

PATERNO R. CANLAS, PETITIONER, VS. HON. COURT OF APPEALS, AND FRANCISCO HERRERA, RESPONDENTS.

G.R. No. 77691. August 08, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The case dramatizes the unpleasant spectacle of a lawyer tangling with his own client, more often than not, in the matter of fees. The lawyer, the petitioner himself, would have his petition decided on pure questions of procedure, yet, the Court cannot let pass unnoticed the murkier face of the controversy, wherein the law is corrupted to promote a lawyer's self-seeking ends, and the law profession, debased into a simple business dealing. Accordingly, we resolve it on the basis not only of the questions raised by the petitioner pertaining to procedure, but considering its serious ethical implications, on its merits as well.

We turn to the facts.

The private respondent was the registered owner of eight (six, according to the petitioner) parcels of land located in Quezon City.[1] Between 1977 and 1978,[2] he obtained various loans from the L & R Corporation, a financing institution, in various sums totaling P420,000.00. As security therefor, he executed deeds of mortgage in favor of the corporation over the parcels aforesaid. On August 28, 1979, and upon the maturing of said loans, the firm caused an extrajudicial foreclosure of mortgage following his failure to pay, as a consequence of which, the said eight (six, according to the petitioner) parcels of land were disposed of at public auction, and in which L & R Corporation was itself the highest bidder.

Pending redemption, the private respondent filed a complaint for injunction against L & R Corporation, to enjoin consolidation of title in its name, in which he succeeded in obtaining preliminary injunctive relief. He was represented by the petitioner.

Two years later, and with no imminent end to the litigation in sight, the parties entered into a compromise agreement whereby L & R Corporation accorded the private respondent another year to redeem the foreclosed properties subject to payment of P600,000.00, with interest thereon at one percent per month. They likewise stipulated that the petitioner shall be entitled to attorney's fees of P100,000.00. On November 19, 1982, the courts[3] approved the compromise.

The private respondent, however, remained in dire financial straits — a fact the petitioner himself concedes[4] — for which reason he failed to acquire the funding to repay the loans in question, let alone the sum of P100,000.00 in attorney's fees demanded by the petitioner. That notwithstanding, the petitioner moved for execution insofar as his fees were concerned. The court granted execution, although it does not appear that the sum was actually collected.[5]

Sometime thereafter, the petitioner and the private respondent met to discuss relief for the latter with respect to his liability to L & R Corporation on the one hand, and his Obligation to the petitioner on the other. The petitioner

contends that the private respondent "earnestly implored"[6] him to redeem the said properties; the private respondent maintains that it Was the petitioner himself who "offered to advance the money,"[7] provided that he, the private respondent, executed a "transfer of mortgage"[8] over the properties in his favor. Who implored whom is a bone of contention, but as we shall see shortly, we are inclined to agree with the private respondent's version, considering primarily the petitioner's moral ascendancy over his client and the private respondent's increasing desperation.

The records further show that the parties, pursuant to their agreement, executed a "Deed of Sale and Transfer of Rights of Redemption and/or to Redeem," a document that enabled the petitioner, first, to redeem the parcels in question, and secondly, to register the same in his name. The private respondent alleges that he subsequently filed loan applications with the Family Savings Bank to finance a wet market project upon the subject premises, to find, according to him, and to his dismay, the properties already registered in the name of the petitioner. He likewise contends that the "Deed of Sale and Transfer of Rights of Redemption and/or to Redeem" on file with the Register of Deeds (Quezon City) had been falsified as follows:

WHEREFORE, for and in full settlement of the attorney's fees of TRANSFEREE in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00). I, FRANCISCO HERRERA, hereby transfer, assign and convey unto TRANSFEREE. Atty. Paterno R. Canlas, any and all my rights of the real properties and/or to redeem from the Mortgagee, L & R Corporation my mortgaged properties foreclosed and sold at public auction by the Sheriff of Quezon City and subject matter of the above Compromise Agreement in Civil Case No. Q-30679[9]

whereas it originally read:

WHEREFORE, for and in full settlement of the attorney's fees of TRANSFEREE in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00). I, FRANCISCO HERRERA, hereby transfer, assign and convey unto TRANSFEREE. Atty. Paterno R. Canlas, any and all my rights of equity of redemption and/or to redeem from the Mortgagee, L & R Corporation my mortgaged properties foreclosed and sold at public auction by the Sheriff of Quezon City and subject matter at the above Compromise Agreement in Civil Case No. Q-30679[10]

As a consequence, the private respondent caused the annotation of an adverse claim upon the respective certificates of title embracing the properties. Upon learning of the same, the petitioner moved for the cancellation of the adverse claim and for the issuance of a writ of possession. The court granted both motions. The private respondent countered with a motion for a temporary restraining order and later, a motion to recall the writ of possession. He likewise alleges that he commenced disbarment proceedings before this Court against the petitioner[11] as well as various criminal complaints for estafa, falsification, and "betrayal of trust"[12] with the Department of Justice. On December 1, 1983, finally, he instituted an action for reconveyance and reformation of document,[13] praying that the certificates of title issued in the name of the petitioner be cancelled and that "the Deed of Sale and Transfer of Rights of Equity of Redemption and/or Redeem dated May 3, 1983 . . . be reformed to reflect the true agreement of Francisco Herrera and Paterno R. Canlas, of a mortgage."[14] He vehemently maintains that the petitioner's agreement with [him] was that the latter would lend the money to the former for a year, so that [petitioner] would have time to look for a loan for the wet market which [the petitioner] intended to put up on said property."[15] Predictably, the petitioner moved for dismissal.

The trial court, however, denied the private respondent's petition. It held that the alteration complained of did not

change the meaning of the contract since it was “well within [the petitioner’s] rights”[16] “to protect and insure his interest of P654,000.00 which is the redemption price he has paid”[17] secondly, that the petitioner himself had acquired an interest in the properties subject of reconveyance based on the compromise agreement approved by Judge Castro in the injunction case, pursuant to Section 29(b), of Rule 39. of the Rules of Court, that had, consequently, made him a judgment creditor in his own right; thirdly, that the private respondent had lost all rights over the same arising from his failure to redeem them from L & R Corporation within the extended period; and finally, that the petitioner cannot be said to have violated the ban against sales of properties in custodia legis to lawyers by their clients pendente lite, since the sale in question took place after judgment in the injunction case abovesaid had attained finality. The complaint was consequently dismissed, a dismissal that eventually attained a character of finality.

Undaunted, the private respondent, on December 6, 1985 filed a suit for "Annulment Of Judgment"[18] in the respondent Court of Appeals,[19] praying that the orders of Judge Castro: (1) granting execution over the portion of the compromise agreement obliging the private respondent to pay the petitioner P100,000.00 as attorney’s fees; (2) denying the private respondent’s prayer for a restraining order directed against the execution; and (3) denying the motion to recall writ of possession, all be set aside.

The petitioner filed a comment on the petition, but followed it up with a motion to dismiss. On December 8, 1986, the respondent Court of Appeals promulgated the first of its challenged resolutions, denying the motion to dismiss. On March 3, 1987, the Appellate Court denied reconsideration.[20]

Hence, the instant petition.

As we stated, the petitioner assails these twin resolutions on grounds of improper procedure. Specifically, he assigns the following errors:

I.

THE RESPONDENT COURT GRAVELY ABUSE (sic) ITS DISCRETION IN NOT DISMISSING AC G.R. NO. 07860 ON THE GROUND THAT IT IS IN REALITY A PETITION FOR CERTIORARI FILED OUT OF TIME AND SHOULD NOT BE GIVEN DUE COURSE.

II.

THE RESPONDENT COURT GRAVELY ABUSE [sic] ITS DISCRETION IN NOT DISMISSING AC G.R. NO. 07860 ON THE GROUND OF RES JUDICATA.

III.

THE RESPONDENT COURT GRAVELY ABUSE [sic] ITS DISCRETION IN NOT CONSIDERING AC G.R. 07860 AS MOOT AND ACADEMIC SINCE PETITIONER HAD DISPOSED OF THE SUBJECT PROPERTIES LONG BEFORE THE FILING OF THIS SUIT.

IV.

