

**ELISEA G. ROXAS, PETITIONER, VS. COURT OF APPEALS, AND
CLARENCE PIMENTEL, RESPONDENTS.***G.R. No. 56960. January 28, 1988*

Ponente: NARVASA, J.

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Presented for resolution in this petition for review on certiorari of a decision of the Court of Appeals, which set aside a Trial Court's order of execution pending appeal, is the question of whether or not good reasons exist to justify that particular order, in accordance with Section 2, Rule 39 of the Rules of Court.

What gave rise to this litigation was a general power of attorney made on October 28, 1973 by Elisea G. Roxas authorizing Edgardo Jose, among other things, "(t)o buy or sell, hire or lease, mortgage or otherwise hypothecate lands, tenements, and hereditaments and other forms of real property, upon such terms and conditions and under covenant as said attorney shall deem fit and proper."[1]

On the strength of this general power, Edgardo Jose sold to Clarence Pimentel on May 30, 1975, Roxas' house and lot at No. 11 President Avenue, BF Homes, Paranaque, Metro Manila. The deed of sale stated the consideration to be P380,000.00 plus Pimentel's assumption of the mortgage constituted on the property in favor of Banco Filipino (securing an obligation in the sum of P83,000.00). The consideration was payable by Pimentel partly in money— P180,000.00 in cash — and partly in property — Pimentel's own house and lot, valued at P200,000.00, which was transferred to Roxas, Jose's principal, together with the mortgage obligation burdening said property in the amount of P50,000.00.[2]The agreement was consummated. Pimentel obtained title to the property in his name, took possession thereof, and introduced improvements thereon.[3]

The transaction took place while Roxas was in the United States. On July 26, 1975, shortly upon her return to the Philippines, she revoked Jose's general power of attorney and then, by her attorney's letter dated November 28, 1975, demanded from Jose the delivery of the cash proceeds of the sale, as well as the chattels and effects she had left in her house.[4] But Jose evidently failed to comply with Roxas' demand.

On March 29, 1976, Roxas instituted suit to annul the sale, founded on Jose's alleged lack of authority to sell.[5] Her complaint was originally against Jose and Pimentel, but was subsequently amended to implead Banco Filipino and the Register of Deeds of Rizal as additional defendants: Banco Filipino for releasing the owner's duplicate certificate of title to Clarence Pimentel; and the Register of Deeds, for having allowed registration of the deed of sale and the issuance of title to Pimentel.[6] Answer was in due course filed by the defendants, affirming the validity of the transaction.[7]

The defendants asserted, and Pimentel testified at the trial, among other things, that prior to the execution of the deed of sale, Roxas had been informed while in America of the terms thereof and had approved them; that on her return to this country she had confirmed the sale through two documents: one entitled "Acknowledgement and/or Confirmation" dated July 29, 1975 and the other, "Receipt Confirmation and/or Acknowledgment" dated August 17, 1975; and that her ratification had been made indubitable by her counsel's aforementioned letter of November

28, 1975 demanding from Jose delivery or accounting of the proceeds of the sale.[8]

The Trial Court's verdict went against the defendants.[9] It annulled the deed of sale, decreed cancellation of Pimentel's title and the issuance of a new one in Roxas' favor, ordered Pimentel to vacate the property and pay damages, and directed Banco Filipino to grant Roxas a period of 6 months from finality of the decision to update her accounts. These dispositions were predicated on the Court's findings that: (1) the transaction was not a sale but a barter,[10] hence not covered by Jose's general power, which speaks only of the authority to sell; (2) there was so great a disparity in the values of the properties exchanged that, even with the additional cash payment by Pimentel of P80,000.00, the barter was unconscionable in contemplation of Articles 1887[11] and 1888[12] of the Civil Code;[13] and (3) there had actually been no confirmation or ratification of the sale by Roxas.

