

**JUANITO CARDOZA, PETITIONER, VS. HON. PABLO S. SINGSON,
JUDGE OF BRANCH I OF THE COURT OF FIRST INSTANCE OF
SOUTHERN LEYTE, ROMULO G. MADREDIJO, EXECUTIVE SHERIFF
OF MAASIN, SOU...**

G.R. No. 59284. January 12, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari, prohibition and mandamus with preliminary injunction seeking (a) to annul and set aside the writ of execution dated July 2, 1981 issued by respondent Judge Pablo S. Singson in Civil Case No. 1853 entitled: Juana Corollo, et al. v. Juan Cardoza et al.; (b) to restore to petitioner possession of the three parcels of land in controversy; and (c) to nullify the proceedings leading to the issuance of the order and writ of execution.

It appears on record that in a Motion for Execution of Judgment dated August 29, 1979, Atty. Adelino B. Sitoy as counsel for the plaintiffs in Civil Case No. 1853 entitled: "Juana Corollo, Silvestre Corollo, Severino Corollo, Ponciano Alvarez, Cirilo Alvarez, Candido Alvarez, Leon Ageroy Bustico Agero Demandantes Contra Juan Cardoza, Por si y Como Administrator de los bienes de Eulalia Cardoza, Urbano Cadabos, Magdalena Ordiz y Miguel Galos, Demandados" prayed for the issuance of a writ of execution in the aforesaid case. The motion alleged that a decision dated February 7, 1938 of the Court of First Instance, Maasin, Leyte which was affirmed with modification in the decision of the Court of Appeals in CA G.R. No. 3545 promulgated on December 6, 1939 had long been final and executory. Plaintiffs allegedly acquired knowledge of the appellate court's decision only in November 11, 1974 because before the death of their original counsel in 1944 they were not informed of the said decision. Attached to the motion is the certification dated January 9, 1979 of the Clerk of Court of the Court of First Instance of Southern Leyte to the effect that the record does not show that plaintiffs' counsel Atty. Francisco Zialcita and defendants' counsel were furnished a copy of the decision. Also the Clerk of Court of the Court of Appeals issued a Certification dated August 23, 1979 that the record of the case in C.A. G.R. No. 3545 was burned during the liberation of Manila in 1945 (Rollo, pp. 39-40).

In an order dated September 4, 1979, the trial court directed the plaintiffs movants to submit their memorandum within fifteen days and for the defendants oppositors to file their opposition thereto within the same period from receipt of the memorandum. Plaintiffs submitted their memorandum on August 18, 1980. Defendants did not submit their memorandum nor submitted their reply to written interrogatories (Rollo, pp. 42-45).

On May 4, 1980, plaintiffs' counsel filed a motion to defer the consideration of the motion for execution on the ground that in the April 22, 1980 hearing they allegedly discovered that no entry of judgment had been made and that nobody could tell whether parties or their counsel received a copy of the decision of the Court of Appeals. (Rollo, p. 41). Plaintiffs therefore, prayed for the recording of the decision of the Court of Appeals in the book of entries of Judgment.

On July 6, 1981, the trial court issued an order that "a nunc pro tunc judgment be entered pursuant to the decision of the Court of Appeals in Civil Case No. C.A. G.R. No. 3545". For the satisfaction of the judgment it likewise ordered the issuance of a writ of execution (*Ibid*).

On July 21, 1981, the writ of execution was issued directing the Provincial Sheriff of Southern Leyte or his deputies to enforce and execute the decision of the trial court as modified by the appellate court.

The February 7, 1938 decision of the then Court of First Instance of Leyte reads as follows, viz:

"En sue virtud, se dicta sentencia declaranda a los demandantes con derecho a la mitad de la parcelas A, B, C y D y se ordena al Albacea que haga entrega de la mitad de dichas parcelas a los demandantes, declarando al demandado Juan Cardoza dueno de las parcelas E, G y H, y sobreseyendo la demanda con respecto a las parcelas F, I y J, sin especial pronunciamiento en cuanto a las costas.

"ASI SE ORDENA".

