

PETRA GABAYA, PETITIONER, VS. HON. RAFAEL T. MENDOZA, IN HIS OFFICIAL CAPACITY AS JUDGE, CFI, CEBU, SPOUSES FULGENCIO GABAYA AND ARACELI L. GABAYA, RESPONDENTS.

G.R. No. 53560, March 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for a writ of certiorari questioning the order dated February 7, 1980 of the Court of First Instance of Cebu, Branch VI, in Civil Case No. R-15973 rectifying its previous Order in the same case dated November 6, 1979.

Civil Case No. R-15973 was a complaint for recovery of possession, accounting and damages filed by the respondent Fulgencio Gabaya (hereinafter called FULGENCIO) against the petitioner Petra Gabaya (hereinafter called PETRA), a sister, and two other defendants involving several parcels of land originally owned by their deceased father Cipriano. The complaint alleged that following the death of Cipriano, these parcels of land were adjudicated to and registered in the name of Fulgencio in accordance with a project of partition executed by the heirs of Cipriano; that by mere tolerance, Fulgencio allowed Petra and the other defendants to oversee the harvest of the products of the land; that the residential house adjudicated to Petra in the project of partition is located in one of Fulgencio's lots; and that in spite of repeated demands for the removal of the house, Petra refused to do so and illegally refused to reconvey the possession of the properties to Fulgencio.

Petra, instead of filing an answer, filed a motion to refer the case to the Department (now Ministry) of Agrarian Reforms for certification as to the triability of the case on the theory that she was Fulgencio's tenant. The motion was granted and pursuant to the referral, the DAR Regional Director of Region VII issued a certification to the effect that the case was proper for trial with respect to Petra since there exists no tenancy relationship between them, but not so with respect to her co-defendants. When her motion to allow the DAR to re-consider the certification was denied, Petra answered the complaint admitting Fulgencio's allegation that she had refused to give possession of the parcels of land in question to the latter and that she had not been paying rentals over the portion of Fulgencio's land where her residential house stands for the reason that she "entered and cultivated" the properties "upon the express desire and conformity" of Fulgencio and that she is cultivating the said properties "as a sharehold tenant under existing tenancy laws or at least in the concept of a tenant."

On May 3, 1978, the Court a quo, on the basis of Fulgencio's motion for summary judgment which was not objected to by Petra and on a finding that "there has already been a certification by the Department of Agrarian Reforms that she is not a tenant of the plaintiffs, which certification erased all legal obstacle to plaintiffs' recovery of the land possessed by her", rendered a judgment in favor of Fulgencio, the dispositive portion of which reads:

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

"1. Ordering defendant Petra Gabaya to surrender the land of the plaintiffs possessed by her;

"2. Ordering defendant Petra Gabaya to remove her residential house within sixty (60) days from the date of this decision, otherwise, she will pay a monthly rental of P100.00 for the use of said premises, and to pay the costs of the proceedings.

"SO ORDERED."

This judgment became final, a writ of execution was issued and on June 6, 1979, the Deputy Sheriff of the Court of First Instance of Cebu rendered his report "with the information that the writ of execution issued in the above entitled case has been duly served and fully accomplished except that order requiring the removal of the defendant's residential house which cannot be carried out."

Thereafter, Fulgencio filed with the court a quo two motions, namely: (a) Motion for Contempt dated August 7, 1979 alleging that Petra, conspiring with several other persons and without Fulgencio's consent harvested the corn products of the land already adjudicated to the latter; and (b) Motion to Demolish the House Subject of Execution, dated September 6, 1979, praying for the issuance of a demolition order.

After the filing of pleadings and counterpleadings relative to the Motion for Contempt, the lower court, on November 6, 1979, issued an order which, in part, reads:

"A careful perusal of the decision of this Court reveal that respondent Gabaya was alleged as a tenant and not an owner of the land in question, to which the Court decided in favor of the petitioner that respondent Gabaya is a tenant.

"Verily, therefore, respondent Gabaya, being a tenant, has plantations therein planted in good faith for which she is entitled to harvest. The Court could not find its way clear in citing respondent in contempt of court for nothing was made mentioned in the decision of the court or in the evidence presented on the sharing basis. All that was alleged is that respondent Gabaya is a tenant. The court cannot surmise the sharing system agreed upon, if there was any.

"Moreover, if the Court allowed respondent Gabaya to remove his (sic) house which is an improvement introduced by him in good faith in the same breath, then he can harvest the improvement introduced by him in the form of corn products.