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION TO DISMISS SOLELY ON THE GROUND THAT THE ARGUMENT RAISED THEREIN ARE BUT REHASH OF THE ARGUMENTS IN HIS COMMENT TO THE PETITION.[21]

The petitioner argues that the petition pending with the respondent court "is actually a petition for certiorari,"[22] disguised as a pleading for annulment of judgment and that in such a case, it faces alleged legal impediments (1) It had been filed out of time, allegedly two years from the issuance of the assailed orders, and (2) It was not preceded by a motion for reconsideration. He adds that assuming annulment of judgment were proper, no judgment allegedly exists for annulment, the aforesaid two orders being in the nature of interlocutory issuances.

On purely technical grounds, the petitioner's arguments are impressive. Annulment of judgment, we have had occasion to rule, rests on a single ground: extrinsic fraud. What "extrinsic fraud" means is explained in *Macabingkil v. People's Homesite and Housing Corporation*: [23]

....

It is only extrinsic or collateral fraud, as distinguished from intrinsic fraud, however, that can serve as a basis for the annulment of judgment. Fraud has been regarded as extrinsic or collateral, within the meaning of the rule, "where it is one the effect of which prevents a party from having a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy." In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent.[24]

A perusal of the petition of therein private respondent Herrera pending before the respondent Court reveals no cause of action for annulment of judgment. In the first place, and as herein petitioner Canlas correctly points out, the judgment itself is not assailed, but rather, the orders merely implementing it. Secondly, there is no showing that extrinsic fraud, as *Makabingkil* defines it, indeed vitiated the proceedings presided over by Judge Castro. On the contrary, Herrera's petition in the respondent court will show that he was privy to the incidents he complains of, and in fact, had entered timely oppositions and motions to defeat Atty. Canlas' claim under the compromise agreement.

What he objects to his suspected collusion between Atty. Canlas and His Honor to expedite the former's collection of his fee. He alleges that his counsel had deliberately, and with malevolent designs, postponed execution to force him (Herrera) to agree to sell the properties in controversy to him (Atty. Canlas) subject to redemption. ("... [I]t was understandable that respondent Atty. Paterno R. Canlas did not implement the writ of execution, instead he contacted petitioner in order that petitioner would sign the questioned documents. This was the clincher of the plan of respondent Atty. Paterno R. Canlas to divest petitioner of his properties. For this purpose, it is obvious that respondent Atty. Paterno R. Canlas had to conspire with the respondent court judge to achieve his plan." [25]) Aside from being plain speculation, it is no argument to justify annulment. Clearly, it does not amount to extrinsic fraud as the term is defined in law.

Neither is it proper for the extraordinary remedy of certiorari. Certiorari presupposes the absence of an appeal [26]

and while there is no appeal from execution of judgment, appeal lies in case of irregular implementation of the writ.[27] In the case at bar, there is no irregular execution to speak of. As a rule, "irregular execution" means the failure of the writ to conform to the decree of the decision executed.[28] in the instant case, respondent Herrera's charges, to wit, that Judge Castro had erred in denying his motions for temporary restraining order and to recall writ of possession, or that His Honor had acted hastily (" . . . that respondent court/judge took only one [1] day to resolve petitioner's motion for issuance of [a] [restraining] order, . . ."[29]) in denying his twofold motions, do not make out a case for irregular execution. The orders impugned are conformable to the letter of the judgment approving the parties' compromise agreement.

The lengths the private respondent, Francisco Herrera, would go to in a last-ditch bid to hold on to his lands amid constraints of economic privation have not been lost on us. It is obvious that he is uneasy about the judgment on compromise itself, as well as the subsequent contract between him and his lawyer. In such a case, Article 2038 of the Civil Code applies:

Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code . . .

in relation to Article 1330 thereof:

Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.

in relation to its provisions on avoidance of contracts.[30] The Court notes that he had for this purpose, gone to the Regional Trial Court, a vain effort as we stated, and in which the decision had become final.

We, however, sustain Atty. Canlas' position — on matters of procedure — for the enlightenment solely of the bench and the bar. It does not mean that we find merit in his petition. As we have intimated, we cannot overlook the unseemlier side of the proceeding, in which a member of the bar would exploit his mastery of procedural law to score a "technical knockout" over his own client, of all people. Procedural rules, after all, have for their object assistance unto parties "in obtaining just, speedy, and inexpensive determination of every action and proceeding." [31] If procedure were to be an impediment to such an objective, "it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy." [32] It was almost eight decades ago that the Court held:

. . . A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by the rapier's thrust . . . [33]

It is a ruling that almost eight decades after it was rendered, holds true as ever.

