

CONSOLACION NAPILAN, GLORIA NAPILAN-JAEN, DAVID NAPILAN AND ELIAS NAPILAN, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, HON. JULIAN Y. EREÑO, JUDGE, REGIONAL TRIAL COURT, REGI...

G.R. NO. 70025. March 14, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In an action brought in the Court of First Instance of Iloilo by Leon Gotera, Benjamin Napilan and Lydia Tacelosa against Consolacion Napilan, Gloria Napilan-Jaen, David Napilan and Elias Napilan for partition, accounting and damages,[1] an amicable settlement was reached and a project of partition voluntarily executed and carried out by the parties. The case was not thereby terminated, however. For the plaintiffs insisted that they were still entitled to their shares in the personal property left by their deceased parents, Gelacio and Atanacia Napilan, as well as the fruits and produce of the lands left by them, during the period from 1971, when Atanacia Napilan died, until 1976 and 1977 when the plaintiffs' respective shares in the real property were given to them. Evidence was therefore received by the Trial Court on these matters.

On September 11, 1981 the Court rendered judgment in favor of the plaintiffs, ordering defendants --

(1) "to render an accounting (a) of the fruits and produce of the lands from August 1971 to 1977 and (b) of all the personal properties left by spouses Gelacio and Atanacia Napilan," and

(2) thereafter to deliver to plaintiffs their shares therein together with interest at six (6) percent per annum from 1971 until fully paid."

The judgment further ordered defendants "to pay plaintiffs P5,000.00 as attorney's fees and to pay the costs of this suit." [2]

The plaintiffs moved for reconsideration of the decision alleging that it was merely interlocutory; it did not finally dispose of the case because it still left something for the Court to do, i.e., act on the accounting which defendants were being required to make.[3] The Trial Court granted the reconsideration and amended the dispositive portion of its decision, by Order dated September 11, 1981 which pertinently reads as follows:

The Court, in ordering defendants to render an accounting, simply granted what plaintiffs, in the first place, prayed for in their complaint. Moreover, aside from the testimonies of defendants that the land produced an average of thirty (30) cavans per hectare a year and P3,500.00 worth of other products, no other evidence was presented regarding the cultivation and the produce and other evidence as may be necessary to aid the Court in determining the share it should give plaintiffs.

Nevertheless, since the judgment has not become final yet, the Court hereby amends the dispositive portion of the decision to read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendants to deliver to plaintiffs their lawful shares in the land subject of this complaint equivalent to two-sevenths (2/7) share of the net produce from August 1971 to 1977 and their two-sevenths (2/7) shares in the personal properties or its equivalent value of P5,718.26 for the same period and in both cases to pay interest at the rate of six (6%) percent per annum from 1971 until fully paid; to pay P5,000.00 as attorneys's fees and to pay the costs of this suit."

From the judgment, as thus amended, no appeal was ever taken. It thus became final and executory.

Some fifteen months later, a writ of execution was issued to enforce the amended judgment.[4] The defendants tried to stop the execution. They tendered payment to the sheriff of the sum of P5,718.26 -- the equivalent value of their shares in the personal property in question -- with 6% interest per annum thereon, together with the sum of P5,000.00 as attorney's fees. They opined that payment thereof was the only part of the judgment obligation exigible at the time. Payment of the plaintiffs' shares in the net produce of the lands, they said, could not yet be demanded of them because the accounting thereon had still to be rendered and approved. The sheriff however proceeded to levy on defendants' property which he then sold at public auction for P60,000.00.

The defendants thereupon instituted on January 17, 1984 a special civil action of certiorari in the Intermediate Appellate Court praying for nullification of the order of execution.[5] They argued that.

"The decision rendered by the lower court provides for an accounting such that until and after an accounting has been rendered the decision cannot yet be executed, hence, the writ of execution dated February 13, 1983, is null and void for having been issued for lack of jurisdiction or a grave abuse of discretion tantamount to lack of jurisdiction."

They raised two other points, but since these are not material to the present proceedings, they need not and will not be passed upon.

The IAC dismissed the defendants' petition for lack of merit. In its decision promulgated on November 12, 1984,[6] the Court declared that the defendants' (petitioners') submittal -- regarding the incompleteness of the judgment since the accounting by it required had yet to be rendered -- "had no leg to stand on, as ** (the) assumption is based on the original decision which has been subsequently amended, and where the accounting has been finally established by respondent court."

