

LEONCIA, MANUEL, DIOSDADA, ANTONIA, ISIDRO, GERONIMO, CRESENCIO, ALEJANDRO, BONIFACIA, AURELIO, EPIFANIO, POLICARPO, IRENEO, ALL SURNAMED BACLAYON; HRS. OF AGRIPINA BACLAYON, RE...

G.R. No. 89132. February 26, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated April 28, 1989 ordering the trial court, in a hearing supplementary to execution, to receive private respondents' evidence to prove that they are builders in good faith of the improvements and the value of said improvements, and its resolution dated June 20, 1989 denying the motion for reconsideration.

The antecedent facts are as follows:

On May 7, 1969, petitioners Leoncia, Martin, Policarpio, Hilarion, Ireneo, Juliana and Tomas, all surnamed Baclayon; Rosendo, Felicidad and Silvestra, all surnamed Abanes; and Tomasa, Leoncia, Anacleto, Monica, Guillerma and Gertrudes all surnamed Abellare filed with the then CFI-Cebu, Branch 2, in Civil Case No. R-11185, a complaint for recovery of ownership and possession, and damages, against spouses Marciano Bacalso and Gregoria Sabandeja of Lot No. 5528 of the Cebu Cadastre. The latter filed their answer thereto on July 15, 1969.

On December 20, 1982, the trial court rendered a decision in favor of the Bacalso spouses, declaring them owners of the subject lot, which decision was appealed by the petitioners to the respondent Court of Appeals. The case was docketed as AC-G.R. CV No. 04948.

On July 29, 1986, the respondent court rendered a decision reversing the trial court, the dispositive portion of which reads as follows (p. 15, Rollo):

"WHEREFORE, the decision a quo is hereby reversed and set aside and another one is rendered declaring plaintiffs-appellants as heirs of the late Matias Baclayon the owners of Lot No, 5528 of the Cebu Cadastre covered by Original Certificate of Title No. 2726 (0-NA) of the Registry of Deeds of Cebu (Exh, I) and ordering defendants to vacate the lot and surrender the same to plaintiffs. No costs.

"SO ORDERED."

The private respondents then elevated the case to this Court by filing a petition for review which was, however, denied in the Resolution dated May 27, 1987.

The decision in favor of the petitioners having become final and executory, they filed a motion for execution of judgment and possession which was opposed by the private respondents. The opposition was based on the pronouncement of the respondent court in its decision dated July 29, 1986, to wit (p. 16, Rollo):

"No fraud or bad faith could be imputed on the part of the Bacalso spouses. They believed the lot they bought from Segundo Baclayon was the land they occupied."

The private respondents argued that since they were found by the respondent court as builders and/or planters in good faith and Article 546 of the Civil Code ordains that the necessary and useful expenses for the improvements must be paid to the builders/planters in good faith with right of retention, a reception of evidence to determine the correct value of the necessary and useful improvements must be done first before ordering the execution.

The RTC-Branch 15, Cebu City, presided by Judge German G. Lee, Jr., in its order, dated March 8, 1988, granted the motion for execution of judgment and possession, to wit (p. 16, Rollo):

"O R D E R

"This is finally, acting on the Motion for Execution of Judgment and Possession filed by Atty. Garcillano in this case and the rejoinder of Atty. Nacua and the plaintiffs' rejoinder dated February 11 and the manifestation of Atty. Garcillano of February 26, 1988.

"It appearing that the dispositive portion of the decision of the Court of Appeals which is now being enforced categorically declares plaintiffs/appellants as heirs of the late Matias Baclayon, the owner of Lot No. 5526 (sic) of the Cebu Cadastre, covered by Original Certificate of Title No. 2728 (sic) (O-NA) of the Registry of Deeds of Cebu (Exh. 1) and ordering the defendants to vacate the lot and surrender the same to the plaintiffs, this Court is not in a position to entertain any further claims by any parties in connection with said case.

"However, if the clients of Atty. Nacua believe that they can prove their claims, then they should file a separate civil case to recover the same as this Court cannot pass judgment anew on certain claims that should have been interposed as counter-claims in this case.

"Wherefore, the Opposition to the issuance of the Writ of execution is hereby DENIED, as the Clerk of Court is hereby ordered to issue a writ of Execution in this case.

"SO ORDERED."

