

GENARO NOLASCO AND ANGELITA ORBIGO, PETITIONERS, VS. HON. TEODORO K. BELTRAN, THE PROVINCIAL SHERIFF OF OCCIDENTAL MINDORO, TEOFILO LACIBAR, JR. AND SUSANA LAQUIHON, RESPONDENTS.

G.R. No. 58313. December 08, 1988

Ponente: REGALADO, J.

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REGALADO, J.:

In this special civil action for certiorari and prohibition, petitioners seek the quashal of the second alias writ of execution issued in Civil Case No. R-186, entitled "Teofilo Lacibar, et al. vs. Genaro Nolasco, et al.", of the former Court of First Instance of Occidental Mindoro, Branch II, presided over by respondent Judge Teodoro K. Beltran who ordered the issuance of said writ and which was partially enforced by the respondent provincial sheriff.

On application of petitioners, a temporary restraining order was issued by this Court on October 14, 1981 enjoining respondents from enforcing said second alias writ of execution, dated March 16, 1981, and the Order, dated July 27, 1981, both issued by respondent judge in said Civil Case No. R-186.[1]

The record discloses that on March 13, 1971, petitioner Genaro Nolasco and private respondent Teofilo Lacibar, Jr. entered into an agreement[2] wherein the said private respondent, as Party of the First Part, agreed to provide the raw land for subdivision containing an area of 27,098 square meters, more or less, situated in Bo. El Progreso, San Jose, Occidental Mindoro, and covered by Transfer Certificate of Title No. T-3134; while the aforementioned petitioner, as Party of the Second Part, undertook to pay for the cost of survey and monumenting of the lots incident to the subdivision of said parcel of land and all other expenses which may be incurred in the issuance of titles to the land for subdivision, aside from other specified costs for developing the land.[3]

Two other stipulations in said agreement bear relevancy to the issues hereinafter to be discussed, viz.:

"b. The Proceeds of sale, either for cash or installment shall be divided equally between the Party of the First Part and the Party of the Second Part after deducting any agent's commission;

"c. The Party of the Second Part will advance or pay any obligation of the Party of the First Part pertaining to the said land in order to expedite or free the land in question from any existing obligations, or liens and encumbrances as annotated in the said title; provided however, that any amount advanced by the Party of the Second Part shall be deducted from his share due on the land."[4]

Said petitioner having defaulted in his undertakings, the private respondent filed the aforesaid case for rescission, liquidation and damages. An amicable settlement was subsequently agreed upon by the parties and on June 2, 1976, the trial court rendered the following judgment on compromise:

"The parties assisted by their respective counsels, submitted their amicable settlement, which reads as follows:

'1. That the defendants have to deliver to the plaintiffs the sum of P10,000.00, P5,000.00 of which shall be delivered within ten (10) days from today and the balance of P5,000.00 shall be delivered anytime within the period of six (6) months from the date hereof;

'2. The defendants have agreed to resume the development of the land in question into a subdivision as originally intended to after six (6) months from date and agree to complete the subdivision within one year therefrom;

'3. That the defendants agree to settle in full the GSIS obligation of the property within the period of improvement as provided for in paragraph 2 hereof;

'4. That in consideration of the foregoing, the parties agree to waive any claim or counterclaim against each other.'

"WHEREFORE, the aforequoted amicable settlement is hereby approved and judgment is hereby rendered in accordance with the terms and conditions thereof without cost." [5]

Petitioners again failed to comply with the terms of said judgment, hence the lower court, after issuing a writ of execution which was returned unsatisfied, issued a first alias writ of execution which resulted in the satisfaction of the P10,000.00 stated in Paragraph 1 of the judgment, [6] without any action taken on the obligation with the Government Service Insurance System (GSIS) referred to in Paragraph 3 thereof.

On March 16, 1981, the court a quo issued a second alias writ of execution, pursuant to which the respondent provincial sheriff garnished the sum of P30,000.00 which was in the possession of the Philippine National Bank (PNB), Mangarin Branch, San Jose, Occidental Mindoro for the credit of petitioner Nolasco. On April 11, 1981, said petitioner filed a motion to lift the garnishment and to quash the second alias writ of execution but the same was denied by the lower court in an order, dated July 27, 1981, which at the same time ordered the manager of aforesaid bank to deliver the said amount of P30,000.00 to the respondent provincial sheriff. Petitioners' motion for reconsideration having proved unavailing, they now seek relief through the two writs herein prayed for. [7]

1. The primary inquiry should necessarily be directed to the validity of the said writ and the propriety of its issuance, assayed on the objection that grave abuse of discretion attended the same.

