

LU CHUN GAN, PETITIONER, VS. HON. JOSE H. TECSON AND RAMON ESTELLA, RESPONDENTS.

G.R. No. 51215. February 22, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Special civil action of certiorari, prohibition and mandamus, with prayer for preliminary injunction or restraining order to set aside the Order[1] of respondent Judge Jose H. Tecson dated July 13, 1979, issued in Civil Case No. 107389, entitled "Ramon Estella v. Lu Chun Gan," which restrained Judge Rosario Veloso as Presiding Judge of Branch III, City Court of Manila, from proceeding with the hearing of Civil Case No. 041513, an ejectment case filed by Lu Chun Gan against Ramon Estella; to enjoin the respondent Judge from further intervening and interfering with the conduct of Judge Veloso in connection with the said ejectment case; and to compel herein respondent Judge to dismiss the appeal interposed by herein private respondent Estella in Civil Case No. 107389.

The facts, as may be pertinent and material to the instant case, are as follows: Private respondent instituted an action for reformation of contract of lease and specific performance with damages against petitioner in the Court of First Instance of Manila, respondent Judge presiding, docketed as Civil Case No. 107389. For failure of petitioner to file his answer to the complaint despite proper service of summons and on motion of private respondent, the former was declared in default and the latter was permitted by the lower court to present his evidence ex-parte. Under date of June 23, 1977, the lower court rendered judgment, the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering:

"a. The defendant to execute a contract of lease in favor of the plaintiff for a period of two (2) years; (Divino v. Marcos, Jan. 1962, Vol. 4, SCRA 186)

"b. The plaintiff to pay a monthly rental at the rate of P800.00 from January 1, 1977 within a period of thirty (30) days from receipt of this decision, less whatever amount and/or rents the plaintiff has deposited with this Court, and every month thereafter in accordance with the manner of payment agreed upon by the parties; and,

"c. Defendant to pay the plaintiff the sum of P1,000.00 as and for attorney's fees; without any pronouncement as to costs.

SO ORDERED."[2]

From the pleadings of the parties extant in the records, it appears that both parties appealed the foregoing decision to the Court of Appeals. Both appeals were, however, dismissed for reasons not clearly disclosed by the records since the petitioner as well as the private respondent never bothered to submit a copy of the order of dismissal. Nevertheless, the parties are agreed that as declared by the lower court, the decision became final and executory as of November 17, 1978. Accordingly, a writ of execution was issued by the lower court.

Admittedly, paragraphs (b) and (c) of the dispositive portion of said decision have been fully executed. But there is a dispute with respect to paragraph (a) thereof, private respondent maintaining that it was not yet implemented since petitioner had not yet executed the contract of lease as ordered by the lower court. The former thus argued and prayed in his motion for execution that petitioner be ordered to execute a formal contract of lease for two years in his favor, which period shall be counted from the execution of said contract. On his part, petitioner countered in his opposition to said motion for execution that the 2-year period should be computed from January 1, 1977 to December 31, 1978 and that there was no necessity for executing a contract because the decision of the lower court will already serve that purpose.

On January 26, 1979, the lower court issued the following Order:

"Pending resolution is a motion for execution on a portion of the decision of this Court, i.e., 'ordering the defendant to execute a contract in favor of the plaintiff for a period of two years,' together with an urgent motion for consignation of rentals, filed by the plaintiff through counsel. The defendant also through counsel opposes the said motions alleging inter alia that the two-year period should be counted from January 1977-when the parties are agreed that there existed no lease contract between them - so that the said two-years (sic) period, had the same been agreed upon by the parties, would have ended or expired on December 31, 1978. And consequently, therefore, there being no lease agreement by and between the parties, and by virtue of a judgment long final and executory in the instant case, the plaintiff has no obligation to pay any rental, much less has he any right for consignation of rental.