The private respondents appealed the said order of March 8, 1988 by filing a notice of appeal dated March 30, 1988 which appeal was, however, dismissed by Judge Lee in the order dated April 15, 1988.

On April 29, 1988, the petitioners filed a motion for writ of possession and demolition to which motion the private respondents filed their opposition reiterating the ground in the opposition to the motion for execution and possession.

Judge Lee, thereafter, issued the order dated August 19, 1988, to wit (p. 17, Rollo):

"O R D E R

"An examination of the records of this case reveals that until now, there is yet no action by the Court of Appeals on the Clarificatory motion filed by the losing party.

"The Court has allowed this excuse to defer its issuance of an order of demolition after the prevailing party has prayed the Court to issue one.

"With the long passage of time, since the judgment in this case has become final, this Court cannot allow any further delay in the enforcement of its judgment.

"WHEREFORE, it is finally ordered that the losing party in this case be given fifteen (15) days from today within which to effect a voluntary removal of any improvements that they have introduced in the premises,

considering that the prevailing party refused to reimburse the losing party therefor, and if they do not demolish it after the expiration of this 15 days, this Court will be constrained to order its demolition as prayed for.

"IT IS SO ORDERED."

On September 19, 1988, the private respondents filed a petition for certiorari, mandamus and prohibition with the respondent court concerning the orders dated March 8, 1988 and August 19, 1988.

On April 28, 1989, the respondent court granted the petition, the dispositive portion of which reads as follows (p. 21, Rollo):

"WHEREFORE, the orders of March 8, 1988 and August 19, 1988 issued in Civil Case No. R-11185 by the RTC-Cebu City, Branch 15, are hereby SET ASIDE and ANNULLED. In a hearing supplementary to execution, the said court is hereby ordered to receive petitioners' evidence to prove that they are builders in good faith of the improvements and the value of the said improvements introduced by them in the subject Lot 5528.

"IT IS SO ORDERED."

The motion for reconsideration was denied. Hence, the present petition.

The only issue is whether or not the private respondents should be allowed, in a hearing supplementary to execution, to present evidence to prove that they are builders in good faith of the improvements and the value of said improvements.

Petitioners allege that the orders dated March 8, 1988 and August 19, 1988 are legitimate having been issued by a judge presiding a court of competent jurisdiction, pursuant to his duties which are ministerial in nature, to enforce a decision which is already final and executory.

In ordering the trial court to receive private respondents' evidence to prove that they are builders in good faith of the improvements and the value of said improvements, reliance was placed by the respondent court in the cases of *Naga Development Corporation v. Court of Appeals, et al.*, G.R. No. L-28173, September 30, 1971, 41 SCRA 105 and *Vda. de Chi v. Tañada, etc., et al.*, G.R. No. L-27274, January 30, 1982, 111 SCRA 190.

We shall narrate the facts in these two cases in a nutshell:

1) In the former case, *Pacific Merchandising Corporation (Pacific)* filed a complaint against *Naga Development Corporation (Naga)* for the balance of its indebtedness in the amount of P143,282.76. For failure to file an answer within the period, Naga was declared in default. In its affidavit of merit attached to the motion to set aside the order of default, Naga asserted that it had made certain payments to Pacific which should be deducted from the amount of the claim. The motion was denied. A judgment by default was rendered ordering Naga to pay said balance of indebtedness. The decision was affirmed by the Court of Appeals and also by this Court, with the qualification that Naga was allowed to prove, during the process of execution of the judgment, whatever payments it had made to Pacific, either before or after the filing of the complaint, which constitute a proper deduction from the principal sum ordered to be paid. Thus, We rationalized (41 SCRA 115-116):

"Bearing in mind the nature of the instant suit and considering that the Court of Appeals' concurrence in the trial court's assessment of the amount of P143,282.76 is in the nature of a factual finding, this Court cannot now pass upon its correctness. The two courts below had before them the sales agreement between the parties, and to what extent the parties complied with their, respective prestations thereunder was purely a matter of evidence.

"However, although we cannot pass upon the correctness of the said assessment, it is quite obvious that in the

execution of its judgment as affirmed by the Court of Appeals, the trial court cannot compel the Naga to pay more than what it actually owes the Pacific under the terms of their covenant. Deeply imbedded in our legal system are the principles that no man may unjustly enrich himself at the expense of another, and that every person must, in the exercise of his rights, act with justice, give everyone his due, and observe honesty and good faith. x x x."

