

SPOUSES CARLOS DAVID AND TERESITA DAVID, AND JESUS B. PASION, PETITIONERS, VS. HON. OSCAR C. FERNANDEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BULA...

G.R. No. 62896. August 21, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

On March 7, 1980, a gravel and sand truck driven by petitioner Jesus B. Pasion and owned and operated by his co-petitioners, Spouses Carlos David and Teresita David, hit Paulino Mananghaya in front of Mantrade Building, Epifanio de los Santos Avenue, Makati, Metro Manila, resulting in the latter's death. Subsequently on May 25, 1980, Paulino's wife, Francisca Lagman Mananghaya, in her own behalf and as natural guardian of her minor children Noel, Nolly and Joy, (hereinafter private respondents) filed before the then Court of First Instance (CFI) of Bulacan an action for damages docketed as Civil Case No. 1136-B against petitioners.

For failure to file their answer despite service of summons, petitioners as defendants in said Civil Case No. 1136-B were declared in default. Private respondents as plaintiffs were allowed to present their evidence ex-parte, after which a decision was rendered on April 10, 1981[1] ordering petitioners to pay private respondents jointly and severally the amount of P100,000.00 as moral damages; P80,000.00 as exemplary damages; P100,000.00 as actual and compensatory damages; P10,000.00 as attorney's fees plus costs. A copy of said decision was received by petitioners on April 24, 1981.

Petitioners filed a motion for new trial, which was denied in the lower court's order of June 5, 1981[2] for having been filed one day late. In the same Order, the court granted private respondents' prayer for the issuance of a writ of execution. A Writ of Execution[3] dated June 10, 1981 was correspondingly issued directing the Provincial Sheriff of San Fernando, Pampanga to cause to be made of the goods and chattels of petitioners the sums awarded to private respondents in respondent court's decision of April 10, 1981. Consequently, some personal properties of the spouses David were levied upon and sold at public auction, the proceeds of which amounting to P12,000.00 were subsequently delivered to private respondents.

Having received a copy of the Order of June 5, 1981 only on September 1, 1981, petitioners filed on the same day a motion for reconsideration of the June 5, 1981 Order and a motion to quash the writ of execution dated June 10, 1981, calling the attention of the lower court to the fact that the 30th day of the reglementary period for the filing of an appeal fell on a Sunday so that the filing of the motion on the 31st day was nevertheless still within the reglementary period for appeal. On February 8, 1982, the lower court issued an order[4] reconsidering its previous order of June 5, 1981, granting petitioners' motion for new trial and recalling the writ of execution dated June 10, 1981.

Resultantly, petitioners were allowed to file their Answer with Counterclaim for damages against private respondents, who countered with a Motion to Dismiss Counterclaim and Reply to Answer. The latter's motion to

dismiss was denied by the lower court.

On June 5, 1982, petitioners filed a Motion for Restitution which was resolved by respondent lower court in its assailed Order dated June 8, 1982,[5] reading thus:

O R D E R

Defendants' properties levied in execution are hereby ordered to be returned to them pending new trial.

In the event that this could not be done, defendants may, in the event of favorable judgment, go after plaintiffs' bond.

SO ORDERED.

Baliuag, Bulacan, June 8, 1982.

OSCAR C. FERNANDEZ

J u d g e

In their motion for reconsideration of the aforequoted Order, petitioners manifested that they are in accord with the first paragraph of said order but seek a reconsideration of the second paragraph by setting the same aside and ordering the return of the proceeds of P12,000.00 obtained from the sale of their personal properties considering that private respondents have not posted a bond as a condition precedent to the taking of said properties as the same was done pursuant to a decision believed by the private respondents to be final and executory but which later turned out not to be so in view of the allowance of petitioners' motion for new trial by the respondent lower court.

Respondent court denied petitioners' aforesaid motion for reconsideration in its second assailed Order dated December 1, 1982 on the ground that a new trial had been ordered as early as February 8, 1982.

Hence this petition seeking to annul and set aside the two aforementioned Orders of respondent judge, namely: the Order dated June 8, 1982 which required the return of the properties of the petitioners levied upon in execution or, in the event that this could not be done, for petitioners to go after private respondents' bond in case of a favorable judgment; and the Order dated December 1, 1982 denying petitioners' motion for reconsideration of the June 8, 1982 order. In addition, petitioners seek to enjoin respondent court from further proceeding with Civil Case No. 1136-B except to issue a corresponding order setting aside the herein assailed Orders of June 8, 1982 and December 1, 1982 and ordering private respondents to return to Spouses Carlos David and Teresita David the proceeds of the public auction sale of their personal properties in the sum of P12,000.00.

