, ordering the defendant to pay the plaintiff the sum of P3,047.87, with interest and costs. On August 26 of the same year the judgment became final and executory. There is nothing in the record to show when the judgment was entered in the book of judgments, but it does appear that on December 3 of the same year, a writ of execution was issued which was returned unsatisfied. A second writ of execution was issued on January 29, 1929, by virtue of which levy was made upon certain properties claimed by Aurea A. Madrid, wife of Pantaleon Demetriou, in a complaint which she immediately filed and which was docketed as civil case No. 4997 of the Court of First Instance of Albay. On March 18 following, the court, at the instance of Aurea A. Madrid, issued a preliminary injunction against defendants Ciriaco Chunaco and Max. M. Romero, the latter as deputy sheriff of the Province of Albay, "enjoining them from selling at public auction the properties described in the complaint (of intervention) during the pendency of this case and until further order of the court." Judgment was rendered on this complaint on February 24, 1933, whereby the properties in suit were declared paraphernal of Aurea A. Madrid, with the exception of a certain part of the lot and house described in paragraph 3, subsection (a), of said complaint. The injunction became permanent in part and was lifted in part in accordance with the judgment. A third writ of execution was issued on October 10, 1934, by virtue of which the respondent judge, upon petition of Ciriaco Chunaco, objected to by Pantaleon Demetriou and Aurea A. Madrid, required in an order of January 18, 1935, the appearance of the latter on the 26th of the said month for examination "on the properties yielding palay and the products thereof subject to levy, together with a residential lot and house of strong materials in which the defendant Pantaleon Demetriou has an interest or share." The petitioners now ask for the issuance of a writ of certiorari addressed to the respondent judge, alleging that the latter acted without jurisdiction, or in excess of that which he might have, in issuing the writ of execution of October 10, 1934, and in entering the order of January 18, 1935, requiring the examination of Pantaleon Demetriou and Aurea A. Madrid under sections 474 and 476 of the Code of Civil Procedure.

The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement. The judgment may be enforced after the lapse of this period and before the same shall have been barred by any statute of limitations, by instituting an ordinary action. (Sections 443 and 447, Code of Civil Procedure; *Compania General de Tabacos vs. Martinez*, 17 Phil., 160; *Paterno vs. Aguila*, 22 Phil., 427; *Compania General de Tabacos vs. Martinez and Nolan*, 29 Phil., 515; *Araxnbulo vs. Court of First Instance of Laguna and Municipality of Santa Rosa*, 53 Phil., 302.)

It is not open to question that the writ of execution of October 10, 1934, was issued after the lapse of five years

from the date of entry of judgment in civil case No. 4665, considering said date as the time when the judgment became final and executory or August 26, 1928. Consequently the only question for consideration and decision is whether the injunction issued in civil case No. 4997, at the instance of Aurea A. Madrid, had the effect of suspending, while it was in force, the five-year period provided in section 443. In the affirmative case, the writ of execution of October 10, 1934, was issued within the said period. Otherwise, the five years had elapsed when the said writ was issued, and the same should be declared null and void as an act in excess of the jurisdiction of the respondent judge.

The decisions of the states of the Union are conflicting on this point. Those of California, where sections 443 and 447 of our Procedural Law were taken, hold that the five-year period within which a judgment may be enforced is not suspended by the issuance of an injunction restraining the execution of the judgment. (*Solomon vs. Maguire*, 29 Cal., 227, 237; *Rogers vs. Druffel*, 46 Cal., 654; *Cortez vs. Superior Court*, 86 Cal., 274, 278; *Buell vs. Buell*, 92 Cal., 393, cited with approval in *Compania General de Tabacos vs. Martinez*, 17 Phil., 160; *Arambulo vs. Court of First Instance of Laguna and Municipality of Santa Rosa*, 63 Phil., 302.) The contrary view prevails, however, in Mississippi (*Work vs. Harper*, 31 Miss., 107, 109); Georgia (*Rogers vs. Smith*, 98 Ga., 788, 789); and New York (*Underwood vs. Green*, 56 N. Y., 247, 248). In our opinion the better rule is that announced in 21 A. L. R., 1059, citing *Series vs. Cromer* (88 Va., 426), a case similar to the present, where it was said:

"An injunction suit brought by a judgment debtor to restrain the sale of his home place, but not asking for an order restraining the issuance of execution, is not such a legal proceeding as to suspend the statute of limitations under a statute providing that any time during which the right to sue out execution on a judgment is suspended by the terms thereof or by legal proceedings shall be omitted in computing the period of limitations prescribed."

It appears from the record that the injunction issued in civil case No. 4997 was not to enjoin the execution of the judgment, but only to have the creditor Ciriaco Chunaco and the sheriff Max. M. Romero "abstain from selling at public auction the properties described in the complaint * * * during the pendency of this case and until further order of the court." It is manifest that the issuance of said injunction at no time prevented Ciriaco Chunaco from executing his judgment otherwise than by making a public sale of the properties claimed by Aurea A. Madrid. The examination of the latter as well as the debtor Pantaleon Demetriou under sections 474 and 476 of the Code of Civil Procedure, required by the respondent judge in his order of January 18, 1935, could have been made during the lifetime of said injunction, inasmuch as the terms thereof did not prohibit such an examination.

Wherefore, we hold that the issuance of an injunction the terms of which do not prohibit the execution of a judgment does not suspend the five-year period within which a writ of execution may be obtained, and rule that in issuing the writ of execution of October 10, 1934; in civil case No. 4665, and in entering the order of January 18, 1935, by virtue of said writ, the respondent judge acted without jurisdiction. The writ of certiorari prayed for is granted, with the costs to the respondent Ciriaco Chunaco.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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