2) In the latter case, an action for recovery of damages as a result of a vehicular accident was filed by Rosita Yap Vda. de Chi against Alfonso Corominas, Jr., the owner of the bus, and Simplicio Lawas, the driver. Since the vehicle was insured, a third-party complaint was filed against the surety company. The trial court rendered judgment against Corominas, Jr. and Lawas by ordering them jointly and severally to pay P40,302.31 to Vda. de Chi. In turn, the surety company was ordered to indemnify Corominas, Jr. by the same amount. A writ of execution was issued against the defendants and the surety company. The decision was only partially satisfied because P6,700.00 has remained unpaid. Later, upon motion of the Southern Islands Hospital, the trial court ordered the surety company to pay directly to the hospital the amount of P686.35 out of the residue of the unpaid judgment; upon motion of the Chong Hua Hospital, the trial court issued another order requiring Corominas, Jr. and the surety company to pay the hospital the amount of P4,238.56. These two orders were questioned before this Court by Vda. de Chi. We set aside said orders and ordered the trial court to conduct a hearing, after proper notice to the parties, to determine whether or not the hospital bills incurred by Vda. de Chi have been paid, and thereafter, to render a decision accordingly. Thus, We explained (111 SCRA 196-197):

"Technically it was error for the respondent Court to order the defendants and the surety company to pay the respondents Southern Islands Hospital and Chong Hua Hospital the amounts of P686.35 and P4,238.56, respectively, from the balance of the judgment yet to be paid to the herein petitioner by the defendants and the surety company since the said respondents are not parties in the case. The judgment sought to be executed specifically ordered the defendants Alfonso Corominas, Jr. and Simplicio Lawas to pay, jointly and severally, the plaintiff Rosita Yap Vda. de Chi, the amount of P40,302.31, plus costs; and for the surety company to indemnify the defendant Alfonso Corominas, Jr. the amount of P40,302.31, which the said defendant is ordered to pay the plaintiff. Consequently, to order the payment of certain portions thereof to the herein respondent hospitals, Southern Islands Hospital and Chong Hua Hospital, would be to modify, alter, or vary the terms of the judgment. While the said respondents may have an interest over the said amounts claimed by them, their remedy was not to file a mere ex-parte motion before the court, but to file separate and independent actions before courts of competent jurisdiction, since the judgment rendered in the case had already become final and almost executed and the law allows no intervention after the trial has been terminated.

"On the other hand, it cannot also be denied that the sums of money in question have been awarded to the herein petitioner as expenses for her hospitalization in the respondent hospitals and are based upon petitioner's own evidence. To order the filing of a separate and independent action to recover a claim where the respondent hospitals concerned will have to prove exactly a claim which had already been tried, litigated and adjudged would unduly result in multiplicity of suits. Considering that the herein respondents claim that the herein petitioner has not yet paid the amounts she incurred for hospitalization, the interests of justice will be best served if a hearing be conducted to determine whether or not the hospital bills have been paid, instead of requiring the respondent hospitals to file separate actions to recover their respective claims."

The aforementioned reliance on these two cases was misplaced. The common denominator between these two cases is the existence of a defense/claim which has been raised/tried before the trial court. In the Naga case, the defense of payments made to Pacific which are properly deductible from the principal sum ordered to be paid by Naga to Pacific was part of the issues which Naga was not allowed to prove, being already in default. In the Vda. de Chi case, her claim of hospitalization expenses incurred in the respondent hospital has been litigated and adjudged. The respondent court failed to appreciate that this shared denominator does not obtain in the present

case. The defense of builders in good faith of the improvements and evidence of the value of said improvements were not raised/presented before the trial court.

More importantly, in the recent case of First Integrated Bonding and Insurance Co., Inc., et al. v. Isnani, etc., et al., G.R. No. 70246, July 31, 1989, which involved a similar issue, We ruled:

"Significantly, the decision of September 30, 1971 in Naga Development Corporation vs. Court of Appeals, on which total reliance has been placed by the petitioners, does not appear to have been reaffirmed by this Court in subsequent cases. It is Justice Antonio Barredo's dissent (quoted below) that appears to have been firmed up in later decisions of this Court:

x x x I believe that since Naga has been declared in default, and no grave abuse of discretion having been found by the Court in that respect, the judgment by default must stand and be executed, as is. Whether or not Naga has partially paid was part of the issue before the court before judgment was rendered; Naga through its own fault was not allowed to prove any such partial payment by the trial court; surely, that issue cannot be reopened during the execution because that would tend to vary the terms of the judgment. The matters of equity which can be raised in an execution proceeding, cannot to my mind, refer to those which the court could have passed upon before judgment. Otherwise, there will be no end to litigation, since conceivably the proof of partial payments could be so seriously controversial as to need another full blown trial, decision and appeal. It is my view that under the circumstances, Naga can do no more than address itself to the benignity or conscience of the private respondent.' (Italics supplied; 41 SCRA 105, 119.)"

