

CU UNJIENG E HIJOS, PLAINTIFF AND APPELLEE, VS. THE MABALACAT SUGAR CO., ET AL., DEFENDANTS. THE MABALACAT SUGAR CO., APPELLANT.*G.R. No. 45351. June 29, 1940*

Ponente: MORAN, J.

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Judgment for the plaintiff, Cu Unjieng e Hijos, was rendered in a foreclosure suit instituted against the defendant, the Mabalacat Sugar Company. A writ of execution was later issued and the mortgaged property, consisting of a sugar central, ordered sold at public auction. At the sale, one B. H. Berkenkotter, filed a third-party claim over certain machineries of the central, but a bond having been filed by the plaintiff, the sheriff proceeded with the public auction, at which said plaintiff was the highest bidder for P177,000. The sale was confirmed by the trial court, and, upon appeal to this court, the order of confirmation was affirmed. On motion, the receiver in possession of the property sold was caused to deliver the same to the plaintiff, and at that time the judgment debt, together with interests thereon, amounted to P226,036.80.

In the meantime, Berkenkotter instituted a separate proceedings against plaintiff Cu Unjieng e Hijos for the vindication of his claim over the machineries which constituted the subject matter of his third-party claim. From an adverse decision of the trial court, he appealed to this Court. While Berkenkotter's appeal was pending, the Mabalacat Sugar Company presented, on October 11, 1934, a petition in the trial court, praying that it be declared entitled to the proceeds of the central during the period of its receivership, aggregating P36,793.99. In this connection, it should be remembered that the judgment debt at the time the property sold was delivered to the plaintiff, amounted to P226,036.80, and that the mortgaged property was sold to the plaintiff for P177,000, leaving thus a balance of P49,036.80. But the defendant contended that the sum of P177,000 offered by the plaintiff at the auction sale was so offered for the mortgaged property with the exclusion of the machineries, valued at P60,000, which were the subject matter of Berkenkotter's third-party claim, and that should Berkenkotter lose his appeal in this Court and the machineries thud claimed by him be declared included in the property sold at public auction, plaintiff should be charged not only with the amount of P177,000 but also with the sum of P50,000, or a total of P227,000 which covered the entire amount of the judgment debt. Plaintiff opposed defendant's claim, contending that the sum of P177,000 he offered at the public auction was for the whole property mortgaged including the machineries claimed by Berkenkotter, and that, therefore, he was entitled to a deficiency judgment to which the net proceeds of the central during the period of its receivership should be applied. After due hearing, the trial court issued its order of November 13, 1935, the pertinent portion of which is as follows:

A quiEn debe adjudicarse dicho saldo? La parte demandante lo reclama en virtud de su derecho a un deficiency judgment, y la parte demandada porque, segun ella, todo el credito de la demandante ha sido pagada con la central, incluyendo su maquinaria y demas mejoras.

"Segfin esto, dicho saldo de P36,733.99 * * * debe corresponder a la demandada si los demandantes han ganado el litigio en Manila sobre ciertas partes de la maquinaria avaluadas en ¥50,000, porque, entonces, habran cobrado todo su credito. De este efecto, cualquiera de ellas presentar& una copia certificada de la decision en dicho asunto."

From this order, plaintiff announced its intention to appeal, but before perfecting his bill of exceptions, he filed in the same court a petition, which was later amended, for a deficiency judgment. Defendant opposed the petition, claiming that the question raised therein had already been adjudged in the court's order of November 13, 1935, above quoted. Later, the defendant, in compliance with one of the directions contained in said order, presented an urgent motion, praying that it be permitted to file a certified copy of the decision of the Supreme Court in the Berkenkotter's case. The trial court acceded to this motion, and on March 28, 1936, received the certified copy as evidence. (According to the decision thus presented in evidence, Berkenkotter lost his appeal in this court. On May 29, 1936, the trial court overruled defendant's opposition to plaintiff's petition for a deficiency judgment and adjudged said plaintiff entitled thereto, ordering, at the same time, that the sum of P36,793.99 representing the net proceeds of the receivership and which has already been turned over to the plaintiff, be applied to the judgment debt, and rendering a deficiency judgment in the amount of P35,737.99, which was the last balance unpaid. This order is the subject of the present appeal.

There are, therefore, two orders involved in this appeal, the first dated November 13, 1935, and the second, May 29, 1936. Defendant-appellant contends that the second order is null and void, for it has been rendered without jurisdiction, and that, even if it were valid, the same is erroneous. As to the nullity of the second order, which was in effect a reversal of the first order, defendant's contention is predicated on the theory that the lower court has lost all jurisdiction to amend or reverse the first order which had already become final and executory before the second order was issued.

The order of November 13, 1935, was conditioned upon a contingency, namely, the outcome of the Berkenkotter case that was then pending appeal in this Court. It did not dispose definitely of the issue as to who should be awarded the amount of P36,793.99—whether the plaintiff-appellee or the defendant-appellant. The order provided that the sum should be awarded to the appellee if Berkenkotter should win the case, or to the appellant should Berkenkotter lose the case in this Court. And this is not a final disposition of the case. We have once held that orders or judgments of this kind, subject to the performance of a condition precedent, are not final until the condition is performed. (*Jaucian vs. Querol*, 38 Phil., 707, 715.) Before the condition is performed or the contingency has happened, the judgment is not effective and is not capable of execution. In truth, such judgment contains no disposition at all and is a mere anticipated statement of what the court shall do in the future when a particular event should happen. For this reason, as a general rule, judgments of such kind, conditioned upon a contingency, are held to be null and void. (33 C. J., 1196.) "A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action." (33 C. J., 1102.) And when a definitive judgment cannot thus be rendered because it depends upon a contingency, the proper procedure is to render no judgment at all and defer the same until the contingency has passed.

The order of November 13, 1935, expressly directed the parties or any of them to introduce in court a certified copy of the judgment which the Supreme Court shall render in the Berkenkotter case. This requirement was proper, for only after such decision is rendered and a certified copy thereof presented to the trial court could a final order be issued reciting how the contingency has happened and settling definitely the rights of the parties in accordance therewith. But the certified copy was presented in court on March 28, 1936, and no final order has as

yet been issued thereon. There was, therefore, nothing which could legally bar the issuance of the second order of May 29, 1936. It is a well-settled rule that interlocutory or provisional orders are subject to vacation or amendment at any time before final judgment is rendered or has become executory. We conclude that the second order is valid.

As to whether or not in the execution sale made of the sugar central to the plaintiff-appellee, the machineries claimed by Berkenkotter were included, we find in the record no sufficient ground to disturb the conclusions of the lower court.

Order is affirmed, with costs against appellant.

Diaz, Laurel, and Concepcion, JJ., concur.

AVANCEÑA, C.J.,

I concur in the result.

Imperial, J.:

I concur in the result.

Order affirmed.

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