

GENARO CUBAR, FLORA CUBAR, NARCISO CUBAR, CRESENCIA CUBAR, ROSALIO CUBAR, PETRA T. VDA. DE CUBAR, FELOMINO CUBAR, FAUSTO CUBAR, ET AL., PETITIONERS, VS. HON. RAFAEL T. MENDOZA, ...

G.R. No. 55035. February 23, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Special civil action of certiorari and prohibition with writ of preliminary injunction to annul and set aside the Order dated January 28, 1980 of the defunct Court of First Instance of Cebu, Branch VI, herein respondent judge presiding, setting aside the Order for the issuance of a writ of execution issued by Branch V of said Court in Civil Case No. R-15607 on January 8, 1980, and to restrain and enjoin respondent judge from further proceeding with the case in any manner until further orders from this Court.

On September 22, 1976, herein petitioners filed a complaint with the Court of First Instance of Cebu, assigned to Branch V thereof, then presided by Judge Mariano A. Zosa, docketed as Civil Case No. R-15607, for the nullification of certain documents alleged in the complaint, which they, claiming to be "illiterate mountain people", supposedly had signed upon the representations of the defendants, herein private respondents, that what they were signing was a right of way in favor of the government over their lands for the construction of a road leading to a mining site, with the inducement that once operational, each landowner shall be entitled to a royalty of P.30 per ton of minerals loaded in trucks passing through their respective lots, which documents, however, turned out to be alleged authorizations for entry into their lots by private respondents for the purpose of exploring rich rock phosphate deposits, and on the basis of said documents, private respondents were granted by the Bureau of Mines permits to exploit and develop the mineral resources in petitioners' land to the exclusion of the latter.

In their answer, private respondents specifically denied the material allegations thereof, claiming that the questioned documents were freely and voluntarily executed by the petitioners.

After hearing on the merits and the case submitted for decision, the trial court rendered judgment on October 1, 1979 declaring the subject documents null and void, and adjudging private respondents liable to pay damages to petitioners. A copy of said decision was served to Atty. Romeo Gonzaga, private respondents' counsel of record and was received by his wife at his given address on November 23, 1979.

No appeal having been duly perfected within the reglementary period provided by law, petitioners filed on January 7, 1980 a motion for the issuance of a writ of execution, which was granted by the trial court in its Order of January 8, 1980.

On January 12, 1980 or four days after the issuance of the order of execution, Branch V became vacant with the appointment of Judge Zosa to the Court of Appeals.

On January 14, 1980, private respondents, through a new lawyer, Atty. Ponciano H. Alivio, filed a motion for

reconsideration of the Order of January 8, 1980 and to quash the writ of execution, on the ground that the decision is not yet final and executory for lack of valid service thereof. Said motion was opposed by petitioners, who insisted that said decision is already final and executory and Atty. Alivio has no personality to file said motion for want of formal substitution of counsel as required by the Rules.

Since Branch V was then vacant, the motion for reconsideration was resolved by Branch VI, presided over by the respondent judge who, on January 28, 1980, issued the herein assailed Order setting aside the Order of execution and quashing the writ issued thereunder.

Petitioners' motion for reconsideration filed against the above order of respondent judge having been denied, this petition was filed.

We find the petition to be meritorious. That the decision of the trial court was received by the wife of Atty. Romeo Gonzaga, private respondents' counsel of record at his given address on November 23, 1979, is not disputed. It is likewise not disputed that said wife has been receiving prior notices of the case for her husband at the office of the latter, who had always acted as if he had received said notices himself for he had duly complied therewith. With these facts, no other ruling can be had but that the service of the decision in question is valid and binding. It is fully being in accordance with Rule 13, Section 4, on personal service, said wife being of sufficient discretion to receive notice of final judgment.

Private respondents argue that said service is not valid because Atty. Gonzaga had left Cebu City, his address of record, and has resided in Legaspi City. It is already well-settled rule that when a party is represented by counsel, notice should be made upon the counsel of record^[1] at his given address, to which notices of all kind emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.^[2] Petitioner's argument, likewise, fails to consider the need of observing a legal formality before a counsel of record may be considered relieved of his responsibility as such counsel on account of withdrawal. This legal formality is that a lawyer's withdrawal as counsel must be made in a formal petition filed in the case, without which, notice of judgment rendered in the case served on the counsel of record is, for all legal purposes, notice to the client, the date of receipt of which is considered the starting point from which the period of appeal prescribed by law shall begin to run.^[3] Not having withdrawn formally as counsel in the case, Atty. Romeo Gonzaga continued to be the counsel of record^[4] and was, for all legal purposes, private respondents' attorney upon whom the court's processes may be served, as they were in fact duly served.

Consequently, the decision of the trial court, copy of which was served upon respondents' counsel on November 23, 1979, is already final and executory at the time the order of execution was issued on January 8, 1980, no appeal having been taken therefrom within the reglementary period provided by law. Time and again, this court has ruled that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the granting of execution becomes a ministerial duty of the court.^[5] Therefore, respondent judge gravely abused his discretion in issuing the herein questioned order, in the absence of any justification, both legal and factual, that would warrant the stay of execution.

The claim of private respondents that the present petition was filed late 2 months and 29 days after the assailed order was issued, is without any merit. This is a special civil action of certiorari and prohibition which may be filed within a reasonable period, no time frame for its filing having been fixed by Rule 65, Rules of Court.

WHEREFORE, the writ of certiorari is granted and the questioned Order of respondent judge is hereby annulled and set aside. The writ of prohibition is likewise granted and respondent judge or whoever would be appointed to the appropriate branch of the Regional Trial Court, prohibited from acting in any wise or form except to order execution of the subject decision. The temporary restraining order heretofore issued is hereby made permanent.

Costs against private respondents.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
Aquino, J., on leave.

[1] Jalover v. Ytoriaga, 80 SCRA 100 & cases cited therein.

[2] Lopez v. De los Reyes, 31 SCRA 215.

[3] Baquiran v. Court of Appeals, 2 SCRA 873.

[4] Don Lino Gutierrez & Sons Inc. v. Court of Appeals, 61 SCRA 87.

[5] Far Eastern Surety & Insurance Company, Inc. v. Vda. de Hernandez, 67 SCRA 256.

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