The rule is well established that once a decision has become final and executory the only jurisdiction left with the trial court is to order its execution. To require now the trial court in a hearing supplementary to execution, to receive private respondents' evidence to prove that they are builders in good faith of the improvements and the value of said improvements, is to disturb a final and executory decision; which may even cause its substantial amendment. It appears that the private respondent's opposition to the motion for the execution of the judgment, possession and demolition is their last straw to prevent the satisfaction of the judgment. Sad to say, We have to cut this straw.

We disagree with the respondent court that any counterclaim for reimbursement of the value of the improvements thereon by reason of private respondents' being builders in good faith, which presupposes that they are not the owners of the land, would run counter to the defense of ownership and therefore could not have been set up before the trial court. It should be emphasized that Rule 8, Section 2 of the Rules of Court allows a party to set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. This Court, in *Castle Bros., Wolf and Sons v. Go-Juno*, 7 Phil. 144, even held that inconsistent defenses may be pleaded alternatively or hypothetically provided that each defense is consistent with itself. Mention must also be made of the case of *Camara, et al. v. Aguilar, et al.*, 94 Phil. 527, where We ruled:

"The contention that a counterclaim for expenses incurred in clearing and cultivating the parcel of land and planting coconut and other fruit-bearing trees therein could not have been set up in the former case because that would have been inconsistent with or would have weakened the claim that they were entitled to the parcel of land, is without merit, because 'A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses.' Hence, the plaintiffs herein and intervenors in the former case could have set up the claim that they were entitled to the parcel of land and alternatively that assuming (hypothetically) that they were not entitled to the parcel of land, at least they were entitled as possessors in good faith to the coconut and other fruit-bearing trees planted by them in the parcel of land and their fruits or their value." (italics supplied)

A corollary question that We might as well resolve now (although not raised as an issue in the present petition,

but conformably with *Gayos, et al. v. Gayos, et al.*, G.R. No. L-27812, September 26, 1975, 67 SCRA 146, that it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation) is whether or not the private respondents can still file a separate complaint against the petitioners on the ground that they are builders in good faith and consequently, recover the value of the improvements introduced them on the subject lot. The case of *Heirs of Laureano Marquez v. Valencia*, 99 Phil. 740, provides the answer:

"If, aside from relying solely on the deed of sale with a right to repurchase and failure on the part of the vendors to purchase it within the period stipulated therein, the defendant had set up an alternative though inconsistent defense that he had inherited the parcel of land from his late maternal grandfather and presented evidence in support of both defenses, the overruling of the first would not bar the determination by the court of the second. The defendant having failed to set up such alternative defenses and chosen or elected to rely on one only, the overruling thereof was a complete determination of the controversy between the parties which bars a subsequent action based upon an unpleaded defense, or any other cause of action, except that of failure of the complaint to state a cause of action and of lack of jurisdiction of the Court. The determination of the issue joined by the parties constitutes *res judicata*." (italics supplied)

Although the alternative defense of being builders in good faith is only permissive, the counterclaim for reimbursement of the value of the improvements is in the nature of a compulsory counterclaim. Thus, the failure by the private respondents to set it up bars their right to raise it in a subsequent litigation (Rule 9, Section 4 of the Rules of Court). While We realize the plight of the private respondents, the rule on compulsory counterclaim is designed to enable the disposition of the whole controversy at one time and in one action. The philosophy of the rule is to discourage multiplicity of suits.

ACCORDINGLY, the petition is hereby GRANTED. The decision of the Court of Appeals dated April 28, 1989 and its resolution dated June 20, 1989 are SET ASIDE and the orders dated March 8, 1988 and August 19, 1988 of the Regional Trial Court of Cebu City, Branch 15 are REINSTATED.

SO ORDERED.