On the other hand, the dispositive portion of the Court of Appeals decision promulgated on December 6, 1939, provides as follows, viz:

"In view of the foregoing, the decision appealed from is hereby affirmed with the modification that Urbano Cadabos is ordered to deliver to the plaintiffs one-half of parcel I. There is no pronouncement as to costs."

On July 29, 1981, Sheriff Romulo Madredizo served a copy of the writ of execution on petitioner Juanito Cardoza through his wife and son at Sta. Cruz, Maasin, Southern Leyte. Trinidad Malbas who was in actual possession of parcel I was also served a copy of the writ on July 30, 1981 (Rollo, p. 50).

On July 31, 1981, Juanito Cordoza's counsel filed a motion for reconsideration and to hold in abeyance the execution of the writ. Accordingly, the implementation of the writ was held in abeyance.

On September 14, 1981 the heirs of the original defendants filed a manifestation to the effect that they interpose no objection to the issuance of a nunc pro tunc judgment. The manifestation was filed by Rustico Cardoza, the son of the late original defendant Juan Cardoza, who also represented the late original defendant Magdalena Ordiz and the grandchildren of the deceased original defendant Miguel Galos. The children of the original defendant Urbano Cadabos, namely: Honorato, Camilla and Basilio all surnamed Cadabos except Basilio whose surname is Calapre by reason of the judicial adoption joined in the said manifestation (Rollo, pp. 78-79).

On October 14, 1981 the trial court reinstated its order dated July 6, 1981 and directed the issuance of an alias writ of execution (Rollo, p. 49). The trial court opined that courts are given wide latitude in allowing the issuance of a nunc pro tunc judgment.

On November 11, 1981 respondent Sheriff executed the writ and personally delivered to plaintiffs the property subject matter in Civil Case No. 1853. Rustico Cardoza was furnished a copy of the writ on November 23, 1981. On November 26, 1981 Juanito Cardoza was informed of the formal turn over of the property and was furnished a copy of the writ of execution (Rollo, p. 50).

On November 26, 1981, Petitioner appeared before the trial court in compliance with the summons directing him to appear and explain why he should not be declared in contempt of court for harvesting the coconuts in parcels A, B and C, the land in question. In the hearing, petitioner was personally served the writ of execution and the respondent judge directed him to desist from harvesting the coconuts and to explain in writing why he should not be declared in contempt of court.

On January 8, 1982 herein petitioner Juanito Cardoza filed the instant petition for certiorari, mandamus and

prohibition with preliminary injunction. In his petition he alleged inter alia that the respondent judge usurped the jurisdiction of the Court of Appeals when it issued the Order of July 6, 1981 directing that 'a non pro tunc judgment be entered pursuant to the decision of the Court of Appeals in Civil Case C.A. G.R. No. 3554' because under Section 10 of Rule 5 of the Revised Rules of Court, its issuance is the ministerial duty of the Clerk of Court of the Court of Appeals; that the trial court erred in granting the application for issuance of a nunc pro tunc judgment because plaintiffs' inaction to move for the execution of the Judgment 40 years after its promulgation is a ground for its denial; that private respondents have not adduced evidence to overcome the regularity in the performance of official function so that it can be presumed that the Clerk of Court of the Court of Appeals made the entry of judgment; that respondent judge gravely abused his discretion when he deprived petitioner of his property without due process of law; that petitioner acquired the land from his aunt Eulalia Cardoza who executed on April 13, 1935 her last will and testament in the Visayan dialect; that after the death of Eulalia Cardoza her last will and testament was probated on February 25, 1936 in special proceeding No. 1781 of the then Court of First Instance of Maasin, Leyte and as a legatee, petitioner received the four (4) parcels of land identified as parcels A, B, C, and D from the Court-appointed administrator Juan Cardoza; that as owner he paid the real property tax and caused the issuance of tax declarations in his name; that when plaintiffs in Civil Case No. 1853 received a copy of the decision they agreed to receive parcel D, the biggest land, instead of getting one-half of the four parcels of land; that his uncle Juan Cardoza prevailed upon petitioner to turn over parcel D to the plaintiffs; that assuming that the respondent Judge can issue a writ of execution 40 years from the rendition of the Judgment, nonetheless, it could not deprive petitioner of the one-half portion of the four (4) parcels of land decreed to him in the judgment sought to be implemented.

