

**RAMON CODILLA, GUILLERMO CODILLA, AND NARCISA ARCUINO,
PETITIONERS, VS. HON. NUMERIANO G. ESTENZO, HON. COURT OF
APPEALS, AND RUSTICO CAPAHI, RESPONDENTS.**

G.R. No. 50003. April 28, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review on Certiorari of the Decision of the Court of Appeals in CA-G.R. No. SP-08135 upholding the Order of respondent Judge, dated May 31, 1978, directing execution of the final judgment in the case below (Case No. 911-0).

The factual antecedents of the case follow:

Lot 657 of the Ormoc Cadastre, containing 450 square meters, is registered under Transfer Certificate of Title No. 5041 of the Registry of Deeds for Ormoc City in the names of:

"RUSTICO CAPAHI, married to Salome Conopio, 1/2 share; and the other 1/2 share to the undivided equal shares to GUILLERMO CODILLA, married to Narcisa Arcuino and RAMON CODILLA, married to Consorcia Enoveso, all of legal ages, Filipinos, with residence and postal address at Ormoc City, Philippines."

Although the title still reflects a co-ownership whereby a 1/2 undivided share belongs to RUSTICO and a 1/4 undivided share belongs to GUILLERMO and the last 1/4 undivided share belongs to RAMON, still, according to an entry on the back of the title, the 453 sq. m. lot has been actually partitioned with a portion containing 243 square meters adjudicated to RUSTICO, known as Lot "A", and 207 square meters adjudicated to RAMON and GUILLERMO, known as Lot "B". There is a peculiar situation in regards to Lot "B" allocated to RAMON and GUILLERMO in the sense that there is a residential-commercial building erected on that area which occupies almost its entirety.

If Lot "B" has been physically divided between RAMON and GUILLERMO, the land area allocated to RAMON can be called Lot "B-1", and the portion of the building standing thereon can be referred to as Portion "B-1 (a)"; while the area allocated to GUILLERMO can be called Lot "B-2", and the portion of the building standing thereon can be referred to as Portion "B-2(b)". If Lot "B" has not been actually divided and it has continued to be under co-ownership, RAMON's undivided interest in Lot "B" can be called Participation "C" and that part of the building standing thereon as Portion "B/C"; while the undivided interest of GUILLERMO can be represented as Participation "D" and the portion of the building erected thereon as Portion "B/D".

On October 27, 1964, RAMON executed a "Contract of Mortgage with Option to Purchase" in favor of private respondent RUSTICO whereby the former mortgaged all his rights, shares and interests over his one half-share, or 103.5 square meters, "and the building built thereon" to secure a loan of P6,725.00 without interest if paid within one year. That deed was registered and annotated on the title to the property. In addition, paragraph 3-a of said Contract reads:

"3-a. That for and in consideration of this mortgage, the Mortgagee is hereby given the option to purchase the aforementioned property, together with the residential building thereon, for the amount of TWENTY THREE THOUSAND PESOS (P23,000.00), if the right of option to buy is exercised after the third (3rd) and before the fifth (5th) year from date of this instrument; and, by paying the amount of TWENTY FIVE THOUSAND PESOS (P25,000.00) to the Mortgagor, if the right of option is exercised by the Mortgagee after the fifth (5th) but before the seventh (7th) year from and after the date of this instrument; PROVIDED, however, that in both instances, the Mortgagee shall not sell the aforementioned property to any person, corporation or entity, within the first three (3) years from and after the date of this instrument." (Italics supplied)

On June 15, 1968, RAMON sold the mortgaged property to his brother GUILLERMO. That was after RUSTICO's overture to exercise the option to purchase before the end of the fifth year, and RAMON's attempts to redeem the mortgaged property, had both failed in March/April of 1968.

