

JOVITA JOVEN, PETITIONER, VS. MARCELO T. BONCAN, JUDGE OF FIRST INSTANCE OF CAVITE, AND PHILIPPINE NATIONAL BANK, RESPONDENTS.

G.R. No. 45898. April 10, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for certiorari to review a resolution of the Court of Appeals of November 16, 1937 in C. A.- G. R. No. 1253.

In civil case No. 3198 of the Court of First Instance of Cavite, Jovita Joven, plaintiff, vs. El Banco Nacional Filipino and Jose S. Camus, defendants, judgment was entered on November 7, 1936, absolving the defendants from the complaint and ordering the plaintiff to yield possession to defendant Jose S. Camus of the litigated properties with the improvements existing thereon. On November 20, 1936, plaintiff filed a bill of exceptions preparatory to her appeal. The following day, November 21, 1936, defendants presented a motion for execution of the judgment pending the appeal. This was opposed by the plaintiff. On December 14, 1936, the court, after oral argument, ordered the execution of the judgment unless the plaintiff could give a bond in the amount of P5,000. On December 17, 1936, the court approved plaintiff's bill of exceptions and ordered the same, together with the evidence of the case, elevated to the Court of Appeals. On December 19, 1936, plaintiff moved to reconsider and to annul the court's order of December 14, 1936, ordering the execution of the judgment. On December 24, 1936, Jose S. Camus, in turn, moved ex parte to have their motion asking for the execution of the judgment as well as the order granting the said execution, incorporated in the bill of exceptions. Against plaintiff's opposition, the court granted the motion for incorporation. Twice plaintiff moved to reconsider this latter order; both motions were denied, and plaintiff excepted to each denial.

On January 5, 1937, plaintiff sued out a writ of certiorari in the Court of Appeals, G. R. No. 1253, to nullify the order of the trial court of December 14, 1936, ordering the execution of the judgment rendered against her in civil case No. 3198 of the Court of First Instance of Cavite. On February 23, 1937, the Court of Appeals, by a divided court, granted the writ, holding, in substance, that the trial court proceeded irregularly and with abuse of discretion in issuing the order complained of. Respondents moved to reconsider, and on November 16, 1937, the Court of Appeals favorably resolved this motion as follows:

"Esta es una mocion de reconsideracion presentada por los abogados de los recurridos, que contienden que la decision de este Tribunal debe dejarse sin efecto y, en su lugar se dicte otra, sobreseyendo la demanda en vista de la decision de la Corte Suprema en R. G. No. 45325, 'Francis Lusk versus Frederic Stevens et al.,' que se promulgo el 27 de febrero de este año. Creemos innecesario volver a relatar los hechos, asi como la opinion de la mayoria, de la cual no esta conforme la Corte Suprema de estas Islas. Basta con decir que el Tribunal Supremo ha sentado la regla de que, lo que da vida juridica a la excepcion a la prohibicion general de expedir mandamiento de ejecucion de una sentencia estando pendiente una apelacion, no es la consignacion en la pieza de excepciones de las razones especiales sino su misma existencia, porque la consignacion de las razones

especiales no es sino un mero requisito de forma. En el presente caso, el Juez recurrido expidio la orden de la ejecucion de su sentencia, teniendo presente, sin duda, ciertas razones que el Juzgado creyo que plenamente justificaban su actuacion, pero que no se hicieron constar en la pieza de excepciones. Adoptando el punto de vista expresado por la Corte Suprema en la causa arriba citada, nos vemos precisados a declarar que el remedio solicitado debe ser denegada y sobreseer la peticion."

A minority of the Court of Appeals dissented and held that the doctrine laid down in *Lusk vs. Stevens* (G. R. No. 45473, March 13, 1937), was misinterpreted by the majority and that the same does not govern the present case as held by the majority.

The requirements provided for in section 144 of the Code of Civil Procedure for the execution of the judgment notwithstanding the appeal are: (1) that there be a special order of the court for the execution of the judgment, and (2) that there be special reasons therefor which must be stated in the bill of exceptions. We find that these two requirements are present in this case. On December 14, 1936 the respondent judge issued an order authorizing the execution of the judgment "in view of all the circumstances present in the case" and after taking into consideration the reasons advanced by both parties. (Bill of Exceptions, pp. 54, 55.) Later, or on December 26th, another order was issued ordering that the petition for execution dated November 21, 1936, as well as the order granting said petition, be incorporated in the bill of exceptions. (Bill of Exceptions, pp. 49-52.) The reasons for immediate execution are found in the defendant's petition therefor. We have to assume that the respondent judge, after hearing both parties, arrived at the conclusion that the facts alleged in the petition were true and that the relief prayed for therein should be granted.

As the special reasons for the order of execution appear and are stated in the bill of exceptions, as required by section 144 of the Code of Civil Procedure, we find it unnecessary to further elucidate on the decision of this court in *Lusk vs. Stevens*, supra. The resolution of the Court of Appeals complained of will be, as the same is hereby, affirmed, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Concepcion, JJ., concur.

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