

MARIA D. CABUHAT, PETITIONER, VS. MARCELIANO R. MONTEMAYOR, JUDGE OF FIRST INSTANCE OF MANILA, JOSE CASIMIRO, SHERIFF OF MANILA, AND THE SPOUSES CIRILO HIPOLITO AND MARTINA TORR...

G. R. No. 45224. September 17, 1936

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The herein petitioner instituted civil case No. 106255 and filed the complaint dated September 11, 1935, in the municipal court of the City of Manila, to recover from the defendants, the respondent spouses Cirilo Hipolito and Martina Torres, an indebtedness in the sum of P156 and to foreclose the mortgage constituted by them on a piano and a cash register to secure the obligation. In their answer, the respondent defendants charged the petitioner with usury, alleging that they had not received the entire original loan from her. After the trial, and having examined all the evidence presented by the parties, the municipal court, on October 5, 1935, rendered judgment dismissing the action, without costs. The judgment became final because the petitioner failed to appeal.

Later the petitioner brought civil case No. 106679 against said respondents in the said municipal court, the complaint filed by her being dated October 17, 1935. The action was the same and it had the same purpose. The relief sought was identical. The only difference between the two cases was that in the latter the petitioner asked for the issuance of a writ of attachment upon filing a bond of P400 which she was willing to do. In their answer, the respondent defendant set up the same defenses and furthermore alleged that the latter action brought by the petitioner was already *res judicata*. After the trial, the municipal court, on November. 19, 1935, rendered judgment dismissing the action on the ground that it already constitutes *res judicata*. The petitioner appealed. Inasmuch as she had filed a bond, the writ of attachment was issued and the sheriff attached the piano and cash register and delivered them to the petitioner. On appeal and after due trial, the Court of First Instance of Manila, on March 31, 1936, rendered judgment holding that the case already constituted *res judicata*, and dismissed the petitioner's complaint, with costs. Subsequently, it ordered the return of the piano and cash register to the respondents. The petitioner filed a motion for a new trial, upon the denial of which she gave notice of her intention to perfect her appeal, duly presenting her bill of exceptions. It does not appear whether the bill of exceptions has already been approved or not. Upon petition of the respondents, the court, in its order of June 9, 1936, provided for the execution of the judgment so rendered notwithstanding the petitioner's notice of appeal, unless she filed a bond of P400 to secure compliance with the judgment, in case it should be affirmed. The petitioner asked for the reconsideration of the latter order and excepted to the resolution denying it. She however filed the bond required of her, which was subscribed by two sureties. The court disapproved it because it did not appear satisfactorily that the sureties were solvent. The petitioner was given a certain period to prove the solvency of the sureties and, as she failed to file the certificate of the municipal treasurer on time, the court ordered the execution of the judgment and the delivery of the chattels to the respondents. The sheriff executed it and found only the piano which he delivered to the respondents. The cash register is still in the possession of the petitioner.

In her petition for certiorari, the petitioner now contends that the court's order of June 9, 1936, requiring her to file an additional bond of P400 if she wished to have the execution of the judgment suspended, pending the appeal, is illegal and has been issued with abuse of discretion.

Without expressly deciding whether or not the court acted with abuse of discretion in requiring the petitioner to file an additional bond in order to suspend the execution of the judgment to which she had excepted, this court holds that the petitioner is not entitled to the extraordinary remedy now sought by her on the ground that she is estopped therefrom, having consented and submitted to the conditions of the order of June 9, 1936, by voluntarily filing the additional bond of P400. It is not a good policy to permit a party to question an order which he has voluntarily complied with, when it has been issued by a court which had full jurisdiction over the case (11 C. J., pages 138, 139, sec. 103). If the petitioner wished the order, which she claimed to have been issued irregularly or with abuse of discretion, reviewed, she should have filed this petition immediately after excepting thereto and should have applied for the issuance of a writ of preliminary injunction in order to maintain the status quo. But after having complied therewith, she cannot successfully question it in certiorari proceedings because it would be equivalent to repudiating her own acts.

For the foregoing reasons, the remedy applied for is denied, with costs to the petitioner. So ordered.

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

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