

FERNANDO, PELAGIO, CARLOS, JULIA AND JUANA, ALL SURNAMED ARANDA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, MARCELO DE LARA, MARIA DE LARA, AND DOMINADOR, PEDRO, AND LIBRA...*G.R. No. 63188. June 13, 1990*

Ponente: FERNAN, C.J.

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The instant petition has its roots in the decision rendered on November 29, 1967 by Judge Emmanuel Munoz of the then Court of First Instance of Bulacan, Branch I (Malolos) ordering herein private respondents as well as Tomasa de Lara, Felicisima Ramos and Hilario Ramos as defendants therein to reconvey to herein petitioners, as well as Asuncion Reyes Vda. de Aranda and Maria Aranda as therein plaintiffs several parcels of land situated in Bigaa (now Pandi), Bulacan and covered by sixteen (16) transfer certificates of title. Defendants were further ordered to pay P10,000.00 as moral damages plus P10,000.00 as attorney's fees and the costs of the suit.[1]

Private respondents De Laras et al. appealed from that decision.[2] However, the Arandas, as the prevailing parties, moved for an execution pending appeal which the trial court granted on March 15, 1968 upon the filing by the Arandas of a bond worth P10,000.

As a consequence of the execution pending appeal, the various lots covered by Transfer Certificates of Title Nos. 98049, 98051, 98053, 98054, 98055, 98056, 98057, 98058, 98060 and 98063 of the Bulacan Registry of Deeds were transferred to petitioners. In addition, a jeepney belonging to private respondent Marcelo de Lara was sold at public auction and the amount of P42,159.00 due from Tecson Chemical Corporation to Marcelo de Lara was garnished and turned over to the Arandas.

During the pendency of the appeal[3] on February 25, 1969, the Arandas mortgaged eight (8) of the ten (10) reconveyed parcels of land covered by TCT Nos. 98049, 98051, 98053, 98054, 98055, 98056, 98060 and 98063 to Alfredo Cruz to secure a loan of P80,000.00. Similarly on April 17, 1969, the Arandas mortgaged two more lots, covered by TCT Nos. 98057 and 98057, to Aurelia Oxiles to secure another loan of P40,000.00. Both loans were payable within one (1) year from the date of the mortgages and said encumbrances were registered on June 4, 1969.[4]

The loans matured during the pendency of the appeal and because of the failure of the Arandas to redeem the same, the two mortgages were foreclosed and the encumbered properties were sold at public auction to mortgagees Cruz and Oxiles on February 23, 1978 and March 30, 1978 respectively. Eventually, the mortgagees consolidated their ownership and new transfer certificates of title were issued in their names.

Meanwhile, on June 11, 1970, while their appeal was still pending before the Appellate Court[5] private respondents decided to register with the Register of Deeds of Bulacan notices of lis pendens on all transfer certificates of title covering the parcels of land mortgaged to Alfredo Cruz and Aurelia Oxiles.

On March 17, 1977, the Appellate Court, through Justice Guardson R. Lood, reversed the decision of the Bulacan trial court and declared the De Laras et al. as the owners of the disputed lots covered by sixteen transfer certificates of title. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of all the foregoing, the judgment appealed from is hereby reversed; consequently, dismissing this case against the defendants-appellants and declaring them owners of the properties in question with costs against the plaintiffs-appellees. The counterclaim is denied for insufficiency of evidence."[6]

This reversal was affirmed by the Supreme Court in a minute resolution dated August 1, 1977.[7]

On February 6, 1978, the lower court, pursuant to the reversal by the Appellate Court in CA-G.R. No. 42228-R issued an order which required the Arandas (plaintiffs in execution) to reconvey to private respondents within five (5) days from notice the properties transferred to them by virtue of the writ of execution pending appeal, with the exception of the property covered by TCT No. 98052, and authorized the clerk of court to execute the proper documents of reconveyance should the Arandas fail to comply. The order further required the petitioners to return to private respondent Marcelo de Lara the jeepney which was levied on execution or to turn over the proceeds of the sale thereof, and to reimburse the latter in the sum of P42,159.00 which had been garnished from Tecson Chemical Corporation.

On June 26, 1978, the clerk of court executed the deed of reconveyance in favor of private respondents (defendants) with respect to the lots covered by TCT Nos. 98049, 98050, 98051, 98062, 38605, 98059, 98080, 98061, 98063, 98058, 42055, 98055, 98054, 98053, 98057 and 98056, all of the Bulacan Registry of Deeds.

Thereafter, on September 25, 1978, the De Laras et al. filed a motion to nullify the aforesaid sixteen (16) titles to the disputed properties for failure and/or refusal of the Arandas to surrender their owner's copy of the said titles to the Register of Deeds in order that new ones could be issued in favor of private respondents.