Pimentel appealed to the Court of Appeals. For her part, Roxas filed a motion for partial execution pending appeal. This the Trial Court granted over Pimentel's opposition, by Order dated January 2, 1980 (and amended, January 11, 1980).[14] It ordered execution specifically with respect to that portion of the judgment which (1) annulled the deed of sale, (2) ordered cancellation of Pimentel's title and the issuance of a new one in Roxas' favor, and (3) directed Pimentel to vacate the property. In justification of the order for immediate execution, the Court said:

"The plaintiff has no house to live on at present and that she takes temporary shelter in the houses of her relatives causing much humiliation to her and much inconvenience to her relatives, the appeal being interposed by defendants would be, at best, pro-forma and its purpose is merely to delay the case inasmuch as the rights of plaintiff are clear as adjudicated in the decision; and that to answer for whatever damages may accrue, to defendant by reason of the immediate execution of the decision, the plaintiff is hereby required to post a bond of P100,000.00."

Pimentel promptly filed in the Court of Appeals a petition for certiorari with application for preliminary injunction, seeking nullification of said order and writ of execution, and their provisional inhibition pending judgment.[15]

On March 27, 1981 the Court of Appeals rendered judgment setting aside the challenged order and writ of immediate execution because issued in grave abuse of discretion.[16] The Appellate Court declared as gravely in error the Trial Court's holding that Pimentel's appeal was "at best, pro-forma." It moreover said that:

"It should be stressed here that petitioner is the present registered owner and possessor of the subject properties and in fact admittedly had introduced substantial improvements therein, and for the respondent court now to order the transfer of ownership and possession of the same in favor of the private respondent during the pendency of the appeal, seasonably taken by the petitioner, and while said properties legally remain in the petitioner's name, would in effect pre-judge or pre-empt the merits of the appeal, the determination of which resides in this Court. And until such title or registration in the name of the petitioner or this sale is declared null and void by final judgment, the same is presumed to be valid and should be protected and upheld by the courts; and neither is the filing of a bond by private respondent enough to compensate for the harm or injury done to the petitioner with the untimely transfer of the ownership and possession of the subject properties to herein private respondent."

Roxas now asks this Court to reverse the Appellate Court's decision. In the petition for review on certiorari filed by Roxas with this Court, she takes issue with the Appellate Court's findings that (1) it was grave abuse of discretion for the Trial Court to have adjudged Pimentel's appeal as being "at best pro-forma"; (2) in declaring that the validity of the deed of sale was a proper issue in Pimentel's appeal; (3) in according full faith and credit to Pimentel's title until set aside by final judgment; (4) in not acknowledging the urgency of her need for a residential house; and (5) in not considering the posting of a bond as sufficient reason to warrant execution

pending appeal, invoking *City of Manila vs. C.A.*, 72 SCRA 98. Roxas argues that Pimentel's appeal had been correctly characterized as "pro-forma" since his own admissions were the bases of the Trial Court's conclusions (as to the precise amount and nature of the consideration), and he could not disclaim those admissions on appeal; and success of his appeal was also precluded by the further fact that there was no specific and convincing evidence demonstrating the validity of the transaction. Pimentel's title, she adds, should not have been accorded any credit because obtained in bad faith, with awareness by Pimentel of her objections; and her need for a residential house should have been deemed akin to a need for support or for education, which have been considered as adequate ground for immediate execution in *De Leon v. Soriano*, 95 Phil. 806 and *People's Bank v. San Jose*, 96 Phil. 895.

The errors ascribed to the Court of Appeals are inexistent. The petition for review lacks merit. It will be denied.

The rule set forth in Section 2, Rule 39 of the Rules is that immediate execution may be ordered by the trial court even before the expiration of the time to appeal, upon good reasons to be stated in a special order. And while determination of the existence of good reasons lies in the court's discretion, that determination may be nullified upon a showing that it was made with grave abuse of discretion.

