

**SIMEON ESTOESTA, SR. AND LUCIA ESTOESTA, PETITIONERS, VS.
COURT OF APPEALS, HON. EDUARDO C. TUTAAN, AS PRESIDING
JUDGE, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH
LXXXFFL; QUEZO...**

G.R. No. 74817. November 08, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari, prohibition, mandamus, with a prayer for a restraining order seeking to annul and set aside the Orders dated May 21, 1986 denying the "Urgent Motion to Quash Writ of Execution" and dated May 29, 1986 denying plaintiffs' (herein petitioners') motions for reconsideration in Civil Case No. 19319.

From the records the antecedent facts are as follows:

On October 7, 1974 spouses Simeon Estoesta, Sr. and Lucia Estoesta, herein petitioners, filed an action for the annulment of the sale of a house and lot located at 54-A Legaspi Street, Project 4, Quezon City, more particularly described as Lot No. 14-a, Block No. 461 now Lot No. 28, Block No. 61, made by petitioners' daughter Trinidad Estoesta in favor of private respondent Luis Villamor.

In their complaint petitioners alleged, inter-alia, that the Philippine Homesite and Housing Corporation (PHHC) awarded to them the said house and lot in 1953; that in 1967 petitioners transferred to Davao City leaving the occupancy of the house and lot to Trinidad Estoesta and their other children who were then studying in Manila; that payments of the monthly amortizations to the PHHC were made by petitioners through their daughter Trinidad Estoesta; that for convenience and in order to facilitate transactions with the PHHC, petitioners acceded to Trinidad Estoesta's request that the house and lot be transferred in her name so the former executed a document transferring their rights to the latter; that because of the simulated Transfer of Rights, upon full payment of the value of the house and lot, PHHC executed a Deed of Sale in favor of Trinidad Estoesta; that Trinidad Estoesta obtained TCT No. 145066 on September 19, 1969 from the Register of Deeds of Quezon City; that annotated in the title is the restriction that within a period of five (5) years from the issuance of the title, the property cannot be sold or transferred by the purchaser without the written consent of the PHHC; that in 1973 upon learning that Trinidad Estoesta offered for sale the subject property, petitioners demanded from the former to re-transfer the title by executing a deed of sale in the latter's favor, that on condition that petitioners will pay to Trinidad Estoesta the sum of P1 0,000.00 within one (1) year from the execution of the deed of sale and that they will assume Trinidad Estoesta's loan with the GSIS amounting to P1 0,246.66 with the subject property as collateral, Trinidad Estoesta executed on February 11, 1974 a deed of absolute sale in favor of petitioners; that for the account of Trinidad Estoesta petitioners paid to the GSIS the sum of P5,800.00 from February 5, 1974 to August 5, 1974; that even before the lapse of the five (5) year period and, without the consent of PHHC, for a consideration of P17,000.00, Trinidad Estoesta executed on August 5, 1974 another Deed of Sale in favor of private respondent Luis Villamor; that Luis Villamor is a buyer in bad faith as he had personal knowledge that the subject property

had been occupied by persons other than the vendor; that TCT No. 145066 was cancelled and in lieu thereof TCT No. 202855 was issued in the name of Luis Villamor. As relief petitioners prayed for the annulment of the sale in favor of Luis Villamor, the cancellation of TCT No. 202855, and as the rightful owners of the subject property the issuance of title in their names. Also they prayed for the payment of moral and exemplary damages, attorney's fees, plus costs of suit.

On October 22, 1974, private respondent Luis Villamor filed his Answer with Counterclaim. In his Answer he claimed that the sale made in his favor by co-defendant Trinidad Estoesta is valid and legal, because the registration of the transaction was outside the five (5) year prohibitory period; that he is a buyer in good faith because there were no existing liens nor encumbrances on the lot in question; that the sale between petitioners and co-defendant Trinidad Estoesta is fictitious and was obtained through force and intimidation. As counterclaim he prayed for the award of attorney's fees, litigation expenses, moral damages, plus costs of suit.

On November 22, 1974 defendant Trinidad Estoesta filed a motion to dismiss but it was denied in the order of the Court dated December 9, 1974 (Record on Appeal, p. 32). For failure to file an Answer defendant Trinidad Estoesta was declared in default in the trial court's order dated December 10, 1974 (Record on Appeal, p. 34). Her Answer dated January 2, 1975, was stricken from the record in the order of the trial court dated January 23, 1975 (Record on Appeal, p. 52).