Case No. 911-0, CFI, Leyte

CA-G.R. No. 48834-R, Court of Appeals

On June 19, 1968, RAMON filed with the Court of First Instance of Leyte an action for Redemption of Mortgage through Consignation against RUSTICO, docketed as "Special Civil Action No. 911-0" (Mortgage Redemption Case), seeking to compel RUSTICO to receive the amount consigned by RAMON in payment of the loan of P6,725.00 plus interest, and to execute a release of mortgage. RUSTICO, in an Amended Answer with Counterclaim, demanded compliance by RAMON with the terms of the "Mortgage with Option to Purchase". GUILLERMO and his spouse Narcisa Arcuino were impleaded as "defendants to the counterclaim", after RUSTICO learned of the sale to them by RAMON. Judgment was eventually rendered therein ordering RAMON to pay the loan of P6,725.00, with interest, or P8,686.46, and upholding the validity of the deed of sale executed by RAMON in favor of his brother GUILLERMO covering the mortgaged property. However, on appeal to the Court of Appeals by both parties, docketed as CA-G.R. No. 48834-R (Appealed Mortgage Redemption Case), said Court,[1] on February 15, 1977, held that the sale executed by RAMON in favor of GUILLERMO could not defeat RUSTICO's option to purchase and ordered RAMON to execute the corresponding deed of sale over his half of the property in favor of RUSTICO, as follows:

"WHEREFORE, the decision appealed from is hereby reversed and judgment is rendered setting aside the deed of sale executed by Ramon Codilla in favor of the Spouses Guillermo C. Codilla and Narcisa Arcuino of the property in question and ordering the plaintiff Ramon Codilla to execute the corresponding deed of sale of one-half of the property embraced in Transfer Certificate of Title No. 5041 containing an area of 103.5 square meters in favor of defendant Rustico Capahi upon payment by said Rustico Capahi of the purchase price of twenty-three thousand (P23,000.00) specified in paragraph 3-a of the mortgage with option to purchase, Exh. '2' and ordering the plaintiff Ramon Codilla and the spouses Guillermo C. Codilla and Narcisa Arcuino to pay, jointly and severally, the defendant Rustico Capahi moral damages in the amount of P2,000.00 and the sum of P2,000.00 as attorney's fees.

"The amount of P8,686.46 deposited by Ramon Codilla with the Clerk of Court of the lower Court shall be deducted from the purchase price to be paid by defendant Rustico Capahi to the plaintiff Ramon Codilla who is authorized to withdraw the said amount of P8,686.46. No pronouncement as to costs.

" x x x x x x x x "

A Motion for Clarification and/or Reconsideration was filed by RUSTICO seeking amendment of the dispositive portion so as to include the residential building standing on the 103.5 square-meter-portion of the land in the Deed of Sale to be executed in his favor by RAMON. Said Motion was denied by the Court of Appeals in a Resolution dated April 18, 1977. Apparently, in the mind of the appellate Court, its judgment was clear enough and did not need any clarification since the dispositive portion thereof adverted to what was specified in paragraph 3-a, supra,

of the contract between the parties.

The Petition for Review on Certiorari of the above Decision of the Court of Appeals, filed by the brothers Codilla (G.R. No. L-46120), was denied by this Court in a Resolution dated July 1, 1977.

The Decision in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) having thus become final and executory, a Writ of Execution, upon motion of RUSTICO, was issued by the lower Court, presided by respondent Judge, on March 22, 1978, commanding RAMON to execute the deed of sale in favor of respondent RUSTICO upon the latter's payment of the purchase price of P23,000.00.

In compliance, on May 5, 1978, RAMON executed a Deed of Absolute Sale in favor of RUSTICO conveying his undivided one-half-share for a consideration of P23,000.00. It should be noted that the conveyance made no mention of the residential building.

On May 12, 1978, RAMON filed an ex-parte Motion alleging compliance with the Writ of Execution and asking for the release of his deposit of P8,686.46. An Opposition thereto, with Motion for Alias Writ of Execution, was filed by RUSTICO praying that the Clerk of Court be made to execute the judgment on behalf of RAMON by preparing the deed of conveyance covering the 103.5 square meter portion, together with the building thereon, upon his (RUSTICO's) payment of P23,000.00.