By Atty. Canlas' own account, "due to lack of paying capacity of respondent Herrera, no financing entity was willing to extend him any loan with which to pay the redemption price of his mortgaged properties and petitioner's P100,000.00 attorney's fees awarded in the Compromise Judgment," [34] a development that should have tempered his demand for his fees. For obvious reasons, he placed his interest over and above those of his

client, in opposition to his oath to “conduct [him]self as a lawyer . . . with all good fidelity. . .to [his] clients.”[35] The Court finds the occasion fit to stress that lawyering is not a money-making venture and lawyers are not merchants, a fundamental standard that has, as a matter of judicial notice, eluded not a few law advocates. The petitioner’s efforts partaking of a “shakedown” of his own client are not becoming of a lawyer and certainly, do not speak well of his fealty to his oath to “delay no man for money.”[36]

It is true that lawyers are entitled to make a living, in spite of the fact that the practice of law is not a commercial enterprise; but that does not furnish an excuse for plain lust for material wealth, more so at the expense of another. Law advocacy, we reiterate, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from government interference, is impressed with a public interest, for which it is subject to State regulation.[37] Anent attorney’s fees, section 24, of Rule 138, of the Rules, provides in part as follows:

SEC. 24. Compensation of attorneys, agreement as to fees. — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney ... A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

So also it is decreed by Article 2208 of the Civil Code, reproduced in part, as follows:

Art. 2208. . .

In all cases, the attorney's fees and expenses of litigation must be reasonable.

We do not find the petitioner's claim of attorney's fees in the sum of P100,000.00 reasonable. We do not believe that it satisfies the standards set forth by the Rules. The extent of the services he had rendered in Civil Case No. 30679, and as far as the records will yield, is not impressive to justify payment of such a gargantuan amount. The case itself moreover did not involve complex questions of fact or law that would have required substantial effort as to research or leg work for the petitioner to warrant his demands. The fact that the properties subject thereof commanded quite handsome prices in the market should not be a measure of the importance or non-importance of the case. We are not likewise persuaded that the petitioner’s stature warrants the sum claimed.

All things considered, we reduce the petitioner’s fees, on a quantum meruit basis, to P20,000.00.

It is futile to invoke the rule granting attorneys a lien upon the things won in litigation similar to that vested upon redemptioners.[38] To begin with, the rule refers to reality sold as a result of execution in satisfaction of judgment. In this case, however, redemption was decreed by agreement (on compromise) between the mortgagor and mortgagee. It did not give the petitioner any right to the properties themselves, much less the right of redemption, although provisions for his compensation were purportedly provided. It did not make him a redemptioner for the plain reason that he was not named one in the amicable settlement. To this extent, we reverse Judge Pedro Santiago’s ruling in Civil Case No. 40066, recognizing Atty. Canlas’ “legal right, independent of the questioned deed of sale and transfer which was executed subsequently on May 3, 1983, to redeem the subject realty from the L & R Corporation pursuant to Sec. 29(b), Rule 39 of the Rules of Court.”[39] Whatever right he had, it was, arguably, with respect alone to his remuneration. It did not extend to the lands.

Secondly, and assuming that such a right exists, it must be in proportion to the "just fees and disbursements"[40] due him. It is still subject to the tempering hand of this Court. '

The Court notes a hidden agenda in the petitioner's haste to execute the compromise agreement and subsequently, to force the transfer of the properties to himself. As we have observed, in spite of the issuance of the writ of execution, it does not appear that the petitioner took pains to implement it. We find this perplexing, given his passionate and persistent pleas that he was entitled to the proceeds. There can indeed be no plausible explanation other than to enable him to keep an "ace" against the private respondent that led; finally, to the conveyance of the properties in his favor. To be sure, he would have us believe that by redeeming the same from the mortgagee and by in fact parting with his own money he had actually done the private respondent a favor, but this is to assume that he did not get anything out of the transaction. Indeed, he himself admits that "[t]itles to the properties have been issued to the new owners long before the filing of private respondents [sic] petition for annulment." [41] To say that he did not profit therefrom is to take either this Court or the petitioner for naive, a proposition this Court is not prepared to accept under the circumstances.

