

VENANCIO GONZALES, HON. RICARDO P. TENSUAN AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV, AND THE EX--OFICIO SHERIFF OF QUEZON CITY OR ANY OF HIS DEPUTIE...

G.R. No. 62556. August 13, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari of the Resolution of the Court of Appeals dated July 8, 1981, in CA-G.R. No. SP-11334-R,[1] the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, the motion for reconsideration is hereby granted. The order of the respondent court granting the writ of execution is therefore set aside, without prejudice on the part of the private respondent to file an action to revive the judgment in question.”[2]

as well as the Resolutions of May 24, 1982,[3] and November 16, 1982,[4] denying petitioner's first and second motions for reconsideration.

The antecedents: On February 4, 1957, the then People's Homesite and Housing Corporation (PHHC) awarded the subject property, Lot 29, Block E-418, covered by TCT No. 1356 of the Register of Deeds of Quezon City, to petitioner Venancio Gonzales. However, the award was subsequently cancelled and the lot was "re-awarded" to Esteban Raterta who was issued TCT No. 84217/T-416.[5] Consequently, petitioner Gonzales commenced Civil Case No. Q-5550 in the Court of First Instance of Rizal, at Quezon City, praying that PHHC be ordered to execute the corresponding contract of sale in his favor. The trial court dismissed the case but directed PHHC to reimburse petitioner Gonzales the amount of P1,576.00 paid on the lot. Gonzales elevated the case to the Court of Appeals, docketed as CA-G.R. No. 31757-R, which on January 31, 1969, rendered a decision in his favor, thereby reversing the judgment appealed from, specifically declaring him the legal and rightful awardee of Lot 29, Block E-148, and ordering PHHC to cancel or revoke the award made to intervenor Esteban Raterta being null and void, and to execute the corresponding Contract to Sell over the lot in favor of Gonzales.[6]

During the pendency of Civil Case No. Q-5550, the lot was sold by Esteban Raterta to Dalmacio Raterta who in turn sold the property to private respondents Rafael, Mario and Vicente, all surnamed Santos, who were issued TCT No. 135516.[7]

On August 26, 1977, petitioner Gonzales instituted Civil Case No. Q-23713 in the same court for “Annulment of Contracts and Titles Emanating Therefrom with Damages” against the National Housing Authority (formerly PHHC), Dalmacio and Esteban Raterta, and respondents Rafael; Mario and Vicente Santos. Perhaps realizing that this remedy was already superfluous in view of the final judgment in CA-G.R. No. 31757-R, petitioner desisted from pursuing his action for annulment.[8] Thus, On October 13, 1978, his case was dismissed for failure to prosecute.[9]

Thereafter, petitioner Gonzales sought execution of the judgment of the Court of Appeals in CA-G.R. No. 31757-R. The move was opposed by PHHC, but on August 27, 1979, in Civil Case No. Q-5550, the CFI of Rizal issued an Order stating inter alia:

"x x x the plaintiff pointed out that the records of this case have long been forwarded to this court by the Court of Appeals, however, it is unfortunate and regrettable that said records cannot be found among the records of cases of this court despite diligent efforts to locate the same. x x x x Considering that the records of this case was (sic) lost or misplaced through no fault of the herein plaintiff, in counting the reglementary period during which the writ could not be served, that is when the record of this case cannot be found, shall be deducted or subtracted." [10]

In the meantime, after securing the legal opinion of the Government Corporate Counsel, the PHHC voluntarily executed the judgment in CA-G.R. No. 31757-R by cancelling and revoking the award in favor of Esteban Raterta and executing a deed of sale in favor of petitioner Gonzales. On June 3, 1980, TCT No. 268893 was issued in the name of Venancio Gonzales after cancelling TCT No. 138516 in the name of respondent Santos. [11]

On May 26, 1980, petitioner Gonzales filed in Civil Case No. Q-5530 a motion for writ of possession based on the judgment of the Court of Appeals of January 31, 1969, in CA-G.R. No. CV 31757-R. [12] On July 17, 1980, the trial court directed the issuance of a writ of possession in favor of Gonzales "against all persons in occupancy thereof, including but not limited to Julian Aguilar and/or the brothers Rafael, Mario and Vicente Santos. [13]

Accordingly, on September 25, 1980, the writ of possession was issued. [14] Their motion for reconsideration of the order granting the writ having been denied, private respondents filed a petition with the Court of Appeals, docketed as CA-G.R. No. SP 11334-R. [15] On January 21, 1981, respondent Court having denied due course to the petition, private respondents moved for a reconsideration. On July 8, 1981, respondent Court issued the resolution now sought to be reversed, which set aside the writ of execution issued by the trial court. On May 24, 1982, respondent court denied Gonzales' motion for reconsideration. On November 16, 1982, the second motion for reconsideration was likewise denied. [16]

Hence, this petition for review on certiorari. The issues raised are thus encapsulated: (1) Whether there is a negation of petitioner's right to due process resulting from the issuance of a resolution on the merits without first requiring him to answer; (2) whether petitioner is entitled to a writ of possession; and, (3) whether respondent court committed grave error of law in not maintaining the dismissal of the petition in CA-G.R. SP No. 11344-R.