In the complaint GSIS was impleaded as a defendant, but by agreement of the parties during the pre-trial conference, the trial court dropped GSIS in its order dated April 10, 1975 (Record on Appeal, pp. 74-75).

On August 15, 1978, after hearing the trial court rendered a decision the dispositive portion of which reads, viz:

"WHEREFORE, premises considered, this Court hereby renders judgment in favor of plaintiffs and against defendants Trinidad Estoesta, and:

- (a) Declares the sale by defendant Trinidad Estoesta to defendant Luis Villamor of the subject property to be null and void;
- (b) Orders the Register of Deeds of Quezon City to cancel Transfer Certificates of Titles Nos. 202855 and 145066, and in lieu thereof to issue a new certificate of title in favor of plaintiffs over the said subject property;
- (c) Orders defendant Trinidad Estoesta and defendant Luis Villamor, jointly and severally, to pay plaintiffs the sum of P5,000.00 as and for costs of litigation, and the further sum of P5,000.00 as and for attorney's fees; and
- (d) Orders defendant Trinidad Estoesta and defendant Luis Villamor to pay the costs of suit.

SO ORDERED."

(p. 2, Respondents' Comment; p. 110, Rollo)

Faustino Tugade, counsel of record for private respondent, Luis Villamor, received a copy of the trial court's decision on September 5, 1978 (Annex "F-I", Certification of Branch Clerk of Court Fabre Luna, Rollo, pp. 53-54).

On October 3, 1978 the law firm of De Santos, Balgos and Perez entered its appearance as counsel for Luis Villamor in collaboration with Villamor's counsel of record Atty. Faustino Tugade (Record on Appeal, p. 131). On even date it filed a motion for extension of fifteen (15) days to be computed from October 5, 1978 to file a motion for reconsideration of the trial court's decision. (Record on Appeal, pp. 132-134). Judge Ricardo Tensuan, granted the law firm's motion in his order dated October 3, 1978 (Record on Appeal, p. 153). On October 3, 1978 Atty. Faustino Tugade filed a motion for reconsideration of the trial court's decision (Record on Appeal, pp. 134-152). On October 5, 1978 the law firm also representing Luis Villamor filed its motion for reconsideration of

the trial court's decision (Record on Appeal, pp. 153-154). Said motions for reconsideration were denied by the said court in its order dated May 2, 1979 (Record on Appeal, pp. 200-203). Atty. Faustino Tugade received copy of the order of denial on July 26, 1979, while Attys. De Santos, et al., received their copy on July 31, 1979. (Certification of Branch Clerk of Court Fabre Luna, Rollo, pp. 53-54).

On August 7, 1979, Luis Villamor thru counsel filed a notice of appeal and paid the appeal bond (Record on Appeal, p. 204). Also on even date Luis Villamor thru counsel filed a motion for extension of thirty (30) days to be computed from August 16, 1979 to file Record on Appeal (Record on Appeal, pp. 205-207). In its order dated August 14, 1979 the trial court granted the motion for extension to file record on appeal (Record on Appeal, pp. 207-208).

On August 20, 1979 petitioners, thru counsel, filed a motion to set aside the Order of August 14, 1979 and to dismiss the appeal on the ground that the appeal was not perfected on time and the decision dated August 15, 1978 had become final and executory. Private respondent thru Attys. De Santos, et al., filed his opposition on September 6, 1979 (Record on Appeal, pp. 212-217).

On September 7, 1979, private respondent, thru counsel, filed his second motion for reconsideration of the trial court's decision (Record on Appeal, pp. 217-231). On said date he also filed a motion to suspend the filing of the record on appeal (Record on Appeal, pp. 231-232).

On September 18, 1979 petitioners filed their consolidated reply to private respondent's opposition to the motion to dismiss appeal and opposition to the second motion for reconsideration (pp. 233-257). On said date petitioner also filed a motion for reconsideration (Record on Appeal, pp. 258-259).

In its order dated September 27, 1979, the trial court denied for lack of merit the following: (1) the Motion to Dismiss Appeal and to set aside the order dated August 14, 1979; (2) Second Motion of Reconsideration; and (3) Motion for Execution (Record on Appeal, pp. 261-262).

On October 16, 1979, private respondent Villamor filed a second motion for extension of time to file Record on Appeal. (Record on Appeal, pp. 262-264). Petitioners filed an Opposition on October 24, 1979 (Record on Appeal, pp. 265-266). Also on October 24, 1979 petitioners filed a motion for partial reconsideration of the Order dated September 27, 1979 (Record on Appeal, pp. 266-267).