On May 31, 1978, respondent Judge granted RUSTICO's petition in an Order, the dispositive portion of which reads:

"WHEREFORE, finding the Opposition to Ex-Parte Motion of Ramon Codilla, with Motion for Issuance of an Alias Writ of Execution to be well ground-ed and in order to carry out the final decision of the Honorable Court of Appeals as sent to this Court, this Court hereby designates and directs the Clerk of Court, Atty. Leonardo D. Dejaño to execute the judgment pursuant to Sec. 10 of Rule 39 of the Rules of Court, and to execute the judgment for and in behalf of the defendant Ramon Codilla by executing a Deed of Conveyance in favor of Rustico Capahi, over a portion of Lot No. 657 of the Ormoc Cadastre, containing an area of 103.5 square meters and covered by Transfer Certificate of Title No. 5041, together with the building thereon, upon pay-ment by Mr. Rustico Capahi of the price of Twenty-Three Thousand Pesos (P23,000.00) as specified in paragraph 3-a of the Mortgage Contract with Option to Purchase, Exh. '2', as stated both in the body and dispositive portion of the Decision of the Honorable Court of Appeals, and after placing said Rustico Capahi in the possession and ownership of the land, together with the improvements thereon to deliver to Ramon Codilla the amount of P8,686.46.

"SO ORDERED." (Italics ours).

On July 24, 1978, the Clerk of Court executed the Deed of Sale, which was duly annotated on the title.

What was sold to RUSTICO can be either a specific divided land area, Lot "B-1", and the portion of the building standing thereon, Portion "B-1 (a)", or it could be an undivided area, Participation "C", and the portion of the building standing thereon, Portion "B/C".

CA-G.R. No. SP-08135

Their Motion for Reconsideration of the above Order having been denied, the brothers filed a Petition for Certiorari and Prohibition with the Court of Appeals, docketed as CA-G.R. No. SP-08135 (Mortgage Redemption Case on Certiorari), alleging grave abuse of discretion on the part of respondent Judge in that his Order varied or amended the dispositive portion of the judgment in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) by providing for the inclusion of the building when it was not so provided, and by directing the placing of respondent RUSTICO in possession and ownership of the 103.5 square-meter-portion, when the issue of

possession was not involved. The brothers further contended that to place respondent RUSTICO in possession and ownership of the 103.5 square-meter-portion would be tantamount to depriving them of property without due process of law for the reasons that the issues of possession and ownership were never raised in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) and that the 207 square-meter-property, on which the residential building is erected, is owned by them in undivided equal shares and has not yet been partitioned by them.

In the meantime, as a consequence of the sale of RAMON's interests to RUSTICO, GUILLERMO, filed before the lower Court on July 5, 1978, a Complaint for Legal Redemption (Legal Redemption Case) (Civil Case No. 1718-0) against RUSTICO, depositing with the Court at the same time the sum of P23,000.00. The trial Court found from Exh. "K" and "5" which was presented, that there was already a physical separation of the portions belonging to RAMON and GUILLERMO, that there was no longer a co-ownership between the two brothers, hence, legal redemption by GUILLERMO was no longer possible. An appeal from said Order now pends before the Court of Appeals in CA-G.R. No. 64576 (Appealed Legal Redemption Case).

In a Decision[2] dated November 6, 1978, in the Mortgage Redemption Case on Certiorari (SP-08135), the Court of Appeals denied the Petition for Certiorari and Prohibition and interpreted its previous Decision in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R), thus:

"And when we spoke therein of the 'property in question', we refer to none other than the subject of the contract of mortgage with option to purchase, Exhibit '2', entered into by and between petitioner Ramon Codilla, as mortgagor, and private respondent Rustico Capahi, mortgagee with option to purchase, i.e., x x x the aforementioned property, together with the residential building thereon x x x'. (Par. 3-a, Mortgage with option to purchase) emphasis ours. To say that we never intended to include the said residential building in the property ordered by this Court in CA-G.R. No. 48834 to be conveyed to private respondent Rustico Capahi would run counter to our holding therein that 'the defendant Rustico Capahi should be allowed to purchase the property in question in accordance with paragraph 3-a of the mortgage with option to purchase, Exh. '2', and to do so would have the effect of amending or modifying our decision which has already become final and executory. x x x"[3]

Petitioners' Motion for Reconsideration thereof was denied by the Court of Appeals in a Resolution dated January 30, 1979.