On the first issue, We are not persuaded that petitioner was denied due process.

In CA-G.R. No. SP 11344-R, the respondent Court in its Resolution of January 21, 1981, denied due course to the petition of private respondents, the Santos brothers. However, upon motion for reconsideration, the Court of Appeals set aside the writ of execution issued by the trial court.

In the petition before Us, Gonzales argues that respondent Court of Appeals resolved the case on the merits without first requiring him to file his answer, without elevating the original records, and without declaring that the case was already considered submitted for decision.

We agree that this is not in consonance with Sec. 3, Rule 47, of the Rules of Court which requires that upon a prima facie showing, the court shall order the respondent to answer the petition. The Internal Operating Procedure of the Court of Appeals, then applicable, likewise provides that giving due course to an original petition means that the respondent has been required to file an answer to the same; [17] and that the petition may be declared submitted for decision upon the receipt of the memoranda of the parties or completion of the hearing. [18] These lapses in the observance of procedural requirements however do not necessarily result in the derogation of

petitioner's right to due process.

The records show that petitioner was not wholly deprived of a fair and reasonable opportunity to explain his side of the controversy. As correctly noted by private respondents, records are clear that respondent court resolved to send petitioner Gonzales copy of the resolution of October 15, 1980, together with the petition, summons and restraining order (Resolution dated December 9, 1980); that respondent Court granted petitioner's motion for extension of time to file comment (Resolution dated January 21, 1981); required petitioner Gonzales to file comment to respondents' (petitioners therein) motion for reconsideration (Resolution dated May 11, 1981); admitted petitioner's motion for reconsideration (Resolution dated May 24, 1982); granted petitioner's motion to admit second motion for reconsideration and directed parties to file their respective memoranda in lieu of oral arguments (Resolution dated August 18, 1982).[19] Petitioner complied with the trial court's order and filed his memorandum.[20] Thus, petitioner having filed comment, two motions for reconsideration and a memorandum, he certainly had been afforded the opportunity to inform the respondent Court of his side of the controversy. As we have repeatedly held, there is no denial of due process as long as the party has been given an opportunity to be heard.[21]

In *German Management and Services, Inc. v. Hon. Court of Appeals*,[22] We held:

"x x x the Court of Appeals need not require petitioner to file an answer for due process to exist. The comment filed by petitioner on February 26, 1966 has sufficiently addressed the issues presented in the petition for review filed by private respondents before the Court of Appeals. Having heard both parties, the Appellate Court need not await or require any other additional pleading. Moreover, the fact that petitioner was heard by the Court of Appeals on its motion for reconsideration negates any violation of due process."

However, as regards the other issues, We rule in favor of petitioner Gonzales.

The finality of the decision in *Gonzales v. PHHC, et al.*[23] is not denied by private respondents, and that therefore the prevailing party has the right to a writ of execution of the judgment he obtained by filing a motion within five (5) years from the date said judgment becomes final and executory; after the lapse of the five-year period but before the prescriptive period of ten (10) years sets in, the prevailing party has the right to enforce judgment by action.[24]

In the case at bar, respondent Court ruled that the writ of possession was no longer proper since the basis of such writ, which in effect was an execution of a judgment, was the decision of respondent Court dated January 31, 1969, which became final eleven (11) years earlier reckoned from the time the motion for writ of possession was filed on May 26, 1980. The records however show that petitioner had earlier sought execution of the decision dated January 31, 1969, as may be gleaned from the Order of August 27, 1979, in Civil Case No. 5550, stating the following, inter alia:

"x x x the plaintiff pointed out that records of this case have long been forwarded to this court by the Court of Appeals, however, it is unfortunate and regrettable that the said records cannot be found among the records of cases of this court despite diligent efforts to locate the same.

x x x

"Considering that the records of this case was (sic) lost or misplaced through no fault of herein plaintiff, in counting the reglementary period during which the writ could not be served, that is when the records of this case cannot be found, shall be deducted or subtracted." [25]

The then Government Corporate Counsel upon consultation by PHHC made the following observations in his Opinion of October 9, 1979.[26]

"The court, which obviously conceded, x x x that the disappearance of the records was due to its fault or that of its clerical staff, concluded that plaintiffs motion for execution was filed within the period when the final and executory decision of the court of appeals may be enforced by motion."