"WHEREFORE, in view of all the foregoing, the Motion for Contempt is, as it is hereby DENIED."

Anent Fulgencio's motion to demolish the house of Petra, the lower court, on December 13, 1979, granted Fulgencio's prayer in an order which reads, thus:

"While it is true that in the dispositive portion of the decision of the Court, defendant has the alternative obligation to remove her house within sixty (60) days from the date of the decision or to pay monthly rental of P100.00 for the use of the premises, said decision could not be availed of simultaneously. Should defendant wish to remove her house, she should have done so within sixty (60) days from the date of the decision and considering that he failed to do so within the time limit mentioned in the decision, she has to pay a monthly rental of P100.00 which she like-wise failed to pay. Any of the alternatives were not availed of by the defendant.

"To stop the vicious circle of avoiding one alternative and later refusing to perform said alternative only again to avail of the other, the Court hereby orders the demolition of defendant's house within ten (10) days from receipt of this Order."

On January 15, 1980, Petra moved for a reconsideration of the demolition order of December 13, 1979. She alluded to the Order dated November 6, 1979, quoted above, particularly the statement therein that she "is a tenant" and stated that such order had "become final". She argued that since she is a tenant, she is entitled to a

homelot pursuant to the provisions of R.A. No. 3844 and R.A. 1199. In the rejoinder which she filed in reply to Fulgencio's opposition to the motion, Petra argued, additionally, that "final judgments may be changed" citing Our ruling in *City of Butuan vs. Ortiz, et al.*, L-18054, December 22, 1961. Further pleadings and counterpleadings were filed until the lower court, on February 7, 1980, denied the motion for reconsideration in an order which, in part, read:

"The main case in this entitled case has already become final wherein Petra Gabaya was ad-judged not as a tenant. The grounds relied upon by the movant were sentences and I quote: 'to which the Court decided in favor of the petition-er that respondent Gabaya is a tenant', and 'Verily therefore respondent Gabaya being a tenant xxx' which were inadvertently placed which escaped the attention of the Presiding Judge.

"The sentence adverted to should read to wit: 'to which the Court decided in favor of the peti-tioner that respondent Gabaya is NOT a tenant' and 'Verily therefore respondent Gabaya being NOT a tenant x x x.'"

Alleging that the respondent court acted "in excess of its or his jurisdiction, or with grave abuse of discretion" in reversing the Order of November 6, 1979, Petra filed the instant petition. She prayed for the annulment of the lower court's order dated February 7, 1980. On April 21, 1980, this Court issued a temporary restraining order, likewise prayed for in the petition, restraining the court a quo from further proceeding with Civil Case No. R-15973 and from demolishing the house of Petra Gabaya.

The basic issue presented by the petition is whether the final and executory judgment in Civil Case No. R-15973 wherein it was declared that Petra is NOT a tenant may be altered by a subsequent order disposing of a motion for contempt - filed on the allegation that there was an intention to defy the final judgment - stating that Petra IS a tenant.

The issue is neither novel nor controversial.

In *Marasigan vs. Ronquillo*,^[1] it was categorically stated that the rule is absolute that after a judgment becomes final, by the expiration of the period provided by the rules within which it so becomes, no further amendment or correction can be made by the court except for clerical errors or mistakes. And such final judgment is conclusive not only as to every matter which was offered and received to sustain or defeat the claim or demand but as to any other admissible matter which must have been offered for that purpose.^[2] In the earlier case of *Contreras and Ginco vs. Felix and China Banking Corp., Inc.*,^[3] it was stated that the rule must be adhered to regardless of any possible injustice in a particular case for "(W)e have to subordinate the equity of a particular situation to the over-mastering need of certainty and immutability of judicial pronouncements."

This rule on the immutability of final and executory judgments has remained valid through the years^[4] and the Court, quite recently, had occasion to re-state both rule and reason in *Fariscal Vda. de Emnas vs. Emnas*,^[5] thus:

"After judgment has become final, no additions can be made thereto, and nothing can be done therewith except its execution; otherwise, there would be no end to litigations, thus setting at naught the main role of courts of justice, which is to assist in the enforcement of the rule of law and the maintenance of peace and order by setting justiciable controversies with finality."