After hearing the arguments of both parties in said motion to nullify the titles, the lower court, on March 15, 1979, issued an order cancelling TCT Nos. 98050, 98062, 38605, 98059, 98061 and 42055 but denied the motion of private respondents to nullify TCT Nos. 98049, 98051, 98053, 98054, 98055, 98056, 98060, 98063, and 98057 and 98058 issued in favor of Alfredo Cruz and Aurelia Oxiles respectively, without prejudice to private respondents' filing a separate action for their invalidation.[8]

Having failed in their attempt to nullify the titles now in the names of Cruz and Oxiles, private respondents filed on January 14, 1980 an amended motion for restitution with motion for contempt, which motions were rejected by the trial court in its order dated August 21, 1980.[9] The court opined that the consolidated ownership of said realty in the names of mortgagees Cruz and Oxiles could no longer be disturbed in said proceedings. However, this would not bar the De Laras, et al. from going after the Arandas in a separate direct action to seek redress for the former's inability to recover the said properties now in the names of Cruz and Oxiles.[10]

On August 9, 1982, private respondents (De Laras et al.) filed a special civil action for certiorari and mandamus before the Court of Appeals to set aside the order of August 21, 1980.[11] On November 19, 1982, the Appellate Court, through Justice Jose C. Colayco, modified the questioned order and ruled in this wise:

"1. The x x x Asuncion Reyes Vda. de Aranda, and all the other(s) x x x surnamed Aranda must pay to x x x Marcelo de Lara the proceeds of the sale of the jeepney, as shown by the certificate of sale issued by the sheriff, and return to him the amount of P42,159.00;

"2. x x x Pelagio, Fernando, Maria, and Julia, all surnamed Aranda, must pay to all the (De Laras, et al.) the proceeds of the auction sale of the mortgaged parcels of land to Alfredo Cruz and Aurelia Oxiles, as shown by the certificates of sale issued by the sheriff.

"The liability of the (Arandas) under these headings can be enforced by writ of execution.

"The (De Laras, et al.) may of course enforce restitution against Alfredo Cruz and Oxiles, instead of demanding their rights under Sec. 5, Rule 39 of the Revised Rules of Court; but this must be done in a separate civil action, where they can demand from the (De Laras, et al.) and Alfredo Cruz and Aurelia Oxiles their share of the harvest from the time of the levy. This alternative right is recognized in the case of Hilario vs. Hicks (cf. pp. 586, et seq.). But they cannot demand the amounts realized from the auction sale. 'The right to recover mesne profits is evidently derived from the right to specific restitution. . .' [12]

"It must be borne in mind in this connection that the proceedings for the execution of the decision pending appeal are lawful and that 'those who act under the process are protected by the law.' [13] 'This is the generally recognized rule. After a reversal, the plain-tiff is bound to make restitution - that is, to return to the defendant whatever he got by means of the judgment; but he cannot be treated as a wrongdoer for causing execution to issue, and the defendant's property to be levied on and sold. It protects him while it remains in force.' " [14]

"The petition for the reconsideration or review of the order denying or dismissing the motion to find the (Arandas) in contempt of court is not meritorious either. An appeal cannot be availed of in contempt proceedings where the charge has been dismissed because contempt proceedings are criminal in nature. [15]

"WHEREFORE, the order of August 21, 1980 is AFFIRMED with the modifications above indicated, and the case remanded for further proceedings until the proper relief are carried out. x x x ." [16]

Hence this recourse.

The pivotal issues presented are:

- (1) Whether or not the Court of Appeals erred in giving due course to the special civil action of certiorari in CA-G.R. No. 14821-SP despite the lapsed remedy of ordinary appeal;
- (2) Whether or not the Appellate Court erred in granting reliefs to private respondents which are not mentioned in the dispositive portion of the Court of Appeals' decision in CA-G.R. No. 42228-R which reversed the Court of First Instance of Bulacan in Civil Case No. 2366-R.

Anent the first issue, the Appellate Court can legally entertain the special civil action of certiorari in CA-G.R. No. 14821-SP considering the broader and primordial interests of justice which compel an occasional departure from the general rule that the extraordinary writ of certiorari cannot substitute for a lost appeal, the order of March 15, 1979 having become final upon the lapse of the reglementary period of appeal. [17]

While the lower court correctly denied the motion to nullify the subject titles in the names of Cruz and Oxiles, it failed to provide private respondents complete restitution as decreed in Section 5, Rule 39 of the Rules of Court which states:

"Effect of reversal of executed judgment. - Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."