We are likewise convinced that it was the petitioner who succeeded in having the private respondent sign the "Deed of Sale and Transfer of Rights of Equity of Redemption and/or to Redeem," a pre-prepared document apparently, that allowed him (the petitioner) to exercise the right of redemption over the properties and to all intents and purposes acquire ownership thereof. As we have earlier averred, the private respondent, by reason of bankruptcy, had become an easy quarry to his counsel's moral influence and ascendancy. We are hard put to believe that it was the private respondent who "earnestly implored" [42] him to undertake the redemption amid the former's obstinate attempts to keep his lands that have indeed led to the multiple suits the petitioner now complains of, apart from the fact that the latter himself had something to gain from the transaction, as alluded to above. We are of the opinion that in ceding his right of redemption, the private respondent had intended merely to forestall the total loss of the parcels to the mortgagee upon the understanding that his counsel shall acquire the same and keep them therefore within reach, subject to redemption by his client under easier terms and conditions. Surely, the petitioner himself would maintain that he agreed to make the redemption "in order that [he] may already be paid the P100,000.00 attorney's fees awarded him in the Compromise Agreement," [43] and if his sole concern was his fees, there was no point in keeping the properties in their entirety.

The Court simply cannot fall for the petitioner's pretensions that he acquired the properties as a gesture of magnanimity and altruism. He denies, of course, having made money from it, but what he cannot dispute is the fact that he did resell the properties. [44]

But if he did not entertain intents of making any profit, why was it necessary to reword the conveyance document executed by the private respondent? It shall be recalled that the deed, as originally drafted, provided for conveyance of the private respondent's "rights of equity of redemption and/or redeem" [45] the properties in his favor, whereas the instrument registered with the Register of Deeds purported to transfer "any and all my rights of the real properties and/or to redeem," [46] in his favor. He admits having entered the intercalations in question but argues that he did so "to facilitate the registration of the questioned deed with the Register of Deeds," [47] and that it did not change the meaning of the paper, for which Judge Santiago acquitted of any falsification charges. [48] To start with, the Court is at least how such an alteration could "facilitate" registration. Moreover, if it did not change the tenor of the deed, why was it necessary then? And why did he not inform his client? At any rate, the agreement is clearly a contract of adhesion. Its provisions should be read against the party who prepared it.

But while we cannot hold the petitioner liable for falsification – this is not the proper occasion for it – we condemn him nonetheless for infidelity to his oath "to do no falsehood." [49]

This brings us to the final question: Whether or not the conveyance in favor of the petitioner is subject to the ban on acquisition by attorneys of things in litigation. The pertinent provisions of the civil Code state as follows:

Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial action, either in person or through the mediation of another:

- (1) The guardian, the property of the person or persons who may be under his guardianship;
- (2) Agents, the property whose administration or sale may have been intrusted to them, unless the consent of the principal have been given;
- (3) Executors and administrators, the property of the estate under administration;
- (4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government owned or controlled corporation, or institution, the administration of which has been intrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;
- (5) Justice, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.
- (6) Any others specially disqualified by law.[*]

In *Rubias v. Batiller*,^[50] we declared such contracts to be void by force of Article 1409, paragraph (7), of the Civil Code, defining inexistent contracts. In *Director of Lands v. Ababa*^[51], however, we said that the prohibition does not apply to contingent contracts, in which the conveyance takes place after judgment, so that the property can no longer be said to be “subject of litigation”.