"After a close and judicious review of the records and pleadings in the present case, the Court is of the considered view that the position of the defendant is tenable and legally proper. In the first place, from the very context of the present complaint, it seems clear and unequivocal that there was no lease agreement between the plaintiff and the defendant, as the month-to-month contract terminated in December, 1976. In the second place, as observed by counsel for the defendant, the fact that the subsequent paragraph (b) of the dispositive portion of the decision of the Court invoked by the plaintiff stating, 'for the plaintiff to pay a monthly rental of P800.00 from January, 1977', is clear indication that the said amount should be the monthly rental within the two-year period contemplated in said decision-commencing from January, 1977 to December, 1978. A close and logical appreciation of said portions of the decision of the Court, coupled with the proposals and understanding of the parties and counsels during all their conferences in chamber, in the mind of the Court, leave no room for doubt that the two-year period discussed and proposed was meant and understood by and between the parties and their respective counsels, as well as by the Court, to be the time from January, 1977 to December, 1978. Indeed, the two-year proposed lease agreement between the parties would have materialized into a successful conclusion were it not for the added proposal of the plaintiff to extend the lease contract to another five years after December, 1978; while the defendant insisted for extension of the lease agreement to six (6) months only from January, 1979. This great disparity in the length of time of the lease agreement after the expiration of the two-year period first proposed, ending December, 1978, was the proverbial last straw 'that broke the camel's back', so to speak, in the discussion; and therefore, the parties failed to finalize their contemplated amicable agreement. Ergo, it seems only too clear and indubitable that the two-year period meant, understood and stated in the decision refers to the time commencing from January, 1977 to December, 1978.

"WHEREFORE, the twin motions of the plaintiff for execution and for consignation of rentals should be, as they are hereby, denied, for lack of merit.

"SO ORDERED."[3]

The above order triggered the filing of several motions by private respondent, in all of which, his dominant argument being that said order had amended or novated the decision of June 23, 1977 which became final and executory on November 17, 1978, and is therefore, null and void. Those motions were however denied by the lower court. Hence, private respondent presented his notice of appeal and appeal bond, and submitted a record on

appeal after an extension was granted him by the lower court.

Pending consideration or approval of his record on appeal, private respondent filed an urgent petition for the issuance of a restraining order preparatory to a hearing for a writ of preliminary injunction, to enjoin the Presiding Judge of Branch III, City Court of Manila, from proceeding with the hearing of Civil Case No. 041513 pending resolution of said record on appeal. It may be pointed out here, that said Civil Case No. 041513 is an unlawful detainer case filed by petitioner against private respondent on February 5, 1979, after the former had advised the latter in writing on January 4, 1979 of the termination of their lease contract as of December 31, 1978 allegedly pursuant to the decision of the lower court in this case dated June 23, 1977.

On July 13, 1979, the lower court issued the Order herein questioned, granting the restraining order as prayed for by private respondent. On July 25, petitioner filed a motion[4] to lift the said restraining order claiming that the same is void for want of jurisdiction, aside from being issued improperly. Before that date however, or on July 17, 1979, petitioner had likewise filed a motion[5] to dismiss private respondent's appeal on the grounds that the decision and orders appealed from are not appealable and the notice of appeal was filed very late aside from being frivolous and resorted to only for the purpose of delay.

The lower court subsequently issued a resolution dated July 26, 1979 "ordering (private respondent) to file the necessary petition for mandatory preliminary injunction, or to secure restraining order from the proper appellate court, within five (5) days from receipt of this order; otherwise, the restraining order previously issued herein shall be ordered lifted." [6] Complying with this order, private respondent filed the petition for preliminary injunction on July 27, 1979. [7]

Claiming that "in view of the attitude of the respondent Court who would not likely dissolve the restraining order despite its lack of jurisdiction and impropriety for its issuance at this late date, and his apparent reluctance to act on the motion for dismissal of the appeal, based on substantial grounds," petitioner filed this petition on August 10, 1979 for certiorari, prohibition and mandamus, praying as heretofore stated, for the lifting of the restraining order issued by the respondent court, to prohibit said court from interfering in the proceedings of the aforesaid ejectment case, and to order the lower court to dismiss the appeal unless this Court opts to issue such dismissal.