The defendants have appealed to this Court praying for reversal of the decision of the Intermediate Appellate Court. They insist that the judgment of the Trial Court is incomplete as regards the shares of the plaintiffs in the net produce of the property theretofore owned in common, since an accounting thereof had yet to be made for the period from 1971 to 1977, and in effect leaves it to the sheriff to determine that matter -- as he has for all intents and purposes so done -- although plainly without competence so to do. In so doing, and selling defendants' property for P60,000.00, instead of accepting the defendants' tender of payment for the amounts explicitly specified in the judgment -- i.e., the value of the plaintiffs' share in the personal property, and attorney's fees -- and then deferring execution until after rendition and approval of the accounting required by the judgment, the sheriff, and the Trial Court, have acted outside their authority and in the process caused grave injustice to the defendants.

It is now settled that a judgment ordering partition with damages, is a final one, and is appealable, and cannot be deemed incomplete, notwithstanding that it commands a party to make an accounting in order precisely to ascertain with precision and particularity how much damages have been suffered by and will have to be paid to the prevailing party.[7] The judgment in this case is undoubtedly of this character. It declares the defendants liable, in relation to a partition already effected of real property theretofore owned by them and the plaintiffs in

common, to pay the latter their share in the fruits and produce of said real property, after rendering an accounting thereof, in addition to paying them, too, a stated amount of money equivalent to their share in the personalty also owned in common, with interest on both amounts, as well as attorney's fees. Since it is a final judgment, and was never appealed, it became executory. Execution thereof thus became a matter of right on the plaintiffs' part, and mandatory and ministerial on the Court.[8] Execution was entirely proper: (1) to enforce the defendants' obligation to render an accounting; and (2) to exact payment of the money value of the plaintiffs' share in the personal property and attorney's fees due defendants, as well as the costs of the suit. After rendition and approval of the accounting, execution will again be proper to enforce payment of the amount due the plaintiffs in accordance with the accounting.

The Court of Appeals, therefore, correctly held that no abuse of discretion attended the issuance of the questioned writ or order of execution. Indeed, since the private respondents were entitled to have execution as a matter of right, it was its denial that would have constituted reversible error. Even so, it is also clear that its implementation by the sheriff was in the circumstances improper and irregular.

First, the writ of execution itself should have made it obvious to said officer that it could not then and there be carried out insofar as concerned the decreed payment or delivery to the plaintiffs (private respondents herein) of "*** their lawful shares in the land subject of this complaint equivalent to two-seventh (2/7) shares of the net produce from August 1971 to 1977 ***." That reference to a 2/7 share of net produce to which no specific cash value was assigned should have alerted him to look into the record of the case, particularly the body of the decision being executed, from which he would have learned that the precise amount to be satisfied could only be determined after an accounting that the defendants were yet to submit.

Second, while the writ could immediately be carried out with respect to the stated amounts of P5,718.26 plus 6% annual interest from 1971, representing the value placed on the plaintiffs' (now respondents') share in the personalty sued for, and P5,000.00 for attorney's fees, the petitioners have asserted, and it has never been denied by the respondents, that said sums were offered to the sheriff, who rejected them, apparently without any justification, and then proceeded to levy upon and sell petitioners' property, consisting of twenty-eight (28) parcels of land, at public auction for P60,000.00.

This irregular and irresponsible implementation of the writ of execution dictates that without regard to the validity of said writ, the execution sale made pursuant thereto be annulled and set aside.

WHEREFORE, the appealed Decision of the Court of Appeals is hereby modified as follows:

1. the sheriff's sale of January 23, 1984 complained of is hereby ANNULLED, and the certificate of sale issued pursuant thereto is CANCELLED;
2. the respondent Trial Judge, or his successor, is DIRECTED to require the petitioners, as defendants in Civil Case No. 10056, to render the accounting ordered in the original decision of September 11, 1981 in said case, and to act thereon with a view to determining, as expeditiously as possible, the precise amount or value of the share or shares pertaining to the private respondents in the produce of the subject lands from August 1971 to 1977 as decreed in said decision; and pending such determination, to hold or abate execution insofar as payment of such share or shares is concerned. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The case was docketed as Civil Case No. 10056 and assigned to Branch 6.

[2] Rollo, pp. 63-69

[3] Id., p. 34

[4] Id., p. 35

[5] Id., pp. 19, 20, 25. The case was docketed as A.C. G.R. SP No. 02469.

[6] Per German, J., with whom concurred Melo, Kapunan and Lazaro, JJ.

[7] Miranda v. CA, 71 SCRA 295; Lagunzad v. Gonzalez, 92 SCRA 476; Municipality of Biñan v. Garcia, G.R. No. 69260, Dec. 22, 1989 and cases therein cited

[8] Sec. 1, Rule 39, Rules of Court.

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