Petitioners submit that:

"1. The Hon. Respondent Court acted without or in excess of its jurisdiction and/or with grave abuse of its discretion amounting to lack of jurisdiction when it issued the Order of June 8, 1982 directing that in the event return of the personal properties of Petitioners Spouses could not be done by Private Respondents, Petitioners spouses may, in the event of a favorable judgment go after Private Respondents' bond, because there is no bond filed by Private Respondents in said Civil Case No. 1136-B since said personal properties of Petitioners Spouses were taken by the Sheriff from them by virtue of a writ of execution (Annex G) and said writ of execution was set aside and declared null and void by Hon. Respondent Court in its Order of February 8, 1982 (Annex L).

2. The Hon. Respondent Court acted without or in excess of its jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction when it issued its order of December 1, 1982 denying Petitioners' Motion for Reconsideration of said Order of June 8, 1982, for being contrary to law, established jurisprudence

on the matter and an outright denial of substantial justice to Petitioners."[6]

Petitioners maintain that the setting aside of the writ of execution by the lower court naturally entitled them to recover from private respondents their personal properties which were prematurely and improvidently levied upon on execution, or to the reimbursement by private respondents of the proceeds of the auction sale in the sum of P12,000.00 pending the hearing on the merits of Civil Case No. 1136-B. They contend that in providing for an alternative in its assailed order in the event restitution is not possible, the lower court unduly deprived them of their substantial right without due process as there was no bond to speak of in the first place.

On the other hand, private respondents submit that the lower court, under the circumstances obtaining in this case, was merely exercising its sound judicial discretion in not ordering restitution it appearing that the personal properties levied upon on execution were already sold at public auction and the proceeds thereof given to them, who, due to the untimely demise of the sole breadwinner in their family were left orphaned and destitute. Furthermore, petitioners are barred by laches for not taking their legal option to oppose the levy and public sale of their personal properties which took place while their motion for new trial was still pending resolution by the lower court and it was only on June 5, 1982 or almost a year after the levy was made, that they moved for the return of the properties levied upon.

We rule for the petitioners. Although the Court is aware of private respondents' sad plight, having suffered the untimely loss of the alleged sole breadwinner of the family, nevertheless, the Court must go by the precepts of substantive as well as procedural law in resolving the controversy at bar for to do otherwise would be tantamount to pre-empting the lower court in its judgment in Civil Case No. 1136-B wherein a new trial had been ordered as a result of the granting of petitioners' motion for new trial therein.

As provided under Section 5 of Rule 37 of the Revised Rules of Court: "If a new trial be granted in accordance with the provisions of this rule, the original judgment shall be vacated, and the action shall stand for trial de novo; but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same."

The law is unmistakably clear that once a new trial is granted under aforesaid Rule, the original judgment is vacated. The phrase "to vacate" applied to a judgment means "to annul, to render void." [7]

As petitioners' motion for new trial was subsequently granted by the respondent court, this resulted in the nullification of its judgment by default dated April 10, 1981 against petitioners in said civil case, including all the consequential effects thereof, to wit: the Writ of Execution, the corresponding levy on the personal properties of petitioners and the public auction sale.

The Court thus finds validity and strength in petitioners' claim for restitution of the P12,000.00 proceeds of the sale on execution of petitioners' personal properties levied upon pursuant to a writ of execution which was subsequently recalled due to the granting of a new trial in the subject civil case. Considering that the motion for restitution was filed while the subject civil case was still undergoing trial, a stage wherein the rights and obligations of the parties have not yet been determined, it would be unfairly enriching the private respondents, even temporarily, if they are allowed to keep possession of the proceeds of the sale of petitioners' personal properties in the amount of P12,000.00. As Civil Case No. 1136-B then stood, there has yet been no adjudication of rights and obligations between the parties. Furthermore, there was never a plaintiff's bond to speak of in the first place against which petitioners may proceed in case of a favorable judgment since the writ of execution was issued pursuant to a judgment then thought to be final and executory.

WHEREFORE, in view of the foregoing considerations, the second paragraph of the Order of respondent court

dated June 8, 1982 allowing petitioners as defendants therein in case of a favorable judgment to go after the plaintiffs' bond if restitution was not effected; and the Order of December 1, 1982 are hereby SET ASIDE. Private respondents are hereby ORDERED to return to petitioners Spouses Carlos David and Teresita David the proceeds of the public auction sale of their personal properties in the sum of P12,000.00.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 29.

[2] Rollo, p. 45.

[3] Rollo, p. 46.

[4] Rollo, p. 61.

[5] Rollo, p. 74.

[6] Rollo, p. 17.

[7] Castillo vs. Filtex International Corporation, 124 SCRA 900, 903; Bautista vs. Johnson, 2 PHIL 230.

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