In the resolution[8] of August 15, 1979, this Court issued a temporary restraining order, enjoining the enforcement of the order of respondent court dated July 13, 1979 and restraining said court or judge from interfering with the pro-ceedings of Civil Case No. 041513 pending before the sala of City Judge Rosario M. Veloso. By reason of said restraining order, the proceedings in the foregoing ejectment case pro-ceeded resulting in the rendition of a decision dated February 15, 1980 in favor of the petitioner. An appeal interposed by private respondent from said judgment now pends before the Court of First Instance of Manila, the appeal docketed therein as Civil Case No. 132371. Under the premises, it becomes obvious that the certiorari and prohibition aspects of this petition has been rendered no longer warranted for being moot and academic, and to require resolution of the issues raised by the parties apropos thereto is to indulge in an exercise in futility.

Confining Ourselves, therefore, to the mandamus side of this petition, the only question left for determination is whether the appeal in Civil Case No. 107389 filed by private respondent should be dismissed or not, a question which We deem to be resolved necessarily in order to save time, instead of remanding the case to the lower court for action, which inevitably would reach this Court for review, for anyway, the issues raised in said projected appeal are discernible from the pleadings filed in this Court. Now, to consider and resolve the question of dismissing the appeal or not, We have to resolve first the issue of whether the order of the lower court dated January 26, 1979 had amended or novated the decision of June 23, 1977, the resolution of which in turn hinges on the query of when shall the two-year period for the contract of lease between the parties as ordered in the June 23,

1977 decision be reckoned with.

It may be stated here in passing that private respondent has erroneously assumed that the appeal he had filed in the lower court has already been perfected. By his very own admission about his record on appeal being only awaiting the approval of the lower court, the same could not as yet be denominated as a perfected appeal since the mere filing of the notice of appeal, the appeal bond and the record on appeal is not sufficient for the perfection of an appeal. It is that filing plus the approval by the lower court of the record on appeal and appeal bond, other than a cash bond, that will constitute the perfected appeal.[9] The Order[10] of the lower court, reading that "x x x the third pleading entitled Notice of appeal, filing of appeal bond and motion for extension of time to file record on appeal, filed by the plaintiff dated February 15, 1979, should be, as hereby it is, granted. x x x", can in no sense be interpreted, as private respondent asserts, to mean the approval of the record on appeal itself, for it is a mere allowance of time granted to private respondent for the filing of his record on appeal.

Neither can We accept private respondent's insinuation that petitioner is estopped from questioning the appeal because the latter had merely suggested in his "Motion and Opposition"[11] dated July 17, 1979, for the inclusion of some pleadings in the record on appeal. An examination of said "Motion and Opposition" would readily reveal petitioner's main assertion and prayer for the dismissal of the appeal, although with an alternative invocation for the insertion of some pleadings alleged by petitioner to be necessary for the resolution of the appeal, contained in his opposition to the record on appeal in the event the motion to dismiss appeal be denied by the lower court. Private respondent, therefore, cannot claim that he was misled into believing that petitioner is not opposing his record on appeal, much less praying for the dismissal of said appeal, in order to successfully put forth his claim of estoppel.

Private respondent's insistence that the subsequent order fixing the two-year from January 1977 to December 1978, has substantially amended the original judgment which is silent as to the starting point of said period, is not impressed with merit. As correctly pointed out by the lower court, paragraph (b) of the dispositive portion of the decision which ordered private respondent to pay a monthly rental of P800 from January 1977, is a more eloquent indication that said amount should be the monthly rental within the two-year period contemplated in said decision, commencing from January 1977 to December 1978. That must be so, considering that as clearly shown in the records of this case, the last existing contract of lease between the parties had terminated in December 1976.