When a judgment is executed pending appeal and subsequently overturned in the appellate court, the party who moved for immediate execution should, upon return of the case to the lower court, be required to make specific restitution of such property of the prevailing party as he or any person acting in his behalf may have acquired at the execution sale. If specific restitution becomes impracticable, the losing party in the execution becomes liable for the full value of the property at the time of its seizure, with interest. [18]

While the trial court may have acted judiciously under the premises, its action resulted in grave injustice to the

private respondents. It cannot be gainsaid that it is incumbent upon the plaintiffs in execution (Arandas) to return whatever they got by means of the judgment prior to its reversal. And if perchance some of the properties might have passed on to innocent third parties as happened in the case at bar, the Arandas are dutybound nonetheless to return the corresponding value of said properties as mandated by the Rules.

On the second issue, petitioners argue that the proceeds of the jeepney as well as the sum of P42,159.00 garnished from Tecson Chemical Corporation cannot be returned to the De Laras, et al because such return is not expressly included in the dispositive part of the Appellate Court's judgment in CA-G.R. No. 42228-R.

It will be recalled that the decision of the Bulacan trial court,[19] aside from awarding the subject pieces of realty to the Arandas, also ordered the De Laras, et al to pay 10,000.00 as moral damages and another P10,000.00 as attorney's fees. Consequently, to satisfy said judgment pending appeal, the jeepney of Marcelo de Lara was sold in execution and the amount of P42,159.00 due from the Tecson Chemical Corporation in favor of Marcelo was garnished. The proceeds of the jeepney and the garnished amount were later withdrawn by the Arandas. To deny restitution of these items would be to close our eyes to the unalterable fact that such items as acknowledged by both parties were used specifically to complete and satisfy the judgment of the lower court in favor of the Arandas, the plaintiffs in execution, and from which they have derived benefits since 1968.[20]

Indeed, the Court of Appeals need not specify in the judgment of reversal that there should be restitution of the properties, etc. Such restoration is expressly provided for in Section 5, Rule 39 of the Rules and should apply in the absence of any contrary disposition in the final judgment of the appellate court.

In sum, what the trial court failed to effect, the Court of Appeals sought to rectify in the decision under review. It laid down in detail what the trial court should accomplish if only to give full meaning to the earlier reversal by the appellate court in CA-G.R. No. 42228-R and our affirmance thereof in G.R. No. L-46086 and more importantly, to Section 5, Rule 39. For without that assailed judgment, an intolerably incomplete and inequitable situation would have remained uncorrected in direct violation of the rules and the basic tenets of fair play.

WHEREFORE, the decision of the Court of Appeals dated November 19, 1982 is affirmed.

So ordered.

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

Cortes, J., on leave.

[1] Civil Case No. 2366-R; Record on Appeal, p. 225 of Rollo, G.R. No. 46086.

[2] CA-G.R. No. 42228-R.

[3] CA-G.R. No. 42228-R.

[4] See Rollo, p. 33; Annex "J", Rollo, p. 82.

[5] CA-G.R. No. 42228-R.

[6] CA-G.R. No. 42228-R.

[7] G.R. No. L-46086.

[8] Annex G, Rollo, pp. 62-66.

[9] Annex "H", Rollo, pp. 67-74; Annex "J", Rollo, p. 86.

[10] Annex "H", Rollo, p. 67; Annex "J", Rollo, pp.85-86.

[11] G.R. No. 14821-SP.

[12] p. 591, Hilario v. Hicks.

[13] see page 356, Po Pauco Cases, *infra*.

[14] See page 357, *id*.

[15] *Benedicto vs. Canada*, No. L-20292, Nov. 27, 1976, 21 SCRA 1066.

[16] Rollo, pp. 37-38.

[17] (*Pachoco vs. Tumangday and Fernando, etc.*, 108 Phil. 239; *Co Chuah Seng vs. Court of Appeals*, G.R. No. 50151, March 21, 1984, 128 SCRA 308; *Destileria Limtuaco & Co., Inc. vs. IAC*, G.R. No. 74369, January 29, 1988, 157 SCRA 706; *Del Pozo, et al. vs. Judge Penaco*, L-48302, 167 SCRA 755.

[18] *Po Pauco vs. Tan Junco*, 49 Phil. 349; *Hilario vs. Hicks*, 40 Phil. 576.

[19] Civil Case No. 2366-R.

[20] Motion for Reconsideration, CA-G.R. No. 14821-SP, Annex B, Rollo, p. 51; Memorandum for the Petitioner-Appellants, Rollo, p. 157; Amended Motion for Restitution with Motion for Contempt, Annex H, Rollo, pp. 67 and 71; Order, August 21, 1980, Civil Case No. 2366-M, Annex J, p. 85.

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