In its order dated November 13, 1979, the trial court opined that the record on appeal was filed out of time and accordingly dismissed the appeal (Record on Appeal, pp. 281-282). However, on private respondents' motion, the trial court reconsidered said order of November 13, 1979 in its order dated January 3, 1980 (Record on Appeal, pp. 316-318).

Petitioners sought the reconsideration of the January 3, 1980 order, but the trial court denied petitioners' motion and, instead ordered on December 16, 1980 the transmittal of the Amended Record on Appeal together with the evidence to the Court of Appeals (Record on Appeal, pp. 318-349).

On October 30, 1984, the appellate court promulgated its decision in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, finding the decision appealed from inconsistent with the facts and law applicable, the same is hereby SET ASIDE and another one entered —

- Upholding and declaring the Deed of Sale executed by Trinidad Estoesta in favor of Luis Villamor, as well as the Transfer Certificate of Title No. 202855, valid;

- Ordering plaintiffs- appellees to surrender possession of the subject premises to the defendant-appellant;
- Ordering plaintiffs-appellees to pay P30,000.00 moral damages to the defendant-appellant;
- Ordering plaintiffs-appellees to pay P8,000.00 to the defendant-appellant as attorney's fees; and
- Ordering plaintiffs-appellees to pay the costs.

SO ORDERED." (Rollo, pp. 89-90)

Petitioners filed a motion for reconsideration on November 8, 1984, but the appellate court denied it in its resolution dated October 29, 1985 (Rollo, pp. 102-103).

Petitioners elevated the matter to the Supreme Court. This Court in a minute resolution dated January 6, 1986 denied for lack of merit the petition for review on certiorari in G.R. No. 72662, (Simeon Estoesta, et al. v. IAC, et al.) (Rollo, p. 5). Entry of judgment was made on February 17, 1986 (Rollo, p. 115). On April 30, 1986 this Court denied petitioners' second motion for reconsideration (Rollo, p. 5).

To enforce the judgment of the appellate court, on private respondent's motion, the trial court issued on May 12, 1986 a writ of execution in Civil Case No. 19319 (Rollo, p. 18). On the same date, petitioners filed an urgent motion to quash writ of execution, (Rollo, pp. 39-42). On May 22, 1986, the trial court denied petitioners' motion to quash writ of execution. Also in its May 21, 1986 order it granted private respondent's motion to break open the property in litigation (Rollo, pp. 18-19). Likewise, the trial court denied petitioner's motion for reconsideration in its order dated May 29, 1986 (Rollo, p. 20).

Hence this petition.

On June 1, 1987, the Second Division of this Court, resolved to give due course to the petition and considered the case submitted for decision.

Petitioners raised the following grounds for the allowance of the writs prayed for:

I

THE RESPONDENT JUDGE COMMITTED A GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN INSISTING TO ENFORCE THE WRIT OF EXECUTION ISSUED IN CIVIL CASE NO. 19319, DESPITE THE FACT THAT THE DECISION OF THE INTERMEDIATE APPELLATE COURT BEING SOUGHT TO BE ENFORCED IS A PATENT NULLITY.

II

THE RESPONDENT JUDGE COMMITTED A GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN DENYING PETITIONERS' URGENT MOTION TO QUASH THE WRIT OF EXECUTION. (Rollo, p. 21)

The decisive issue in this case is the timeliness of private respondent's appeal.

This case involves: (a) the August 15, 1978 decision of the CFI of Rizal, Branch IV, Quezon City in favor of the petitioners and (b) the resolution of the Supreme Court of January 6, 1986 in G.R. No. 72662, in effect affirming the decision of the Court of Appeals which reversed the decision of the CFI of Rizal. Both decision and resolution appear to have become final and executory. The crux of the issue therefore, is which of them will prevail.

Petitioners contend that the decision of the appellate court sought to be enforced by the trial court is null and void. According

to petitioners, the appeal was not perfected on time, so that the decision of the trial court by operation of law became final and executory hence, beyond the jurisdiction of the appellate courts to review.