Even a cursory perusal of the controverted writ [8] shows that the aforequoted judgment on compromise was merely transcribed or reproduced in what purports to be a second alias writ of execution, followed by the usual directives for the satisfaction of the same plus the sheriff's fees and expenses and the submission of a return on his proceedings. Yet, as will readily be noted, while the first paragraph thereof speaks of sums certain, that is, P10,000.00 payable in two installments of P5,000.00 each, the third paragraph which requires the therein defendants "to settle in full the GSIS obligation of the property" [9] does not state the amount of the obligation. In fact, what the sheriff did, according to his own return on the writ, [10] was to arrive at that amount by obtaining zerox copies of GSIS receipts from the plaintiffs, without the defendants being afforded an opportunity to concur in or to contest the same, thus:

"5. That, on the other hand, plaintiff's claim for the unsatisfied amount which is still required in the said writ of execution (aside from the sum of P10,000.00 which has already been satisfied) is P87,011.47, as evidenced by zerox copies of the GSIS Receipts Nos. 811465, 811458 and 402915 submitted to this office by the plaintiffs;" [11]

This was the basis for the levy by the respondent sheriff upon the P30,000.00 credited to the defendant in the PNB, Mangarin Branch.

Sec. 8, Rule 39 of the Rules of Court, on the matter of the issuance, form and contents of a writ of execution,

specifically requires that the writ "must intelligently refer to such judgment or order, stating x x x the amount actually due thereon if it be for the money". This is but a statutory articulation of the general principle that an execution should recite the amount due thereon with a reasonable degree of accuracy.[12]

In the case at bar, as already stated, for want of quantification in the writ, the respondent sheriff sought to remedy the lacuna by himself determining the amount of P87,011.47 through receipts submitted by herein private respondents, which also necessarily involved his own unilateral determination of which receipts constituted or reflected the GSIS obligation of the property. This is a grave procedural error which invalidates all proceedings involved in the executory process complained of.

It is true that a judgment is not confined to what appears upon the face of the decision but also to those necessarily included therein or necessary thereto. However, the determination of what is necessarily included in or necessary to the judgment is a function and prerogative vested in the court and not in the sheriff.

Verily, the herein respondents completely disregarded the proscription of this Court when it declared that —

"Leaving to the sheriff, as held by the Court of Appeals, the determination of the exact amount due under the Writ would be tantamount to vesting such officer with judicial powers. He would have to receive evidence to determine the exact amount owing. In his hands would be placed a broad discretion that can only lead to delay and open the door to possible abuse. The orderly administration of justice requires that the amount on execution be determined judicially and the duties of the sheriff confined to purely ministerial ones."[13]

2. It is also pertinent to mention that the quashal of said writ is further justified by the fact that there has been a change in the situation of the parties thereto which would render execution inequitable.[14] As earlier pointed out, the parties had agreed on an equal sharing arrangement in the sales proceeds from their venture, with the petitioner having agreed to advance or pay any obligation of the private respondent pertaining to the land involved in order to free the same from any existing obligations, liens or encumbrances, provided that any amount thus advanced by the petitioner shall be deducted from his share in said sales. Obviously, the obligation which the petitioner undertook to pay, and which is reiterated in the judgment on compromise, is the obligation to the GSIS.

However, according to the petitioner,[15] and this is not disputed, the private respondent had long since repossessed the land and their subdivision project had consequently been terminated, without any sale of lots having been effected. It would, therefore, be inequitable and unjust to require the petitioner to pay private respondent's obligation to the GSIS, since any such payment could no longer be deducted or recovered from petitioner's expected share in the sales of subdivision lots as originally contemplated by the parties. That projected participation in the sales constituted the consideration for petitioner's assumption of the obligation to the GSIS. Consequently, such failure of consideration reciprocally exculpates and relieves the petitioner from his aforesaid undertaking.

3. Even the ownership of the P30,000.00 and, consequently, whether it was leviable were in issue when respondent sheriff garnished the same on March 25, 1981.