In the case at bar, then, the court a quo could no longer, after the finality of its judgment unequivocally ruling against Petra's contention that she is a tenant, reverse such findings in an Order and state that Petra is a tenant. The Court, by then, had already lost jurisdiction over its judgment and the Order dated November 6, 1979, to the extent that it declares Petra a tenant, is null and void. And that being so, it may, as it was treated by the court a quo as shown in its subsequent order dated February 7, 1980 be regarded as a lawless thing and ignored whenever it exhibits its head.^[6] That order of February 7, 1980 restating the pronouncement in the final decision to the effect that Petra is NOT a tenant, in the process nullifying what has been contrarily stated in the November 6,

1979 Order, cannot be tainted with grave abuse of discretion. The action of the court a quo was demanded by settled jurisprudence.

It must be noted, moreover, that Petra, after unsuccessfully establishing her tenancy claim in the lower court, sought the annulment or modification of the proceedings had thereat in a petition for certiorari before the Court of Appeals.[7] It ruled, among others, that the denial by the lower court of her motion to have the case referred back to the DAR for a reinvestigation of the tenancy question was not correctible in a certiorari petition. This decision became final and executory on October 27, 1978. It is thus clear that it was not only the non-existence of a tenancy relationship between Fulgencio and Petra which had been finally determined; the propriety of such determination had likewise been settled. There is greater reason, then, to bar petitioner Petra from reviving the tenancy issue which, at bottom, is the object of her insistence on the efficacy of the November 10, 1979 order.

Petitioner Petra, however, maintaining the position taken in the proceedings that led to the instant petition, argues that, on the authority of *City of Butuan vs. Ortiz*,[8] "final judgments may be changed." She quotes a portion of the decision thuswise:

"x x x 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."

This argument proceeds, at the very least, from a mistaken notion of the nature and import of the ruling in *City of Butuan*. [9] Plainly and clearly, the cited decision speaks of facts and circumstances transpiring after the finality of the judgment, of supervening causes, which render the execution of the judgment impossible or unjust such that the interested party may ask the court to alter or modify the judgment to harmonize the same with justice and the supervening facts.

Properly appreciated, this ruling refers to the jurisdiction of the court to execute its judgment not to the jurisdiction over that judgment, to amend, modify or alter the same. The former continues even after the judgment has become final for the purpose of enforcement of judgment; that latter terminates when the judgment becomes final.[10] And it pertains not to the jurisprudentially settled rule on the immutability of final and executory judgments but to the rule stating that the 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.[11] It is an exception to the general principle that the writ of execution must conform to the judgment which is to be executed as it may not vary the terms of the judgment it seeks to enforce.[12]

In this case, petitioner Petra cannot place herself within the *City of Butuan* ruling. Undoubtedly, there are no supervening events that would warrant a modification of the judgment in Civil Case No. R-15973. And she did not, because she cannot, ask the court for such a modification. As just pointed out, the matter of alleged tenancy relationship between her and Fulgencio, far from being a supervening circumstance, was the central issue which had been finally resolved not only by the court a quo but by the Court of Appeals as well in their respective judgments.

WHEREFORE, finding no merit in the petition, the same is hereby DISMISSED. The temporary restraining order issued on April 21, 1980 is hereby LIFTED and petitioner's motion for contempt dated August 21, 1980 and motion for further clarification dated December 17, 1980, both of which were predicated on the April 21, 1980 restraining order are hereby DENIED for having become moot and academic. Costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, Ericta, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] L-5810, January 18, 1954, 94 Phil. 237.

[2] Miranda vs. Dominguez, L-7044, Jan. 31, 1955, 96 Phil. 526.

[3] 44 O.G. 4306.

[4] See 2 Moran's Comments on the Rules of Court, 1970 Ed., p. 205, citing, aside from Marasigan and Ronquillo; Manaois-Salonga v. Natividad, L-13927, February 29, 1960; Galves v. PLDT, L-16370, Oct. 31, 1961, 35 SCRA 418.

[5] L-26095, Jan. 28, 1980, 95 SCRA 471.

[6] Ibid., p. 475 citing other cases.

[7] Rollo, pp. 78-79.

[8] L-18054, Dec. 22, 1961, 113 Phil. 636.

[9] The ruling in De la Costa vs. Cleofas (in turn city other cases) was quoted. See also City of Cebu vs. Mendoza, L-26321, Aug. 19, 1975, 66 SCRA 174.

[10] The delineation of these two concepts in the law of procedure was made in Miranda vs. Tiangco, L-7044, Jan. 31, 1955, 96 Phil. 526.

[11] Da la Costa vs. Cleofas, 67 Phil. 686, 692.

[12] See Villoria vs. Piccio, 95 Phil. 802.

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