

FRED OMNAS AND JOSE TANDINGAN GADIL, PLAINTIFFS AND APPELLANTS, VS. PABLO S. RIVERA, JUDGE OF FIRST INSTANCE OF ABRA, AND EULALIA BELLO, RESPONDENTS AND APPELLEES.*G.R. No. 45531. April 19, 1939*

Ponente: VILLA-REAL, J.

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About March 14, 1931, Eulalia Bello obtained a judgment for P1,800 against Jose Tandingan Gadil in Civil Case No. 326 of the Court of First Instance of Abra. As Gadil was unable to pay the amount of the judgment, the provincial sheriff sold at public auction a parcel of land which appeared to be Gadil's property, the same having been adjudicated to the said plaintiff Eulalia Bello as the highest bidder. On December 24, 1932, the said sheriff issued the certificate of sale in favor of Eulalia Bello. However, for reasons not disclosed by the record, the purchaser did not take possession of the land purchased by her.

On October 15, 1935, Eulalia Bello filed a motion asking that the court issue a writ of possession in her favor, and the respondent judge, Honorable Pablo S. Rivera, granted the motion by putting at the bottom thereof on January 8, 1936, under his signature the words "Motion granted". The writ of possession was issued on January 15, 1936, complied with on March 29, 1936, and returned on April 16th of the same year with the necessary proceedings.

As a result of the issuance of said writ of possession, Fred Omnas and Jose Tandingan Gadil filed an original petition for certiorari in the Court of Appeals against Judge Pablo S. Rivera of the Court of First Instance of Abra and Eulalia Bello.

After proper proceedings, the Court of Appeals rendered a decision denying the petition, with the costs to the petitioners.

The only question for decision is whether the Court of Appeals erred in holding that the Court of First Instance of Abra had jurisdiction to issue the writ of possession in favor of a purchaser at a public sale by virtue of the execution of a judgment in an ordinary action for the recovery of a sum of money.

In *Orestes Y. Olarte vs. Court of First Instance of Pangasinan* (G. R. No. 45330, Sept. 30, 1937), this court said:

"It is plain that the power to issue a writ of assistance or of possession is derived from the jurisdiction of the court to enforce its decree or judgment, and when such judgment or decree is no longer enforceable, the court lacks authority to issue the writ. In the instant case, the judgment of foreclosure was rendered on November 16, 1925, and such judgment could be enforced only within five years after its rendition. (Code of Civil Procedure, sec. 443; *Compania General de Tabacos vs. Martinez*, 17 Phil., 160; *Paterno vs. Aguila*, 22 Phil., 427.) Manifestly, therefore, the respondent judge had no power to issue his order of March 21, 1936."

In the present case the decision was rendered on March 14, 1936, and must have become final and been entered thirty days thereafter (section 145 of Act No. 190; *Roman Catholic Bishop of Lipa vs. municipality of Unisan*, 44 Phil., 866; *Palomata vs. Villareal*, 40 Phil., 641; *Dy Cay vs. Crossfield and O'Brien*, 38 Phil., 521), that is, on

April 14, 1931, from Which last date commenced to run the period of five years provided by law (section 443 of Act No. 190) within which to ask for the issuance of a writ of execution. The writ of possession is nothing more than a complement of the writ of execution which, without the former, is ineffective; for it would be useless to order a sheriff to sell a real property of a judgment debtor if after the sale is made in the manner provided by law the purchaser, after the expiration of the period of redemption, may not enter upon the possession of the property thus purchased. If the writ of possession is a complement of the writ of execution, the court with jurisdiction to issue the latter may issue the former, unless in the interval between the sale and the motion for the issuance of a writ of possession third persons have acquired rights over the property sold. The writ of execution was issued within five years provided by law, hence, the respondent judge acted within his jurisdiction in issuing the writ of possession before us, there being no showing that in the interval between the issuance of the writ of execution and that of the writ of possession, the judgment debtor had ceased to be the owner of the property thus executed.

In view of the foregoing considerations, we are of the opinion and so hold that, the writ of possession being a complement of the writ of execution, a judge with jurisdiction to issue the latter also has jurisdiction to issue the former, unless in the interval between the judicial sale and the issuance of the writ of possession; the judgment debtor had ceased to be the owner of the subject-matter of the sale.

Wherefore, the appealed judgment is affirmed, and the petition is denied, with the costs to the petitioner. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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