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

Narvasa, J., see separate concurring opinion

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CONCURRING OPINION

NARVASA, J.:

The principal issue in this case — arising in the process of execution of a judgment declaring plaintiffs owners of the disputed land and ordering the defendants to vacate the same, the latter having been pronounced to be builders and/or planters in good faith, but not owners of the property — is the propriety of allowing said defendants, after the judgment has become final, to present evidence on and be adjudged entitled to the value of the necessary and useful improvements made by them, payable before they are required to vacate the land. The main opinion ruled in the negative, on the authority chiefly of the separate opinion[1] in *Naga Development Corporation v. C.A., et al.*, 41 SCRA 105, and *First Integrated Bonding & Insurance Co., Inc., et al. v. Hon. Asali S. Isnani, etc., et al.*, G.R. No. 70246, July 31, 1989.

1. In *Naga*, this Court, while affirming the correctness of the declaration of default and the judgment by default against the defendant, resolved to allow the latter — who, because declared in default, had been unable to prove payments on account of his indebtedness — to prove before the Court a quo his claim of having made such payments, which reduced the amount specified in the judgment by default, it being quite obvious —

" * * that in the execution of its judgment as affirmed by the Court of Appeals, the trial court cannot compel the Naga to pay more than what it actually owes the Pacific under the terms of their covenant. Deeply imbedded in our legal system are the principles that no man may unjustly enrich himself at the expense of another, and that every person must, in the exercise of his rights, act with justice, give everyone his due, and observe honesty and good faith."

The separate opinion in *Naga*, however, made the point that —

" * * Whether or not Naga has partially paid was part of the issue before the court before judgment was rendered; Naga through its own fault was not allowed to prove any such partial payment by the trial court; surely, that issue cannot be reopened during the execution because that would tend to vary the terms of the judgment. The matters of equity which can be raised in an execution proceeding, cannot to my mind, refer to those which the court could have passed upon before judgment. Otherwise, there will be no end to litigation, since conceivably the proof of partial payments could be so seriously controversial as to need another full blown trial decision and appeal. It is my view that under the circumstances, Naga can do no more than address itself to the benignity or conscience of the private respondent.

2. In *First Integrated Bonding & Insurance Co., Inc., et al. v. Hon. Asaali S. Isnani, etc., et al.*, after a judgment for recovery of the deficiency in an extrajudicial foreclosure of mortgage had become executory, and a writ of execution had issued for its enforcement, the judgment debtors (principal and surety) filed separate motions to quash the writ on the ground that the total payments made on account of the mortgage debt had resulted in an excess of payment rather than a deficiency, and they were entitled to reimbursement of the excess. The Trial Court's denial of the motions — because "the payment sought to be credited has been duly presented (in the answer), hence, could have been considered and appreciated by the Court at the time of the decision" — was sustained by this Court, which pointed out that the evidence adduced before the Trial Court really failed to substantiate the defendants' claim of payment and that it is the separate concurring opinion, rather than the majority opinion in *Naga*, supra, "that appears to have been firmed up in later decisions of this Court."

I agree with the disposition in the main opinion. I have drawn up this separate opinion merely to make a few further observations on the matter to the end that the rule might be placed in clearer perspective vis a vis the doctrine of stay of execution on equitable considerations set out in several decisions of this Court.

It is axiomatic that once a judgment has become executory, its enforcement becomes a ministerial, mandatory duty on the part of the Court; and the order of execution is and should be unappealable or not otherwise subject of review by a higher tribunal if the desideratum of writing finis to litigation at some definite point is to be achieved.

Equally settled, however, is that the rule admits of exceptions which in the course of time, this Court has come to specifically identify. One of these is when facts and events transpire after a judgment has become executory which on equitable grounds render its execution impossible or unjust, in which case a stay or preclusion of execution may properly be sought.

The principle is well illustrated in an early case decided in 1938, *Chua A.H. Lee*. Mapa.[2] There, judgment was rendered for plaintiff declaring defendants to be liable to repay loans secured by pledges of personal property. After execution had issued out, the defendants manifested willingness to pay the amount of the loans and accrued interests thereon provided the pledges were returned to them. The request for return of the pledges having

unaccountably been rejected by the plaintiff, the latter was thereupon sued by the defendants in a separate action for the recovery of damages arising from the loss of the pledges. The defendants also asked for stay of the execution pending final determination of their separate action. This was granted, upon bond to answer for the judgment. This Court upheld such stay, ruling that the Trial Court had acted "advisedly" and within its jurisdiction. This Court pointed out that "a stay may be allowed on grounds which are in their nature peculiarly equitable, as for instance to give defendant an opportunity to set off a claim against plaintiff;" that the ground relied upon for the stay of execution, and which is the foundation of the new action "is such that it could not have been foreseen at the time of the trial of the case," having indeed "arisen subsequent to the remanding of the record from the Supreme Court to the trial court," and could not therefore be regarded as an attempt "to interpret or to reverse the judgment of the higher court."

