

## **THE HEIRS OF REMIGIO TAN, NAMELY ROSITA TAN, EDUARDO TAN, EUSEBIO TAN, REMIGIO TAN, JR., EUFROSINA TAN, AND VIRGILIO TAN, PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE C...**

*G.R. No. 71033. July 29, 1988*

Ponente: SARMIENTO, J.

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### **SARMIENTO, J.:**

This is the second time around that this case has come before us. The first was on a petition for review by certiorari (G.R. No. 66977) of the decision of the then Intermediate Appellate Court affirming, with modification, the judgment of the trial court on the merits. In a Resolution dated August 20, 1984, we denied the petition for lack of merit. Entry of final judgment was made on October 23, 1984.

In the proceedings which followed in the trial court for the execution of the judgment, the petitioners challenged the order of execution issued by the trial court, and in due course, the case was again propelled the same route to this Court through the instant petition, G.R. No. 71033.

While G.R. No. 71033 was pending before us, Eusebio V. Tan, in his individual capacity brought a petition in intervention, dated October 24, 1986, docketed as G.R. No. 76330, alleging that he was being deprived of his property without due process of law, by virtue of an inherently unjust and void judgment and in violation of Articles 774 and 1311 of the New Civil Code. After the private respondents filed their comment and the petitioner his reply thereto, the Court resolved, on October 28, 1987, to consolidate the case with G.R. No. 71033.

The heart of the matter here is whether or not, in the execution of a judgment that is already final and executory, it may still be modified.

The following is a brief summary of the background facts of the case.

The late Don Eusebio Valdez Tankeh and his wife, Dona Hilaria Isabelo ("Aling Yayang"), had seven children, namely, Remigio, Alejandro, Aida, Florencia, Ruperto, Brigida, and Clemente.

During their lifetime, Don Eusebio and his wife engaged in various businesses and amassed considerable properties. Don Eusebio died intestate in 1948, and his estate was judicially settled before the then Court of First Instance of Manila in Special Proceedings No. 5147 which was terminated and closed in 1954.

His wife "Aling Yayang" died, also intestate, on March 2, 1965, and a petition for the settlement of her estate was filed on July 8, 1965 with the then Court of First Instance of Pasay City, docketed as Special Proceedings No. 1943-P.

On August 27, 1965, Remigio, Aida, and Alejandro filed a complaint against their other four brothers and sisters, Florencia, Ruperto, Brigida, and Clemente, for the recovery of their shares in properties belonging to their mother allegedly illegally transferred to the defendants, and for damages. The action was filed with the Court of First

Instance of Manila and docketed as Civil Case No. 62320. The complaint was subsequently amended (first and second amended complaints) to implead other parties (the spouses of the defendants and certain alleged family corporations) as parties-defendants, and to include other properties of which the plaintiffs were allegedly deprived of their legitimate shares. In their answers to the complaint, both original and amended, the defendants asserted certain counterclaims against the plaintiffs, which, particularly in respect to plaintiff Remigio, sought to have him deliver and reconvey to the defendants their respective shares in the realties known as the Rosario, Folgueras, and Carriedo properties, allegedly transferred to him in trust by their parents on January 4, 1945, December 5, 1945, and December 13, 1948, respectively, and to recover damages.

On September 3, 1968, plaintiff Remigio Tan died, and on motion of his widow, Rosita G. Tan, dated October 18, 1968, the trial court ordered that she and the minor children (Eusebio, Remigio, Jr., Eufrosina, Virgilio, and Eduardo, all surnamed Tan) be substituted as parties plaintiffs.

After Remigio's death, his co-plaintiffs, Alejandro and Aida, entered into a compromise agreement with the defendants Florencia, Ruperto, Brigida, and Clemente, and a partial decision based thereon was promulgated by the trial court wherein the complaint of Aida and Alejandro was dismissed. However, Aida and Alejandro were subsequently impleaded in a third amended complaint as parties defendants. In their answer to the third amended complaint, the original defendants stood by their answer to the previous amended complaints, wherein they set up counterclaims against the plaintiffs to recover their shares of the Folgueras, Rosario, and Carriedo properties, plus damages.

After the trial of the case which lasted fourteen years, the then Court of First Instance of Manila rendered a decision dismissing the complaint and granting the defendants' counterclaims, and ordering the plaintiffs (a) to reconvey one-seventh (1/7) portion or share each to the defendants brothers and sisters of Remigio V. Tan of the Folgueras, Rosario, and Carriedo properties, and in case of the properties already sold earlier by Remigio, the proceeds of the sales should instead be distributed, with legal interest from the date of the corresponding sale up to the time the distribution should have been fully implemented; (b) to pay to each defendant co-heir one-seventh of the income of the Carriedo property in the amount of P15,000.00 per month from 1951, plus interest at the legal rate, until fully paid; (c) to pay the defendants P20,000.00 as attorney's fees. The court also dissolved the receivership of the Yayang Building which it ordered on October 29, 1965, and directed the receiver to settle its accounts and deliver all funds and properties held by it in trust to the defendants in proportion to their respective share of the building.