In the instant case, the Court observes that the “Deed of Sale and Transfer of Rights of Equity of Redemption and/or to Redeem” was executed following the finality of the decision approving the compromise agreement. It is actually a new contract – not one in pursuance of what had been agreed upon on compromise -- in which, as we said, the petitioner purportedly assumed redemption rights over the disputed properties (but in reality, acquired absolute ownership thereof). By virtue of such a subsequent agreement, the lands had ceased to be properties which are “the object of any litigation.” Parenthetically, the Court states that a writ of possession is improper to eject another from possession unless sought in connection with: (1) a land registration proceeding; (2) an extrajudicial foreclosure of mortgage of real property; (3) in a judicial foreclosure of property provided that the mortgagor has possession and no third party has intervened; and (4) in execution sales.^[52] It is noteworthy that in this case, the petitioner moved for the issuance of the writ pursuant to the deed of sale between him and the private respondent and not the judgment on compromise. (He was, as we said, issued a writ of execution on the

compromise agreement but as we likewise observed, he did not have the same enforced. The sale agreement between the parties, it should be noted, superseded the compromise.) The writ does not lie in such a case. His remedy is specific performance.

At any rate, the transfer, so we hold, is not subject to the injunction of Article 1491 of the Civil Code. But like all voidable contracts, it is open to annulment on the ground of mistake, fraud, or undue influence,[53] which is in turn subject to the rights of innocent purchasers for value.[54]

For this reason, we invalidate the transfer in question specifically for undue influence as earlier detailed. While the respondent Herrera has not specifically prayed for invalidation, this is the clear tenor of his petition for annulment in the Appellate Court. It appearing, however, that the properties have been conveyed to third persons whom we presume to be innocent purchasers for value, the petitioner, Atty. Paterno Canlas, must be held liable, by way of actual damages, for such a loss of properties.

We are not, however, condoning the private respondent's own shortcomings. In condemning Atty. Canlas monetarily, we cannot overlook the fact that the private respondent has not settled his liability for payment of the properties. To hold Atty. Canlas alone liable for damages is to enrich said respondent at the expense of his lawyer. The parties must then set off their obligations against the other. To obviate debate as the actual amounts owing by one to the other, we hold Francisco Herrera, the private respondent, liable to Atty. Paterno Canlas, the petitioner, in the sum of P654,000.00 representing the redemption price of the properties,[55] in addition to the sum of P20,000.00 as and attorney's fees. We order Atty. Canlas, in turn, to pay the respondent Herrera the amount of P1,000,000.00, the sum he earned from the resale thereof,[56] such that he shall, after proper adjustments, be indebted to his client in the sum of P326,000.00 as and for damages.

Needless to say, we sustain the action of the respondent Court of Appeals in taking cognizance of the petition below. But as we have stated, we are compelled, as the final arbiter of justiciable cases and in the highest interests of justice, to write finis to the controversy that has taxed considerably the dockets of the inferior courts.

Let the Court further say that while its business is to settle actual controversies and as a matter of general policy, to leave alone moot ones, its mission is, first and foremost, to dispense justice. At the outset, we have made clear that from a technical vantage point, certiorari, arguably, lies, but as we have likewise stated, the resolution of the case rests not only on the mandate of technical rules, but if the decision is to have my real meaning, on the merits too. This is not the first time we would have done so; in many cases, we have eschewed the rigidity of the Rules of Court if it would establish a barrier upon the administration of justice. It is especially so in the case at bar, in which no end to suit and counter-suit appears imminent, and for which it is high time that we have the final say. We likewise cannot, as he overseer of good conduct in both the bench and the bar, let go unpunished what convinces us as serious indiscretions on the part of a lawyer.

WHEREFORE, judgment is hereby rendered:

1. ORDERING the petitioner, Atty. Paterno Canlas, to pay to the private respondent, Francisco Herrera, the sum of P326,000.00, as and for damages;
2. ORDERING the petitioner to SHOW CAUSE why no disciplinary action may be imposed on him for violation of his oath, as a lawyer, within ten (10) days from notice, after which the same will be consolidated with AC No. 2625;

3. DISMISSING this petition and REMANDING the case to the respondent Court of Appeals for execution; and

4. ORDERING the petitioner to pay costs.

SO ORDERED.

Melencio-Herrera, (Chairman) and Medialdea[**], JJ., concur.

Paras and Padilla, JJ., no part due to past personal relations with petitioner.

[1] Rollo, 3, 186.

[2] Id., 186.

[3] Civil Case No. 30679, former Court of First Instance of Rizal, Branch IX. Quezon City, Hon. Jose P. Castro, Presiding Judge.

[4] Rollo, Id., 6.

[5] Id.. 7.