It is not controverted that private respondent thru his counsel of record Atty. Faustino Tugade received a copy of the trial court decision on September 5, 1978. Twenty-eight (28) days thereafter, or on October 3, 1978, private respondent's counsel filed a motion for reconsideration. Another motion for reconsideration was filed on October 5, 1978 by Attys. De Santos, et al. who entered their appearance on October 3, 1978 in collaboration with private respondent's counsel of record. On July 26, 1979 Atty. Tugade received a copy of the Order of denial, while Attys. De Santos received their copy on July 31, 1979. Of the thirty (30) days reglementary period to perfect his appeal under Section 3 of the Rule 41 of the Rules of Court (now 15 days under Section 39 of B.P. 129) private respondent had two (2) days left or up to July 28, 1979 to file his notice of appeal, appeal bond and record of appeal. Private respondent filed his notice of appeal, appeal bond and motion for extension of time to file record on appeal only on August 7, 1979, hence, clearly the appeal was not perfected within the reglementary period. All these notwithstanding petitioners' motion to dismiss the appeal was denied by the trial court and when reiterated in the Court of Appeals, it was not acted upon, even when said Appellate Court promulgated its decision adverse to petitioners. (Roth, p. 15)

On motion for reconsideration of said decision, on the ground among others that the appeal should have been dismissed for having been filed out of time the Court of Appeals ruled that failure of petitioners to question or assail the non-dismissal of the appeal by the trial court, in the form of certiorari, prohibition and mandamus constitutes not only laches but also waiver of their alleged right. (Rollo, p. 102)

On the contrary however, jurisprudence abound supporting the view in such case the then Intermediate Appellate Court had no jurisdiction to entertain the appeal much less to alter, modify or reverse the final and executory judgment of the trial court. (Luzon Stevedoring Corporation v. Reyes, 71 SCRA 655 [1976]; Garcia v. Echiverri, supra; Spouses Santiago v. Intermediate Appellate Court, supra)

Well-settled is the rule that perfection of an appeal in the manner and within the reglementary period allowed by law is not only mandatory but also jurisdictional. (Macabungkil vs. People's Homesite and Housing Corporation, 72 SCRA 326 [1976]). Thus, if no appeal is perfected on time, the decision becomes final and executory by operation of law after the lapse of the reglementary period of appeal (Agricultural and Industrial Marketing Inc. v. Court of Appeals, 118 SCRA 49 [1982]; Santos v. Court of Appeals, 125 SCRA 22 [1983]; Garcia v. Echiverri, 132 SCRA 631 [1984]). Being final and executory the decision in question can no longer be altered, modified, or reversed by the trial court nor by the appellate court. (Spouses Santiago v. Intermediate Appellate Court, No. 73202, April 9, 1986, Resolution). Accordingly, the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is a ministerial duty compellable by mandamus. (Munez v. Court of Appeals, G.R. No. L-46010, July 23, 1987; Balintawak Construction Supply Corporation v. Valenzuela, 124 SCRA 331 [1983]).

Quoting with approval Freeman on Judgments this court in Gomez v. Concepcion (47 Phil. 717) declared that:

"A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress." (Freeman on Judgments, Sec. 117, citing Campbell vs. McChan, 41 111, 45; Roberts vs. Stowers, 7 Bush, 295 Huh v. Buntin, 47 111, 396; Sherell vs. Goddrum, 3 Humph, 418.) Italics supplied.

Recently in Caw, et al. v. Quicho, et al. (G.R. No. L-31426, February 29, 1988) this Court, thru Justice Yap ruled

that:

"The order of the CF1 of Sorsogon being void is no order at all. It confers no right nor does it impose any duty. 'It neither binds nor bars any one.' All acts performed under a void order or judgment and all claims flowing out of it are also void, for like the spring that cannot rise above its source, a void order cannot create a valid and legally enforceable right. A fortiori the order of October 19, 1968 of the CFI of Albay directing private respondent to deliver the possession and enjoyment of Lot No. 1 -C to Luz Caro, is also void."

A null and void judgment is susceptible to direct as well as collateral attack. Directly a void judgment may be questioned thru an action for annulment or it may be attacked collaterally by assailing its validity in another action where it is invoked. This is because a judgment rendered by a court without jurisdiction has no binding force and effect (*Ang Lam v. Rosillosa*, 86 Phil. 447 [1950]; *Abbain v. Chua*, 22 SCRA 748 [1968]).

The judgment of the Court of Appeals sought to be implemented in Civil Case No. 19319 being null and void, it cannot therefore, be legally executed. Hence, the trial court acted with grave abuse of discretion tantamount to lack of jurisdiction when it issued the writ of execution.

PREMISES CONSIDERED, (1) the petition is GRANTED; (2) the decision of the IAC dated October 30, 1984 and the Orders of respondent Judge dated May 21 and May 29, 1986 are declared null and void and the writ of execution issued to enforce the appellate court's decision in CA-G.R. No. 69004-R is nullified and (3) the lower court is directed to execute its decision dated August 15, 1978.

SO ORDERED.

Padilla (Acting Chairman), Sarmiento and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairperson), on leave.

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