Petitioner, therefore, prayed for the immediate issuance of a writ of preliminary mandatory injunction to direct public respondents to restore to him the three (3) parcels of land and to recall the writ of execution.

On February 18, 1982, the First Division of this Court issued a resolution directing public respondents to restore to petitioner possession of the three (3) parcels of land. Also, respondent Judge was enjoined from further proceeding or enforcing the writ of execution issued by him in Civil Case No. 1853. Likewise the respondents were required to file their comment within ten (10) days from receipt of the resolution (Rollo, p. 52)

On the other hand, private respondents alleged, among others, that the respondent Judge did not usurp the jurisdiction of the Court of Appeals when he issued the July 6, 1981 Order because the Court of Appeals, that decided CA G.R. No. 3545 and failed to leave any record of entry of judgment was different from the present Court of Appeals as the former which was created under Commonwealth Act No. 3 on February 1, 1936 (Amended by Commonwealth Act Nos. 259, 425 and 639) was abolished under Executive Order No. 37 dated March 10, 1945; that in the exercise of its function as court of law and equity and as the final repository of the decision transmitted by the defunct appellate court, the trial court correctly made the entry of judgment nunc pro tunc; that despite the lapse of about 40 years, execution is still in order because under Section 443, Chapter IX of Act No. 190 of the Code of Civil Procedure the counting of the five (5)-year period to enforce the Judgment starts from the entry of judgment and not from its promulgation; that except for original plaintiffs Ponciano Alvarez and Cirilo Alvarez, all the other original plaintiffs in Civil Case No. 1853 are all dead; that it is not true that petitioner had been the owner and possessor of the subject property for 45 years; that Tax Declaration No. 16832 covering parcel "A", Tax Declaration No. 18307 covering parcel "B" and Tax Declaration No. 18301 covering parcel "C" previously in the name of Pablo Corollo were cancelled and transferred in the name of Juanito Cardoza only in 1964 and 1965. Private respondents therefore prayed for the dismissal of the petition.

The decisive issues to be resolved in the instant case are (1) whether or not the decision of the trial court as modified by the Court of Appeals can still be enforced and (2) whether or not the trial court committed a grave

abuse of discretion when it made the entry of judgment nunc pro tunc and issued the writ of execution.

On the issue of whether or not the judgment of the trial court dated February 7, 1938 in Civil Case No. 1853 as modified by the Court of Appeals in the decision promulgated on December 6, 1939 can still be enforced, the answer is in the affirmative.

Under Section 443, Chapter 1X of Act No. 190, otherwise known as the Code of Civil Procedure which took effect on September 1, 1901, 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 the date of its entry. The counting of the five-year period starts from the entry of judgment and not from its promulgation.

No presumption of regularity in the performance of the duties of the Clerk of Court of the Court of Appeals can apply to the instant case. There is no record whatsoever whether in the appellate court or in the court below of any entry of judgment in Civil Case No. 1853. Presumptions cannot substitute for the records, much less prejudice vested rights.

Acting not only as a court of law but also as a court of equity, the trial court correctly made the entry of a judgment nunc pro tunc pursuant to the decision of the Court of Appeals in Civil Case No. C.A. G.R. No. 3545. In so doing, the lower court merely ordered the judgment of the Court of Appeals to be executed.

The issuance of a nunc pro tunc order was recognized by this Court in *Lichauco v. Tan Pho*, 51 Phil. 862 where an order or judgment actually rendered by a court at a former time had not been entered of record as rendered. There is no doubt that such an entry operates to save proceedings had before it was made.

Contrary to what the petitioner claims, the lower court's action — decreeing the entry of a judgment nunc pro tunc — was not done arbitrarily nor capriciously. The petitioner was allowed to oppose the motions in open court and was even required to submit a memorandum to support his position. The petitioner, however, failed to submit a memorandum. Neither did he adduce sufficient evidence to support his claims over the properties in question.

Finally, well settled is the rule that a judgment which has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes. In such a situation, the trial court loses jurisdiction over the case except to execute the final judgment, as in this case. (*Marcopper Mining Corporation v. Briones*, 165 SCRA 470)

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

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

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