Now, in the case at bar, the Court a quo opined that good reasons did exist to justify immediate execution, namely: (1) the losing party's appeal was pro-forma and dilatory; (2) the prevailing party had no house to live in; and (3) a sufficient bond had been posted to answer for such damages as might be caused by the execution of the judgment in the event of its subsequent reversal on appeal.

The Trial Court was convinced of the lack of merit of Pimentel's appeal because of its perception that "the rights of plaintiff are clear as adjudicated in the decision," that adjudication being based on the admissions of Pimentel himself. It is quite true that Pimentel did admit ceding his house and lot to Roxas as Part of the consideration of P380,000.00 for the sale. But it is also true, and this has apparently escaped the Trial Court's attention completely, that evidence had been presented by the defendants tending to establish that Roxas had ratified the transaction. There are no admissions anent this issue of ratification; it is an issue legitimately arising from the pleadings and the evidence; it is, obviously, an issue that may properly be raised and ventilated on appeal, involving the examination and evaluation of the testimonial and documentary proofs relevant thereto; and it is one that Pimentel evidently intends to so set up on appeal. That the Trial Court has rejected the defendants' asserted theory of ratification — choosing to accord superior credit to Roxas' oral disclaimer as against Pimentel's documentary evidence — does not import that the issue has been irreversibly resolved. That resolution is not at all conclusive, and is reviewable upon timely appeal which, it should be stressed, may be taken by the aggrieved party as a matter of right.^[17] It is therefore incorrect to brand Pimentel's appeal as dilatory or "pro-forma. In doing so, the Trial Court ignored quite without cause and in derogation of Pimentel's right of appeal, the existence of a substantial issue litigable in appellate proceedings, and hence acted with grave abuse of discretion.

There is, moreover, the matter of the liability of Roxas' attorney- in-fact, Edgardo Jose, particularly as regards the cash payments delivered to and received by him, and in relation to his co- party, Pimentel, which the Trial Court has apparently overlooked, but which, clearly, calls for adjudication and may therefore, properly be raised and resolved on appeal.

Also quite capricious was the Trial Court's acceptance of Roxas' purported need for shelter as a good ground for immediate execution. She had undeniably put up for sale or lease the house which she now claims to urgently need for shelter. She is far from being a pauper; on the contrary, all indications are that she is a person of not inconsiderable means. Her situation cannot in any sense be regarded as analogous to that of a person in need of support. Her plea for shelter is in the premises an exaggeration, exposed as such by the circumstances on record,

and thus should not have been taken as a reason for immediate execution.

The last question that has to be addressed in the instant appeal is whether or not the filing of a bond, without more, can be considered a good reason to justify immediate execution under Section 2 of Rule 39.

Execution pending appeal in accordance with Section 2 of Rule 39 is, of course, the exception.[18] Normally, execution of a judgment should not be had until and unless it has become final and executory — i.e., the right of appeal has been renounced or waived, the period for appeal has lapsed without an appeal having been taken, or appeal having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin — in which case, execution "shall issue as a matter of right." [19]

On the other hand, when the period of appeal has not expired, execution of the judgment should not be allowed, save only if there be good reasons therefor, in the court's discretion. "As provided in Section 2, Rule 39 of the *** Rules ***, the existence of good reasons is what confers discretionary power on a Court *** to issue a writ of execution pending appeal. The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment." [20]

It is not intended obviously that execution pending appeal shall issue as a matter of course. "Good reasons," special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a "good reason" would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law.

There are, to be sure, statements in some of this Court's decisions which do generate the perception that "the filing of the bond by the successful party is a good reason for ordering execution.:[21] Petitioner Roxas herself cites *City of Manila v. CA* [22] to support her postulation to this effect. From that case — which adverts to *Hacienda Navarra, Inc. v. Labrador and People's Bank, etc, v, San Jose* [23]- — she quotes the following:

"From what has been said, it is thus clear that the Court of Appeals erred in not considering the city's posting of a bond as a good and special reason to justify execution pending appeal."