The argument advanced by private respondent that petitioner should be ordered to execute a formal contract of lease in compliance with paragraph (a) of the decision, from the date of the execution of which, the two-year period shall be counted, deserves scant consideration. The execution of a new contract of lease between the parties seems unnecessary because the decision of the lower court, final and definitive will more than serve the purpose.[12] Besides, to count the two-year period from the formal execution of the contract, which pre-supposes consent on both parties, would arbitrarily prolong said period as its commencement would then be dependent on the whim of the private respondent to accede with the terms of the proposed contract to be offered by the petitioner. And more importantly, to place the starting point of said two-year period at another date than January 1977 is to allow a period of time to elapse within which no contract will exist between the parties at shall govern their relationship.

It clearly follows then, that the claim of private respondent that the respondent court arbitrarily amended, modified or novated a final and executory judgment by issuing the order of January 26, 1979, earlier quoted, stating therein that "the two-year period meant, understood and stated in the decision refers to the time commencing from January, 1977 to December 1978", is without any merit. We noted and observed that said statement is merely an expression of opinion, at the most an interpretation and as already shown is a correct one, which cannot in any way be construed as an amendment or modification, much less a novation, of the final

judgment in Civil Case No. 107389. It cannot be otherwise as it is well-settled that a final judgment or order can no longer be altered or changed, and the court loses jurisdiction over it, save to order its execution.[13]

Our attention has been called to the case of Magdalena Estate Inc., v. Caluag, 11 SCRA 333, to fortify private respondent's theory of amended judgment. But as this Court has taken pains to point out in that case, the questioned Order of January 10, 1958 had added this substantially material portion: "Declaring the plaintiff to be entitled to pay for the land on cash basis within a period of ninety days from the time that the defendant shall deliver to him the title to Lot 2-b-5 of Psd-33887, subject to a first mortgage etc., etc.," which amounted to a material alteration of the original decision of June 11, 1957, directing merely the defendant to deliver the title of the litigated property to the plaintiff within thirty days from notice, a situation not obtaining in the present case for reasons already discussed earlier. Moreover, from the recorded facts and circumstances of this case, it is apparent that even in the absence of the questioned order of January 26, 1979, the two-year period fixed in the decision of June 23, 1977 should be counted from January 1977 to December 1978.

Since the June 23, 1977 decision has undisputedly become final and executory, and was in fact already executed, private respondent can no longer appeal therefrom on the bare assertion that since the judgment was amended, he was given a new period to appeal to be counted from the date of receipt of the amending order, because to repeat, there was no amendment of judgment to speak of. The order erroneously alleged to have amended the final decision of June 23, 1977, was merely to explain the ground for the denial of the motion of private respondent for the execution of the first paragraph of the decision after the two other paragraphs thereof had already been implemented. Intended, therefore, merely to resolve the motion for execution of private respondent, the order can by no reasonable intentment be considered as an amendment to the decision which had by then become final, as private respondent and petitioner both agreed, on November 17, 1978.

With the foregoing conclusions arrived at, We find it unnecessary to dwell on the other points discussed by the parties.

WHEREFORE, judgment is hereby rendered dismissing the appeal of private respondent in Civil Case No. 107389. The certiorari and prohibition aspects of the petition is clearly unwarranted for being moot and academic, and the resolution of August 15, 1979, is hereby dissolved and set aside. No costs at this instance.

SO ORDERED.

Barredo (Chairman), Concepcion, Jr., Abad Santos, Ericta, and Escolin, JJ., concur.

Aquino, J., no part.

[1] Annex "A" Petition, p. 16, Rollo.

[2] p. 2, Petition, p. 2, Id.

[3] Annex "B" Petition, pp. 17-19, Id.

[4] Annex "E" Petition, pp. 22-25, Id.

[5] Annex "F" Petition, pp. 26-33, Id.

[6] p. 5, Petition.

[7] Ibid.

[8] p. 34, Rollo.

[9] see Section 9, Rule 41; *Uvero v. Court of Appeals*, 95 Phil. 11.

[10] Annex "D" petition, p. 21, Rollo.

[11] Annex "F" Petition, pp. 26-33, Id.

[12] see *Divino v. Marcos*, 4 SCRA 186.

[13] *Ablaza v. Sycip*, 110 Phil. 4, cited in *Py Eng Chong v. Herrera*, 70 SCRA 130.

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