As explained by petitioner,[16] the amount had been delivered by him to the PNB, Mangarin Branch as down payment on the repurchase price of his house and lot which had been sold at foreclosure sale in favor of the bank. The record shows that the bank initially demurred in implementing the repurchase, basically on a disagreement as to the correct amount of the repurchase price, hence petitioner filed a complaint, dated November 17, 1980, docketed as Civil Case No. R-336 of the then Court of First Instance of Occidental Mindoro, Branch II,[17] to compel the bank to allow such repurchase. After the usual exchanges, the parties in said case eventually executed a compromise agreement on July 23, 1981[18] wherein the bank agreed to such repurchase.

These facts were duly brought to the attention of the court a quo, with a copy of said compromise agreement duly submitted to it.[19] With the pendency of said Civil Case No. R-336 wherein, among others, a determination would be made as to whether the P30,000.00 belonged to either the petitioner or the bank, and said amount having already been put under garnishment, the prudent course of action would have been to await the outcome of said case. The order to the bank manager to deliver said amount to the respondent sheriff, obviously for subsequent delivery thereof to private respondents, would be preemptive of or necessarily affect the judicial course of action in Civil Case No. R-336.

As it eventually turned out, judgment on compromise was rendered in said case on February 26, 1982 which upheld, inter alia, the contentions of petitioner Nolasco in his complaint in said case and in his motions in Civil Case No. R-186 that the aforesaid P30,000.00 was actually delivered to and accepted by the bank as down payment for the repurchase of his house and lot,[20] hence the said amount should be treated as that of the bank and not of the petitioners.

3. Parenthetically, contrary to the contention of private respondents, it was not necessary for the bank to file a third-party claim in Civil Case No. R-186 with respect to the P30,000.00 since it was itself the party defendant in Civil Case No. R-336 wherein the determination of its right to said amount was one of the issues for resolution. Besides, any such third-party claim could not be decided in Civil Case No. R-186 but in a separate action.[21]

Also, while it has been held that an appeal may lie from an order for the issuance of a writ of execution in exceptional cases, the accepted rule is that an order granting a writ of execution is not appealable,[22] otherwise there would be no end to litigations since the losing party could indefinitely thwart execution by appealing from every order granting the issuance of the writ. Besides, in the case at bar, the challenge is not directed to the power of the lower court to authorize the issuance of a writ of execution, but the objectionable manner and the object of its enforcement, which are clearly controllable by the writs sought in the present recourse.

WHEREFORE, the second alias writ of execution dated March 16, 1981, and the order, dated July 27, 1981, both issued in Civil Case No. R-186 of the quondam Court of First Instance of Occidental Mindoro, Branch II, and the proceedings conducted pursuant thereto are hereby ANNULLED and SET ASIDE, and the temporary restraining order issued by this Court on October 14, 1981 is hereby made permanent.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Rollo, 56-58

[2] Annex A, Petition.

[3] Rollo, 9.

[4] Ibid., 9-10.

[5] Ibid., 3; Annex B, Petition.

[6] Ibid., 4, 60; Annex C, Petition

[7] Ibid., 4-5, 60-61; Annex G, Petition.

[8] Ibid., 13-14; Annex D, Petition.

[9] See Annex B, Footnote 5, ante.

[10] Annex E, Petition.

[11] Rollo, 15.

[12] 21 Am. Jur., 39; 30 Am. Jur. 2d, 480.

[13] Windor Steel Mfg. Co., Inc., et al. vs. Court of Appeals, et al., 102 SCRA 275, 282 (1981).

[14] Cobb-Perez, et al. vs. Lantin, et al., 23 SCRA 637 (1968); Sandico, et al. vs. Piguing, et al., 42 SCRA 323 (1971).

[15] Petitioner's Reply, 8-9; Rollo, 85-86.

[16] Petition, 3-4; Rollo, 5-6.

[17] Annex J, Petition; Rollo, 38-41.

[18] Annex L, Petition; Rollo, 49-52.

[19] Petition, 4; Rollo, 6.

[20] Memorandum for Petitioners, Rollo, 124-134, with Annex X, Rollo, 135-138.

[21] San Francisco Oil and Paint Co., Inc., et al. vs. Bayer Philippines, Inc. et al., 63 SCRA 355 (1975); Polaris Marketing Corporation vs. Plan, et al., 69 SCRA 93 (1976); Lorenzana vs. Cayetano, et al., 78 SCRA 485 (1977).

[22] J.M. Tuason and Co., Inc. vs. Jaramillo, et al., 9 SCRA 189 (1963), citing Molina vs. De la Riva, 8 Phil. 571 (1907). Manaois-Salonga, et al. vs. Natividad, et al., 107 Phil. 268 (1960).

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