This Case

Hence, the instant Petition for Review alleging that in the Mortgage Redemption Case on Certiorari (SP-08135) respondent Court of Appeals erred:

- "In sustaining the view that the direction in the dispositive portion of its final and executory decision in CA-G.R. No. 48834-R (the Appealed Mortgage Redemption Case) includes the placing of private respondent in the 'possession and ownership' of a definite portion of the property in question;
- "In applying the doctrines laid down by the Supreme Court in the cases of 'Perez vs. Evite', (1 SCRA 946) and 'Confesor vs. Pelayo' (1 SCRA 817) which, it is humbly submitted, are inapplicable to the case at bar;
- "In sustaining the order in question of the lower Court which virtually directs a partition of the property in question and which was implemented unilaterally by the sheriff who thereby arrogated unto himself purely judicial functions; and
- "In not applying the doctrine laid down by the Supreme Court in the case of 'Talens vs. Garcia', (87 Phil. 173) and 'Jabon vs. Alo', (91 Phil. 751), which holds that the declaration of ownership in favor of a party does not necessarily include the placing in possession of that party."

The foregoing take issue with the following observations of respondent Court of Appeals:

"Petitioners' contention that respondent Judge by his Order of May 31, 1978 cannot direct the placing of Rustico Capahi in the possession and ownership of the land, together with the improvements thereon as the same is not directed by the decision of this Court in CA-G.R. No. 48834-R, ignores what was said in *Perez vs. Evite* (1 SCRA 946) that a judgment is not confined to what appears upon the face of the decision but also those necessarily included therein or necessary thereto. Indeed, as held in *Confesor vs. Pelayo*, (1 SCRA 817), it is in accordance with good sense and propriety that, even in the absence of a special pronouncement as regards the delivery of ownership and possession to the private respondent in whose favor the deed of sale of the property in question was directed to be executed, an execution may be issued to effect such delivery in order to carry into full effect the judgment of this Court. This is so because from the tenor of the judgment of this Court, the directive to execute the corresponding deed of sale of the subject property necessarily involves ownership and possession as an attribute thereof, of such property and is, therefore, necessarily included in the judgment. It is also important to note that petitioners have no other claim to possession of the subject property than that which results from an attribute of ownership. And, as heretofore stated - such ownership, together of course with its attributes, was ordered by this Court conveyed by virtue of the corresponding deed of sale which we ordered petitioner to execute. But because in the correct judgment of the respondent Judge, the execution of the decision of this Court was returned unsatisfied, it had to issue the questioned Order of May 31, 1978 for the full enforcement of Our judgment."

Basically, the bone of contention is whether or not the trial Court had varied and/or amended the dispositive portion of the judgment of the Court of Appeals in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) by including the residential building and placing RUSTICO "in ownership and possession", and whether or not respondent appellate Court had erred in upholding the said ruling in the Mortgage Redemption Case on Certiorari (SP-08135).

The brothers argue that the 207 square-meter-property, on which a residential building stands, still belongs to them in undivided equal shares, as evidenced by Transfer Certificate of Title No. 5041, and that what was mortgaged by RAMON and, consequently, ordered to be sold to respondent RUSTICO in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) was only the former's undivided one-half interest therein (Participation "C"). Claiming that the 207 square-meter-property has not yet been partitioned by them prior to the conveyance of the undivided one-half interest of RAMON to RUSTICO, petitioners maintain that RUSTICO may not be placed in possession of one-half portion thereof, together with the improvements thereon, until the respective portions shall have been determined and segregated. Thus, they claim that the Sheriff, in placing RUSTICO in possession of a specific portion of the 207 square-meter-property, together with the improvements thereon, arbitrarily arrogated upon himself the task of dividing the property, thereby depriving them of their property without due process of law.

RUSTICO, on the other hand, denies petitioners' claim of co-ownership of the 207 square-meter-property, citing petitioners' evidence in the Mortgage Redemption Case (Special Civil Case No. 911-0) and the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) to the effect that the portion belonging to RAMON had already been segregated from that belonging to GUILLERMO, so that the title has ceased to be controlling in respect of the registered owners thereof. He further claims that as the issue of co-ownership was first raised in the Mortgage Redemption Case (Case No. 911-0), it has been passed upon on appeal by the Court of Appeals and may not be raised anew in this Petition on the ground of bar by prior judgment. Additionally, RUSTICO claims that this Petition was filed out of time.

We shall contend with the procedural aspect first.