On appeal to the Intermediate Appellate Court, the trial court's decision was affirmed, with the modification that the share of the plaintiffs-appellants in the Yayang Building was fixed at 1/16th of the property, plus income derived therefrom, and the award of attorney's fees to defendants-appellees was eliminated.

The above judgment became final and executory, with the dismissal by the Supreme Court of the petition for review by certiorari, as heretofore stated. Upon motion for execution by the private respondents, the court a quo issued the following order of execution on December 20, 1984, to wit:

#### O R D E R

Finding the motion for execution filed by the defendants Tankeh dated November 19, 1984 to be well taken, the plaintiffs' opposition thereto dated November 29, 1984 to be without merit, the motion for issuance of a writ of execution is hereby granted. Accordingly, let writ of execution issue against the plaintiffs and in favor of each of the following defendants: (1) Alejandro V. Tankeh; (2) Aida T. Concepcion; (3) Ruperto V. Tankeh; (4) Florencia T. Huibonhoa; (6) Ligaya L. Tankeh, for herself and representing her minor children, and her daughters Catherine L. Tankeh as the heirs of Clemente V. Tankeh, as follows:

- On the Carriedo Property

(a)

The Register of Deeds of the City of Manila is hereby directed to cancel Transfer Certificate of Title No. 117897 covering said property and to issue new certificate of title reflecting a co-ownership therein of one-seventh (1/7) portion or share of each of the above-named defendants with the plaintiffs heirs of Remigio V. Tan, namely: Rosita G. Tan and her children, Eusebio V. Tan; Remigio V. Tan, Jr., Eufrosina V. Tan, Virgilio V. Tan and Eduardo V. Tan, and all income that shall be derived therefrom from date of issuance of said new title in co-ownership.

(b)

the Sheriff is hereby commanded that, of the goods and chattels of the plaintiffs, he should cause to be made the sum of P16,261,714.28, for damages, representing the total amount due to the above-named six (6) defendants-co-owners or at P2,710,-285.71 for each co-owner for the income of the Carriedo property in the amount of P15,000.00 per month beginning January 1951 up to December 31, 1984, with interest at the legal rate, until said amounts shall have been fully paid.

(c)

The receiver for this property, appointed under the order dated November 6, 1979, the Far East Bank and Trust Co., is hereby ordered to turn over to the parties, at one-seventh (1/7) share each, all moneys in its possession concerning the property, and to make a report thereon, within fifteen days from notice.

- On the Rosario Property

The Sheriff is hereby commanded that, of the goods and chattels of the plaintiffs, he should cause to be made the sum of P220,500.00, for damages, representing the total amount due as of December 31, 1984 to the above-named six (6) defendants-co-owners or at P36,750.00 for each co-owner, as their share in the proceeds of the sale of this property with interest at the legal rate until fully paid.

- On the Folgueras Property

The Sheriff is hereby commanded that, of the goods and chattels of the plaintiffs, he should cause to be made the sum of P202,011.42 for damages, representing the total amount due, as of December 31, 1984, to the above-named six (6) defendants-co-owners or at P33,668.58 for each co-owner, as their share in the proceedings of the sale of this property, with interest at the legal rate until fully paid.

With respect to 1/16 share over the Yayang Property awarded to the plaintiffs by the Intermediate Appellate Court in its decision on appeal dated December 2, 1983, (AC-G.R. CV. No. 68068-R), the defendants pursuant to par. 7 of their motion for execution, are hereby ordered to quantify and/or present evidence for the purpose of determining the value of said 1/16 share. For this purpose, let this case be set for hearing on January 11, 1985, at 9:00 AM."