On several instances, this Court has invoked the principle of equity in computing the 5-year period to execute a judgment by motion. We have ruled that if the delays were through no fault of the prevailing party, the same should not be included in computing the 5-year period to execute a judgment by motion.[27] In the early case of *Lancita v. Magbanua*,[28] We ruled:

"In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite to time, by Injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without scire facias."

As We concluded in *Lancita v. Magbanua*, supra:

"[T]here has been no indication that respondents herein had ever slept on their rights to have the judgment executed by mere motions, within the reglementary period. The statute of limitations has not been devised against those who wish to act but cannot do so, for causes beyond their control."

In the case before Us, We agree with the trial court that the time during which the records of Civil Case No. Q-5550 were lost or misplaced through no fault of herein petitioner shall be deducted or subtracted from the period for execution of judgment by motion, and its holding that the motion for execution was filed within the period when the final and executory decision of the Court of Appeals may forced by motion.[29] It is thus clear that petitioner had never slept on his rights as the delay in the execution was beyond his control. Verily then, under the circumstances and in the interest of equity and justice, the writ of execution issued by the lower court on August 27, 1979, should be deemed proper and timely.

Moreover, the records show that the PHHC (NHA) after consultation with the Government Corporate Counsel, `voluntarily "executed" the judgment in CA-G.R. No. 31757-R by the execution on May 21, 1980 of a deed of sale in favor of petitioner Gonzales.[30] Consequently, on June 30, 1980, TCT No. 268893 was issued in the name of petitioner Gonzales after the cancellation of TCT No. 138516 in the name of respondent Santos.[31]

It appearing that PHHC had already complied with the mandate of the judgment in CA-G.R. No. 31757-R, what remains to be done is to place petitioner Gonzales in possession of the questioned property.

Private respondents also contend that they are entitled to the property in question on the ground that they are not parties to said case and that they acquired the property in good faith. This contention is devoid of merit.

In the first place, there is nothing in the records tending to show that they took steps to contest the issuance of TCT No. 268893 in the name of petitioner Gonzales after the cancellation of TCT No. 83217/7-146 in the name of Esteban Raterta as well as TCT No. 135516 in their name which emanated from Ratertas certificate of title. The property in question is now in the name of petitioner Gonzales, his TCT No. 268893 having been issued on June 3, 1980.[32] Significantly, there is likewise nothing in the records, not even a single allegation, much less proof, to dispute the claim and proof of petitioner Gonzales that his TCT has replaced the TCT of respondent Santos brothers. Certainly, private respondents cannot herein assail the title of petitioner Gonzales. As a rule, a Torrens Title is irrevocable and indefeasible, and the duty of the court is to see to it that it is maintained and respected unless challenged in a direct proceeding.[33] By express provision of Sec. 48, P.D. 1529, it is clear that a certificate of title cannot be subject to collateral attack.

It should also be noted that extant in the records is the "affidavit of waiver" executed by Esteban Raterta on March 10, 1966, shortly after the award was made to him by PHHC on February 16, 1961. In said affidavit, Esteban Raterta acknowledged the fact that the lot was previously awarded in favor of Venancio Gonzales, and declared that being "aware of the litigation, I am paying an initial deposit for said lot with the understanding that in the event that the above-mentioned case should be decided against the PHHC and the intervenor on one hand in favor of Mr. Gonzales on the other hand, I hereby waive my right to file a case of specific performance against the PHHC as long as I be refunded of whatever payments I have so far made to PHHC over said lot".[34] This shows that when Esteban Raterta sold the property in question he was aware of the flaw in his title to the lot in question. That the supposed transferee is also a Raterta, a certain Dalmacio, who in turn sold the lot to respondent Santos brothers, all the more suggests, and very strongly, that the "conveyance" was a scheme to avoid possible adverse judgment in the case filed by petitioner Gonzales against PHHC.

