

**SIXTO DE LA COSTA, JUDGE OF FIRST INSTANCE OF RIZAL,
MARCIANO STO. DOMINGO AND THE PROVINCIAL SHERIFF OF
RIZAL, PETITIONERS, VS. BONIFACIO CLEOFAS, RESPONDENT.**

G.R. No. 46003. April 29, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioners ask in their petition for certiorari for the review and reversal of the decision rendered in the case by the Court of Appeals declaring null and void the order of May 29, 1937 entered by the Court of First Instance of Rizal directing the respondent to pay to the petitioner Marciano Sto. Domingo the sum of P995 plus the expenses which the execution may occasion, as well as the sale made by the sheriff in favor of the said Marciano Sto. Domingo, without costs.

In civil case No. 6123 of the Court of First Instance of Rizal, entitled Bonifacio Cleofas, plaintiff, vs. Marciano Sto. Domingo et al., defendants, the parties submitted the case for decision upon the following stipulation:

"Now come the parties in the above entitled case and respectfully pray this Honorable Court to approve the following stipulation and to enter judgment in accordance therewith:

"1. That the plaintiff shall remain to be the owner of the parcel of land in question, shall continue with the business of selling the lots as subdivided, and shall be the owner of all office equipment, furniture, supplies, plans, contracts, as well as any other paper related to the subdivision and the sale of the lots appearing in the inventory hereto attached, marked appendix A.

"2. The defendant Marciano Sto. Domingo shall be relieved of any obligation arising from the sale of 83 lots to the purchasers thereof, the plaintiff herein assuming the obligation to issue the corresponding title to purchasers upon payment in full of the purchase price thereof.

"3. That plaintiff shall pay defendant Marciano Sto. Domingo the sum of one thousand two hundred pesos (P1,200), Philippine currency, payable within the period of one (1) year from the date of the approval by the court of this stipulation, Provided, that one-half of any amount so collected monthly from buyers shall be paid on account of the said amount P1,200 to Marciano Sto. Domingo, through Atty. Felix D. Agcaoili of defendant, 310 Arias Building, Manila, and provided that should it appear afterwards that the said defendant, Marciano Sto. Domingo, had collected more than P1,082,50 from the sales of the said 83 lots, any excess of said amount shall be deducted from the said amount of P1,200 to be paid to him.

"4. That defendant, Marciano Sto. Domingo, shall assume the obligation of paying the balance unpaid of the fee of surveyor who surveyed the subdivided lots of the land in question and of the Bureau of Lands for the perfection and approval of the subdivision plan of the land in question, the payment of which shall be made out of the first amount collected from the buyers.

"5. That defendant, Marciano Sto. Domingo, shall have a preferential lien over the parcel of land in question (Transfer Certificate of Title No. 13063, Property Records of Rizal Province) same being, by virtue of this

stipulation placed as guarantee for the payment unto said defendant Marciano Sto. Domingo by the plaintiff herein, as well as on any amount which shall accrue by virtue of the sale of the subdivided lots, which lien shall remain subsisting until the said amount of P1,200 mentioned in paragraph three hereof shall have been fully paid; and, that said defendant Marciano Sto. Domingo shall waive any and all right to reimbursement for any other expenses he may have incurred. Provided, that failure on the part of the plaintiff to pay within the period of one year as provided for in paragraph three hereof will give right to defendant Marciano Sto. Domingo to demand the payment, by virtue of the present stipulation, for whatever balance then remaining unpaid by plaintiff of the said sum of P1,200."

Pursuant to the said stipulation, the court rendered the following judgment;

"Wherefore, the court approves the above-quoted stipulation in its entirety, and orders the said parties to comply strictly and faithfully with the conditions thereof, without costs."

The decision of the court having become final, the petitioner Marciano Sto. Domingo filed a motion on July 31, 1936, asking for the execution thereof on the ground that the respondent Bonifacio Cleofas had only paid the sum of P100 on account of the P1,200 to which he had been sentenced. Cleofas opposed the motion alleging, in turn, that he had already paid approximately P200. On April 12, 1937, Sto. Domingo filed another motion reiterating his prayer for the execution of judgment, alleging this time that the correct balance in his favor was P995. Cleofas again objected and in his written opposition stated that he and Sto. Domingo had entered into an agreement, subsequent to the decision obtained by the latter, whereby he owed a much lesser amount than that claimed, wherefore, the execution for the amount of P995 did not lie. The agreement and the allegations of Cleofas are set out in the decision of the Court of Appeals as follows:

"In consideration of the sum of eighty pesos (P80), Philippine currency, which I now receive from Mr. Bonifacio Cleofas on account of the judgment rendered in Civil Case No. 6123 of the Court of First Instance of Rizal, entitled 'Bonifacio Cleofas vs. Marciano Sto. Domingo et al.,' I waive the motion of July 31, 1936 which I have presented in said case for the issuance of a writ of execution of said judgment; it being understood and agreed that the balance of the said judgment, after deducting the said P80 and other amounts heretofore paid by said Mr. Cleofas on account of the said judgment, will be paid to me monthly from December, 1936 until fully paid, through the delivery to me of one-half of the entire income which he may obtain from month to month from the lots of the 'Talipapa Subdivision' already sold as well as from those which he may in the future sell. Provided that, the failure to comply with this condition for three (3) successive months would be a sufficient cause for me to ask for the execution of the said judgment rendered in the aforementioned case for the total balance owing until the date of noncompliance, precluding the said Mr. Cleofas from opposing the same.