On appeal to the Intermediate Appellate Court, the order of execution was modified, as follows:

WHEREFORE, the order of execution is affirmed, except that:

- The total monetary obligation of petitioners on the Carriedo, Rosario and Folgueras property up to 31 December 1984 is P14,831,703.13;

- The Register of Deeds of the City of Manila is ordered to issue a new title for the Yayang property and indicate therein the 1/16th share of petitioners therein;
- The Honorable respondent Court shall receive evidence of the income from the Yayang property since the death of Dona Hilaria Isabelo up to 31 December 1984 and determine the petitioners' 1/16th share thereof which shall be deducted from the total monetary liability of petitioners to private respondents, up to the same period. From January 1985, petitioners shall be entitled to their share of the income from the property, subject to the unsatisfied monetary award to private respondents.[\*]

Among the issues raised by the petitioners before the Intermediate Appellate Court, in challenging the legality of the trial court's order of execution, we need consider only the claim of the petitioners that they are being denied due process of law in that they have been made liable beyond the value of their inheritance from the deceased Remigio B. Tan, contrary to the provisions of Articles 774 and 1311 of the Civil Code. This is the only issue raised by the petitioners in the instant petition.[1]

On this issue, the respondent Intermediate Appellate Court held, in its decision of April 26, 1985, that "[T]he questions of the limited liability of petitioners and entitlement to reimbursement for necessary, useful and ornamental expenses should have been raised by them during the trial and on appeal. For the lower court to consider them now and act as petitioners wish it to would be to vary the terms of a final and executory judgment."

On motion for reconsideration by the petitioners, the respondent Intermediate Appellate Court refuted their contention that they could not have raised the question of their limited liability in the trial court and on appeal because it was not an issue then. Said the respondent court: "We disagree. When the trial court condemned petitioners without qualification to pay private respondents certain monetary obligations, the nature and extent of petitioners' liability therefor were brought to the fore. If petitioners did not seek a qualification of that judgment from either the trial court or the appellate court and obtain a favorable judgment thereon, the unqualified judgment would operate against them fully. Petitioners, therefore, should have asked the trial court to limit their liability only to the extent of their inheritance. Failing this, they should have sought the same relief from this Court, and, eventually, from the Honorable Supreme Court to which Courts they had pursued their appeal. Petitioners did not do this. For us to accede to petitioners' desire now would be to alter a final and executory judgment. This we cannot do even under the most liberal interpretation of procedural rules."

We find no reversible error committed by the respondent Intermediate Appellate Court. A review of the records show that the petitioners brought up the matter of their limited liability only at the time of the execution of the judgment, after the same had already become final and executory.

The decision of the lower court which granted the private respondents' counterclaims condemned the petitioners, without qualification, to pay certain amounts representing the share of the former in the income of the Carriedo property, fixed by the Court at P15,000.00 per month, beginning January 1951, up to December 31, 1984, with interest at the legal rate, until fully paid, and their share in the proceeds of the sale of the Folgueras and Rosario properties.

The petitioners at that point should have brought up the question which they are now raising, namely, that their liability to the private respondents should be limited to the amount of their inheritance from Remigio V. Tan. Instead, they allowed the decision to become final and executory without seeking a limitation of their liability.

When the decision was returned to the trial court for execution, all that was needed to be done was to carry out the terms of the decision which had already become final and executory. At that stage, it was too late for the petitioners to seek its modification.

The petitioners can not claim that they are being deprived of their property without due process of law since they had all the opportunity to raise the question they are now raising before the decision became final and executory. Neither can they ask this Court to disregard "procedural technicalities" to allow them to assert their claim at this very late date. What is involved here is not a matter of procedural technicality, but the doctrine of finality of judgment.

It is settled jurisprudence that except in the case of judgments which are void ab initio or null and void per se for lack of jurisdiction which can be questioned at any time -- and the decision here is not of this character -- once a decision becomes final, even the court which has rendered it can no longer alter or modify it, except to correct clerical errors or mistakes. Otherwise, there would be no end to litigation, thus setting to naught the main role of courts of justice, which is, to assist in the enforcement of the rule of law and the maintenance of peace and order, by settling justiciable controversies with finality.[2]

WHEREFORE, the petition in G.R. No. 71033 is hereby DENIED, and the temporary restraining order issued on June 19, 1985 is LIFTED; the petition in G.R. No. 76330 is hereby DISMISSED.

**SO ORDERED.**

Padilla and Medialdea,\*\* JJ., concur.

Melencio-Herrera (Chairman), J., no part. No participation in deliberations.

Paras, J., no part, concurred in CA.

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[\*] Javellana, Luis A., J., ponente; Paras, Edgardo L. and Mendoza, Vicente V., JJ., concurring.

[1] Although the matter is not raised in their petition, hence not in issue in this proceeding, the petitioners also discussed in their memorandum the question of the ownership of the building on the Carriedo property and their entitlement to reimbursement for the necessary and useful expenses incurred by them in administering, maintaining, and preserving the same.

[2] *Fabular v. Court of Appeals*, 119 SCRA 329, 331; *Fariscal Vda. de Emnas v. Emnas*, 95 SCRA 470, 474; *Ocampo v. Caluag*, 19 SCRA 971, 974.

[\*\*] Designated to sit as a member of the Second Division to participate in the consideration and resolution of these cases.

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