[6] Id.

[7] Id.. 188.

[8] Id.

[9] Id., 191; emphasis in the original.

[10] Id.; emphasis in the original.

[11] Francisco Herrera v. Paterno R. Canlas, AC No. 2625

[12] Rollo, Id., 195.

[13] Civil Case No. 40066, Branch CI, Quezon City; Hon. Pedro Santiago, Presiding Judge.

[14] Rollo, id., 51. His recall motion before Judge Castro would be denied on March 6, 1984. (Id., 194.)

[15] Id., 49.

[16] Id., 59.

[17] Id.

[18] Id., 69-86.

[19] AC-G.R. SP No. 07860; Nocon, Rodolfo, Ejercito, Bienvenido, Martinez, Antonio. JJ.

[20] The resolution was penned by Justice Jorge Imperial, with whom Justices Vicente Mendoza and Manuel Herrera concurred. The petition was apparently re-raffled to the Seventh Division of the Court of Appeals. See rollo, id., 152-153.

[21] Id., 17-18.

[22] *Id.*, 18.

[23] No. L-29080, August 17, 1976, 72 SCRA 326.

[24] *Supra*, at 343-344; emphasis in the original.

[25] *Rollo*, *Id.*, 81.

[26] RULES OF COURT, Rule 65, sec. 1.

[27] *De Guzman v. Court of Appeals*, No. L-52733, July 23, 1985, 137 SCRA 730; *Laingo v. Camilo*, No. L-35833, June 29, 1984, 130 SCRA 144; *Macalora v. Court of Appeals*, No. L-51042, September 30, 1986, 117 SCRA 435; *Windor Steel Mfg. Co., Inc. v. Court of Appeals*, No. L-34332, January 27, 1981, 102 SCRA 275.

[28] *De Guzman v. Court of Appeals*, *supra*; *Laingo v. Camilon*, *supra*, *Macalora v. Court of Appeals*, *Supra*, *Windor Steel Mfg. Co., Inc. v. Court of Appeals*, *supra*.

[29] *Rollo*, *Id.*, 84.

[30] CIVIL CODE. arts. 1390, et seq. There is no appeal from a judgment on compromise, unless the aggrieved party repudiates it upon the grounds mentioned by Article 2038. An appeal may be brought upon denial. (*Mabale v. Apalisok*, No. L-46942, February 6, 1979, 88 SCRA 234.) Relief is likewise available under Rule 38 of the Rules of Court, or under the above provisions of the Civil Code.

[31] RULES OF COURT. Rule 1, sec. 2.

[32] *Alonso v. Villamor*, 16 Phil. 315, 322 (1910).

[33] *Supra*, 321-322.

[34] *Rollo*, *Id.*, 6.

[35] Attorney's oath.

[36] *Id.*

[37] CONST., art. VIII. sec. 5. par. (5).

[38] RULES OF COURT, *Supra*, rule 39, sec. 29, par. (b). The rule states: "(b) A creditor having a lien by attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the judgment under which the property was sold. Such redeeming creditor is termed a redemptioner."

[39] *Rollo*, *Id.*, 60.

[40] RULES OF COURT, *Supra*, rule 138, sec. 37; emphasis ours.

[41] *Rollo*, *Id.*, 233.

[42] *Id.*, 7.

[43] *Id.*

[44] According to him, he sold them "for not more than P1,000,000.00" (see *Id.*, 219). The private respondent claims however that the same is worth P5,000,000.00. *Id.*, 188.

[45] *Id.*, 191.

[46] *Id.*

[47] Id., 59.

[48] Civil Case No. 40066, Rollo, Id.

[49] Attorney's oath, Id.

[*] Emphasis supplied.

[50] No. L-35702, May 29, 1973, 51 SCRA 120.

[51] No. L-26096, February 27, 1979, 88 SCRA 513.

[52] Mabale v. Apalisok, Supra, at 247-248; see fn. 30.

[53] CIVIL CODE, Supra, arts, 1390, 1391.

[54] Pres. Decree No. 1529, sec. 32.

[55] See Rollo, Id., 59.

[56] See fn. 45.

[**] Designated to sit as member of the Second Division to participate in the consideration and resolution of this case.

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