It appearing that not only was the writ of execution timely and properly issued but that the judgment in CA-G.R. No. 31757-R had already been voluntarily complied with by PHHC, the questioned writ of possession issued by the trial court is certainly correct, for the writ of possession is nothing more than a complement of a writ of execution which, without the former, is ineffective.[35]

Considering therefore that the final judgment in CA-G.R. No. 31757-R had already been executed by PHHC resulting in the issuance of TCT No. 268893 in the name of petitioner Gonzales over the property in question after the cancellation of TCT No. 83217/T-146 in the name of Esteban Raterta, as well as the TCT No. 135516 emanating therefrom, the respondent Santos brothers and their alleged tenant Julian Aguilar have no more right to remain in the premises. After all, a judgment is not confined to what appears on the face of the decision but also those necessarily included therein or necessary thereto.[36] Hence, We find no justification in law for respondent Court of Appeals to set aside the order of the trial court directing the issuance of a writ of execution and possession in Civil Case No. Q-5550 in relation to the final judgment in CA-G.R. No. 31757-R.

WHEREFORE, the Instant petition is GRANTED and the questioned Resolutions of the respondent Court of Appeals are hereby REVERSED and set aside.

The trial court is directed to enforce immediately the writ of possession issued in favor of herein petitioner Venancio Gonzales in Civil Case No. Q-5550 against persons in occupancy thereof, including Julian Aguilar and the Santos brothers Rafael, Mario and Vicente. No costs.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Julian Aguilar, et al. v. Hon. Ricardo P. Tensuan, as Judge, Court of First Instance of Rizal, Branch IV, et al.

[2] Annex "F", Petition, Rollo, p. 52.

[3] Annex "H", Petition, Rollo, p. 71.

[4] Annex "M", Petition, Rollo, p. 115.

[5] Petition, Rollo, p. 9; Comment, Rollo p. 126.

[6] Petition, Rollo, p. 10; Comment, Rollo, p. 127.

[7] Comment, Rollo, p. 127.

- [8] Rollo, CA-G.R. No. SP. 11334-R, p. 89.
- [9] Comment, Rollo, p. 128.
- [10] Petition, Rollo, p. 11.
- [11] Rollo, CA-G.R. No. SP 11334-R, p. 93 and 98.
- [12] Annex "F", Rollo, p. 57.
- [13] Annex "C", p. 4, Petition in CA-G.R. No. SP. 11334-R, Rollo, p. 42.
- [14] Annex "I", Rollo, CA-G.R. No. SP. 11334-R, p. 49.
- [15] Petition for Prohibition, Rollo CA-G.R. SP No. 11334-R, p. 1.
- [16] Petition, Rollo, pp. 14-15.
- [17] Art. III C (21), Court of Appeals Internal Operating Procedure (old), U.P. Law Center, Regal Printing Co., 1979, p. 18.
- [18] Art IV B (5), Ibid.
- [19] Comment, Rollo, pp. 132-133.
- [20] Annex "L", Petition, Rollo, p. 94.
- [21] Antonio v. Court of Appeals, No. L-35434, November 9, 1988, 167 SCRA 127; Caoile v. Vivo, No. L-27602 - 27603, and Commissioner of Immigration v. Garcia, No. L-28082, October 15, 1988, 125 SCRA 87; Marvel Bldg. Corp. v. Ople, No. L-44302, May 20, 1983, 122 SCRA 405; Ablaza v. CAR, No. L-33906, December 21, 1983, 126 SCRA 246; Cruz v. RCBC, G.R. No. 56591, January 17, 1983, 120 SCRA 15; Romero v. CA, G.R. No. 59606, January 8, 1987, 147 SCRA 185.
- [22] G.R. No. 76217, September 14, 1989; 177 SCRA 495.
- [23] CA-G.R. No. 31757-R.
- [24] Rule 36, Sec. 6, Rules of Court.
- [25] Petition, Rollo, p. 11.
- [26] Ibid.
- [27] Provincial Government of Sorsogon v. Court of Appeals, G.R. No. 64037, August 27, 1987, 153 SCRA 291, citing Republic v. Court of Appeals, 137 SCRA 220; Bien v. Sungca, No. L-39644, September 30, 1982, 117 SCRA 249; Potenciano v. Mariano, No. L-30904, March 6, 1980, 96 SCRA 463.
- [28] 117 Phil. 39, citing Corpus Juris, Vol. 23, p. 378.
- [29] Rollo, CA-G.R. No. 11334-R, p. 26.
- [30] Id., p. 16.
- [31] Id., pp. 93 and 98.
- [32] Annex "A", Rollo, CA-G.R. No. SP 11334-R, p. 98.
- [33] Director of Lands v. Gan Tan, 89 Phil. 184.

[34] Annex "B", Petition, Rollo, p. 38.

[35] *Omnas and Gadil v. Rivera and Bello*, 67 Phil. 419.

[36] Sec. 49 (c), Rule 39, Rules of Court; *Perez v. Evite*, 111 Phil. 564 (1961).

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