But sight should not be lost of the factual context in which the quoted statement was made. In that case, the City of Manila had succeeded in obtaining judgment for the recovery of a piece of land it had lent to the Metropolitan Theater, and immediate execution became imperative because the theater was insolvent and there was imminent danger of its creditor's foreclosing a mortgage on the property. This combination of circumstances was the dominant consideration which impelled the grant of immediate execution, the requirement of a bond having been imposed merely as an additional factor, no doubt for the protection of the defendant's creditor. In *Hacienda Navarra*, there was a special reason for immediate execution, in addition to the posting of a bond. There, the Court said that "Inasmuch as the purpose in depositing the money is to insure its receipt by the party obtaining a favorable judgment in the above cited civil case, the filing of a sufficient bond for the delivery of said proceeds secures said receipt." And in *People's Bank*, the order involved in the case decreed payment of allowances for the support of one of the heirs of the estate of a deceased person under administration, and the urgent need of the party entitled thereto was the paramount consideration for immediate execution, not the filing of a bond.

Upon the foregoing considerations, and without need of dealing with the Appellate Court's opinion respecting the presumptive validity and efficacy of Pimentel's title to the property, which in any case appears upon its face to be correct, petitioner's appeal cannot succeed.

WHEREFORE, the petition for review on certiorari is dismissed, and the judgment subject thereof is affirmed, with costs against petitioner. This judgment is immediately executory, and no motion for extension of time to file motion for reconsideration will be entertained.

Teehankee, C.J., Cruz, Paras,* and Gancayco, JJ., concur.

[1] Rollo, p. 56.

[2] Id., pp. 56-57.

[3] Id., pp. 54-56.

[4] Id., pp. 161-162.

[5] Id., p. 54.

[6] Id., pp. 12, 150.

[7] Id., p. 54.

[8] Id., pp. 55-56, 64.

[9] The judgment is dated November 13, 1979; Rollo, pp. 54-67.

[10] According to Article 1468 of the Civil Code, "If the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of the money or its equivalent; otherwise it is a sale."

[11] Art. 1887 provides that "In the execution of the agency, the agent shall act in accordance with the instructions of the principal. In default thereof, he shall do all that a good father of a family would do, as required by the nature of the business."

[12] Art. 1888 states that "An agent shall not carry out an agency if its execution would manifestly result in loss or damage to the principal."

[13] N.B. The Trial Court noted that Roxas' house was a big one, with such facilities as a swimming pool, servants' quarters, and a garage. On the otherhand, Pimentel's was by his own admission, a small one. Roxas' lot contained an area of 1,094 square meters; Pimentel's only 383 square meters.

[14] Rollo pp. 85-87.

[15] CA-G.R. No. SP-10371, Rollo, pp. 112-121.

[16] Rollo, pp. 123-126; German. J., ponente; Gancayco and Patajo, JJ., concurring.

[17] Appeal by writ of error under Rule 41 of the Rules of Court is a matter of right, as distinguished from appeal by certiorari under Rule 45. cognizance of which by the Supreme Court lies in its discretion, and is never a matter of right.

[18] See, also. Sec. 4, Rule 39.

[19] Sec. 1. Rule 39 in relation to Sec. 1 1, Rule 51.

[20] *Jaca v. Davao Lumber Co.*, 113 SCRA 107, 121.

[21] See, e.g., Moran, Comments on the Rules of Court, 1979 ed., Vol. 2, p. 256, citing *Hacienda Navarra, Inc. v. Labrador, et al.*, 65 Phil. 536; *The People's Bank and Trust Co. y. San Jose, et al.*, L-7692, April 29, 1955, 96 Phil. 895; *Rodriguez v. Court of Appeals*, May 23, 1959. 105 Phil. 777.

[22] 72 SCRA 98.

[23] See footnote 21, *supra*.

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