"In testimony whereof, I sign today, November 14, 1936, in the City of Manila; and

"That the plaintiff has not failed to comply with this agreement, for more than one-half of all the amounts which he has collected from the purchasers of lots of the subdivision in the months of December, 1936, and January, February and March, 1937, which amounted to about P200 only, was paid to the defendant Sto. Domingo as follows: P25 was turned over to Attorney Felix D. Agcaoili of the said defendant; and P80 was paid to surveyor Antonio Gamboa who prepared the subdivision plan of the land in question, as unpaid balance of the fees of said surveyor. This last payment was made by the plaintiff under paragraph 4 of the stipulation which serves as the basis of the decision rendered in this case, reading:

"4. That defendant, Marciano Sto. Domingo, shall assume the obligation of paying the balance unpaid of the fee of the surveyor who surveyed the subdivided lots of the land in question and of the Bureau of Lands for the perfection and approval of the subdivision plan of the land in question, the payment of which shall be made out of the first amount collected from the buyers.

"That the plaintiff and the defendant agreed also on the following:

"* * * and provided that should it appear afterwards that the said defendant, Marciano Sto. Domingo, had collected more than P1,082.50 from the sales of the said 83 lots, any excess of said amount shall be deducted from the said amount P1,200 to be paid to him.

"That according to the invoices now in the hands of the plaintiff, the defendant has collected from the holders of lots of the subdivision more than P1,082.50; wherefore, the difference should be deducted from the amount of the judgment."

Resolving the last motion of the petitioner Sto. Domingo and the opposition thereto of the respondent Cleofas, the court entered on May 29, 1937 the order mentioned at the beginning of this decision, directing the latter to pay to the former the sum of P995, plus the incidental expenses of the execution. Cleofas attempted to appeal from the order and asked for the suspension of execution, but the court denied the petition and held that it was within the sheriff's power "to resolve all the incidents preventing and obstructing the complete execution of said final judgment". Thereupon, Cleofas sued out a writ of certiorari in the Court of Appeals and there obtained a writ of injunction to restrain the sheriff from executing the said order. The writ came late and the sheriff sold the property of the respondent Cleofas at public auction to the petitioner Marciano Sto. Domingo himself.

The petitioners alleged that the Court of Appeals erred: (1) in holding that there is room to doubt the validity of the judgment the execution of which was ordered; (2) in holding that the parties in case No. 6123 of the Court of First Instance of Rizal did not have an opportunity to present evidence; (3) in holding that the liquidation of accounts was not made; (4) in coming to the conclusion that a grave error was committed, constituting an abuse of discretion, in the issuance of the order of May 29, 1937 by Judge Sixto de la Costa; and (5) in granting the writ of certiorari, for aside from the absence of abuse of discretion, the petitioner Cleofas could have appealed from the order of May 29, 1937.

The three assigned errors only-raise the question of whether the Court of First Instance of Rizal, under the facts and circumstances of the case, could legally order the execution of the judgment rendered in civil case No. 6123, or whether it should have given the respondent Bonifacio Cleofas an opportunity to substantiate his allegation that he was no longer indebted to the petitioner Marciano Sto, Domingo in the amount claimed by the latter, but in a much lesser amount.

Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (*Molina vs. De la Riva*, 8 Phil., 569; *Behn, Meyer & Co. vs. McMicking*, 11 Phil., 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil., 4; *Espiritu vs. Crossfield and Guash*, 14 Phil., 5448; *Flor Mata vs. Lichauco and Salinas*, 86 Phil., 809). In the instant case the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of P995, but in a lesser amount. Sto. Domingo neither contradicted the allegation nor denied the agreement. If this is really true, there is no doubt that Sto. Domingo had no right to an execution for the amount claimed by him. In such circumstances it was the court's duty to allow Cleofas to substantiate his allegation and thereafter to issue an execution for the correct balance owing under the judgment rendered against him and the agreement subsequently entered into. We, therefore, hold that the assigned errors are without merit.

The Court of Appeals held that the trial court committed a grave abuse of discretion in ordering the execution of the judgment without first effecting a liquidation and in taking the view that this liquidation should be made by the sheriff. We hold that the holding is in accordance with law and that the fourth assigned error is without

foundation. The liquidation to be made was a judicial act incumbent upon the court which it could not legally delegate to the sheriff.

The petitioners contend that the petition for certiorari sued out by the respondent in the Court of Appeals was improper because he could have appealed from the order of May 29, 1937. The Court of Appeals held that the remedy was proper because the Court of First Instance grossly exceeded its discretion. We hold that the conclusion reached by the Court of Appeals is not error because if the respondent Cleofas had elected to appeal, this would not have proved an adequate and speedy remedy (section 217, Code of Civil Procedure; *De Castro and Morales vs. Justice of the Peace of Bocaue*, 33 Phil., 595; *Valdez vs. Querubin*, 37 Phil., 774).

The decision under review being in accordance with law, we deny the writ of certiorari, with the costs to the petitioner Marciano Sto. Domingo. So ordered.

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

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