Section 1, Rule 45 of the Rules of Court provides that appeal by Certiorari from a judgment of the Court of

Appeals may be made by filing with the Supreme Court a Petition for Certiorari within fifteen days from notice of judgment or of the denial of the Motion for Reconsideration filed in due time. In other words, the filing of a Motion for Reconsideration does not merely suspend the running of the period within which to appeal, but that the entire period of fifteen days commences to run again from notice of the denial of said Motion. Petitioners received the Resolution of the Court of Appeals denying their Motion for Reconsideration on February 9, 1979, so that the period for appealing would have expired on February 24, 1979. However, on February 15, 1979, petitioners sought an extension of thirty days from the expiration of the reglementary period or up to March 26, 1979, within which to file a Petition for Review on Certiorari, which we granted in a Resolution dated March 7, 1979. As the instant Petition was filed on March 23, 1979, the same was, therefore, filed on time.

We come now to the substantive aspect.

We uphold the Court of Appeals in its conclusion that:

"And when we spoke therein of the 'property in question', we refer to none other than the subject of the contract of mortgage with option to purchase, Exhibit '2', entered into by and between petitioner Ramon Codilla, as mortgagor, and private respondent Rustico Capahi, mortgagee with option to purchase, i.e., x x x the aforementioned property, together with the residential building thereon x x x' (Par. 3-a, Mortgage with option to purchase). x x x "

Indeed, paragraph 3-A of the Contract of Mortgage with Option to Purchase, heretofore quoted, as well as the opening paragraph thereof clearly included the residential building. Paragraph 4 of RAMON's Complaint in the Mortgage Redemption Case (Case No. 911-0) also specifically stated:

"4. That on October 27, 1964, the herein plaintiff mortgaged one-half (1/2) of his share of the above-described property, specifically, 103.5 sq. meters, with the improvements thereon, to the defendant, x x x x" (Italics ours)

The judgment of the Court of Appeals in the Appealed Mortgage Redemption Case (CA-G.R. No. 48834-R) has become final. Pursuant thereto, the property mortgaged by RAMON in favor of RUSTICO should be sold to the latter and that sale should be implemented, whether it be a sale of a specific portion of the land and building, Lot "B-1" and Portion "B-1 (a)", or of an undivided participation in said land and building, Participation "C" and Portion "B/C".

The question now pending in the Court of Appeals in the Appealed Legal Redemption Case (CA-G.R. No. 64576) should not deter the execution of the final judgment in the Mortgage Redemption Case (Case No. 911-0) below. The question in that suit, still with the appellate Court, is whether GUILLERMO can exercise the right of redemption, which in turn, hinges on whether co-ownership still exists between him and RAMON, or whether there has already been a physical partition of Lot "B" between them. The trial Court in the Legal Redemption Case (CC No. 1718-0) dismissed the suit on the ground that co-ownership between the two brothers had ceased to exist. The question is now for the Court of Appeals to decide in CA-G.R. No. 64576. If there has been no actual partition and co-ownership has continued, GUILLERMO has the right of redemption. But if there has already been a physical division, as held by the trial Court, it should follow that GUILLERMO has no right of redemption.

Be it one or the other, the fact remains that under the original Mortgage Redemption Case (Case No. 911-0), appealed to the Court of Appeals (CA-G.R. No. 48834-R), and upheld by the same Court on Certiorari (CA-G.R. No. SP-08135), ownership and possession of one-half of Lot "B" and of the building erected thereon can be delivered to RUSTICO, without prejudice to the legal redemption that may be exercised by GUILLERMO should CA-G.R. No. 64576 be decided in his favor.

WHEREFORE, the Order of respondent Judge, dated May 31, 1978, upheld by the Court of Appeals in CA-G.R. No. SP-08135, delivering ownership and possession to respondent Rustico Capahi over an area consisting of 103.5 square meters of the parcel of land covered by Transfer Certificate of Title No. 5041 of the Registry of Deeds of Ormoc City, together with the building thereon, is affirmed, without prejudice to legal redemption by Guillermo Codilla should he be awarded such right in CA-G.R. No. 64576, and the corresponding judgment becomes final.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and De Castro, JJ., concur.
Fernandez,[*] J., took no part.

[1] per Fernandez, Ramon J., concurred in by Bautista, Jose and Alampay, Nestor, JJ.

[2] Penned by San Diego, J., concurred in by Gutierrez and Cuevas, JJ.

[3] p. 40, Rollo.

[*] Fernandez, J. took no part, having penned the Decision in CA-G.R. No. 48834-R.

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