

SALVACION LOCSIN ET AL., PETITIONERS, VS. GERONIMO PAREDES, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND C. N. HODGES, RESPONDENTS.

G.R. No. 45030, March 28, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for certiorari filed by Salvacion Locsin et al. against Geronimo Paredes, Judge of the Court of First Instance of Iloilo, and C. N. Hodges, praying, for the reasons alleged in the corresponding pleading, that the order of the Court of First Instance of Iloilo of November 26, 1935, amending the dispositive part of its decision of June 6, 1935, rendered in civil case No. 9712, entitled C. N. Hodges, plaintiff, vs. Salvacion Locsin et al., defendants, be declared void and illegal, with costs to the respondents.

The pertinent facts necessary for the resolution of the legal question raised in the present case, which are inferred from the petition and the exhibits attached thereto, are as follows:

On December 12, 1933, the respondent C. N. Hodges filed a complaint in the Court of First Instance of Iloilo against the petitioners Salvacion Locsin et al., for the recovery of the sum of P16,417.25 with interest thereon, representing the proceeds of a joint and several promissory note signed by the petitioners in question, which promissory note was reproduced in said complaint and made an integral part thereof. In the prayer of said complaint, it was requested that the therein defendants and herein petitioners Salvacion Locsin et al. be ordered to pay jointly and severally to the herein respondent and therein plaintiff C. N. Hodges the amount of the promissory note plus interest thereon.

After the necessary proceedings, the case in question was called for hearing, both parties having appeared through their respective attorneys. The petitioners admitted the existence of said debt in accordance with the promissory note Exhibit A, and the respondent judge made it so appear in his decision of June 6, 1935, the dispositive part of which reads:

"Wherefore, the court renders judgment ordering the defendants to pay the plaintiff the sum of sixteen thousand four hundred seventeen pesos and twenty-five centavos (P16,417.25) with interest thereon at twelve per cent (12%) per annum from December 25, 1932, until fully paid, plus the costs of this suit.

"So ordered."

Jose Y. Orozco, attorney for the respondent C. N. Hodges, was notified of this decision on June 7, 1935. Said decision having become final and executory, and while the writ of execution issued on August 25, 1935, was in the hands of the sheriff for compliance therewith, the respondent C. N. Hodges, on September 16, 1935, filed a motion praying that an additional judgment be rendered ordering the petitioners Salvacion Locsin et al. to pay jointly and severally to the respondent C. N. Hodges. On September 26, 1935, the respondent C. N. Hodges filed another motion, in lieu of the first, praying that an amendatory judgment be rendered instead of an additional

judgment. The respondent judge, passing upon the latter motion of September 26, 1935, denied it in an order of October 12, 1935. On November 6, 1935, the aforesaid respondent C. N. Hodges filed a motion for reconsideration of the order denying his motion, insisting on the amendment of the decision on the ground that the word "severally" had been inadvertently omitted from the dispositive part of the decision through a slip of the pen, invoking the relief provided in section 113 of the Code of Civil Procedure.

The first question to be decided in the present case is whether or not under section 113 of the Code of Civil Procedure, the party, in whose favor a decision, which has already become final and executory, has been rendered, may ask for the amendment thereof in order to supply the omission of a statement on an essential point of law.

The relief afforded by section 113 of Act No. 190 is for the party against whom an order or judgment has been rendered as a result of a mistake, inadvertence, surprise or excusable neglect, and not for him in whose favor it has been rendered, as in this case. Furthermore, in *Echarri and Azores vs. Belen Velasco* (59 Phil., 570), this court stated that "The relief granted by section 113 of the Code of Civil Procedure to a party against whom a judgment, order, or other proceeding has been taken through his mistake, inadvertence, surprise, or excusable neglect, may not be invoked by such party if he has an adequate remedy at law for the purpose of vacating such judgment, order, or other proceeding taken against him through fraud, but has lost it through his own negligence or that of his counsel." (34 Corpus Juris, 437, 438.)

In the case at bar, the attorney for the respondent C. N. Hodges was notified of the decision, the amendment of which is sought, on June 7, 1935, but "upon receiving a copy of the court's decision, he immediately delivered it to his clerk for the filing of the office record, without reading it carefully because he then believed that the decision had to be in accordance with the terms of the promissory note reproduced in the complaint, the authenticity and due execution of which have not been denied nor questioned under oath by the defendants in their answer." We therefore hold that the fact that the attorney for the respondent C. N. Hodges had not asked for the amendment of the decision before it became final and executory was due to his own negligence and, under the doctrine above stated, he cannot now make use of the remedy provided for in section 113 of the Code of Civil Procedure.

The second question to be decided is whether or not the omission to state the word "severally" in the decision the amendment of which is sought, may be validly supplied not only after the said decision has become final and executory but also when it is already in the process of execution.

We have seen that the complaint filed by the respondent C. N. Hodges against the petitioners Salvacion Locsin et al. was for the purpose of demanding, through the court, compliance with a joint and several obligation contracted by the latter in favor of the former under a promissory note signed by them. The therein defendants and herein petitioners defended themselves merely by alleging that the action was premature and extemporaneous and they never denied that the obligation contracted by them was joint and several. When the case was called for hearing, they admitted the existence of the debt in question in accordance with the promissory note Exhibit A. The respondent judge made it so appear in the decision the amendment of which is questioned in the present case. Therefore, it clearly appears from the allegations of the complaint, the promissory note reproduced therein and made a part thereof, the prayer and the conclusions of fact and of law contained in the decision of the respondent judge, that the obligation contracted by the petitioners is joint and several and that the parties as well as the trial judge so understood it. Under the juridical rule that the judgment should be in accordance with the allegations, the evidence and the conclusions of fact and of law, the dispositive part of the judgment under consideration should have ordered that the debt be paid severally, and in omitting the word or adverb "severally" inadvertently, said judgment became ambiguous. This ambiguity may be clarified at any time after the decision is rendered and even after it had become final (34 Corpus Juris, 235, 236). The respondent judge did not, therefore, exceed his

jurisdiction in clarifying the dispositive part of the judgment by supplying the omission.

For the foregoing considerations, we are of the opinion and so hold: (1) That a party in whose favor a judgment has been rendered cannot resort to the remedy afforded by section 113 of the Code of Civil Procedure; and (2) that when it clearly appears from the allegations of the complaint, the prayer thereof, the evidence and the conclusions of fact and of law arrived at by the trial judge in his decision that the obligation, compliance with which is sought to be enforced through the courts, is joint and several in character, it should be understood that the intention of the judge has been to order that payment be made jointly and severally, although the word or adverb "severally" was not used in the dispositive part of said judgment, through oversight, and the judge in question, in supplying the omission by means of an amendment, has done nothing but clarify an ambiguity.

Wherefore, not finding any merit in the petition for certiorari before us, it is denied, with costs to the petitioners. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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