In *De la Costa v. Cleofas*,^[3] decided in 1939, this Court held that —

"Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts. (*Molina vs. de la Riva*, 8 Phil. 569; *Behn, Meyer & Co. vs. McMicking*, 11 Phil., 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil., 4; *Espiritu vs. Crossfield and Guash*, 14 Phil. 588; *Flor Mata vs. Lichauco and Salinas*, 36 Phil, 809). * * *."

De la Costa was reiterated in a 1955 case, *Ocampo v. Sanchez*,^[4] in which this Court upheld the order of respondent Judge who, on the basis of "facts and circumstances which transpired after judgment," authorized slight deviations by the defendants from a judgment on compromise "so as to harmonize the judgment with justice and the facts."

De la Costa was also applied in (1) *City of Butuan v. Ortiz*, 3 SCRA 659 (1961) in which this Court held that the executory judgment of a Court of First Instance for the reinstatement of a suspended police corporal, the 60-day period therefore having lapsed, should not be executed because "a supervening cause or reason had arisen," i.e., the decision subsequently rendered by the Commissioner of Civil Service affirming the corporal's separation from the service; and (2) a 1975 case, *City of Cebu v. Mendoza*,^[5] which also adverted to *Abellana v. Dosdos*, 13 SCRA 244, 248;^[6] to the effect that "After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend its execution and grant relief as the new facts and circumstances warrant."

In fine, a suspension or refusal of execution of a final and executory judgment or order on equitable grounds can only be justified upon facts and events transpiring after the judgment or order had become executory, materially affecting the judgment obligation.

Conversely, attempts to frustrate or put off enforcement of an executory judgment on the basis of facts or events occurring before the judgment became final cannot meet with success. Facts or events bearing on the substance of the obligation subject of the action should ordinarily be alleged during the issue-formulation stage or otherwise by proper amendment, and proved at the trial; if discovered after the case has been submitted but before decision is rendered, proved after obtaining a reopening of the case; and if discovered after judgment has been rendered but before it becomes final, substantiated at a new trial which the court in its discretion may grant on the ground of newly discovered evidence, pursuant to Rule 37, Rules of Court. Once the judgment becomes executory, the only other remedy left to attempt a material alteration thereof is that provided for in Rule 38 of the Rules of Court

(governing petitions for relief from judgments), or an action to set aside the judgment on account of extrinsic, collateral fraud.[7] There is no other permissible mode of preventing on delaying execution on equitable grounds predicated on facts occurring before finality of judgment.

In the case at bar, the defendants should have alleged their status as builders in good faith with respect to the land in dispute and presented evidence thereon during the original proceedings in the Trial Court. Assuming they were precluded from doing so by some insuperable cause,[8] they should have — in the appellate proceedings, or after being declared to be builders in good faith by the judgment of the Court of Appeals and before it became final — sought leave to present proof of the value of the necessary and useful expenses put up by them on the land in line with Article 546 of the Civil Code.[9] To offer to do so after the judgment had become executory and been remanded to the Trial Court for enforcement, is much too late. The law no longer affords them any other remedy, not even the filing of a separate suit for the purpose, as suggested by the Trial Court, because the subject of that separate action had been, or should have been set up as a compulsory counterclaim in the original suit (alternatively to the defense of ownership [Sec. 2, Rule 8, Rules of Court]), and not having been so set up, became forever barred (Sec. 4, Rule 9, Rules of Court).

[1] Of Mr. Justice Antonio Barredo.

[2] 51 Phil. 624, cited, together with other cases, in Moran, Comments on the Rules, 1980 ed., Vol. 2, p.

[3] 67 Phil. 686, 692.

[4] 97 Phil. 478.

[5] 66 SCRA 174, 177.

[6] Which cited in turn: Candelario v. Cañizares, 114 Phil. 672, City of Butuan v. Ortiz, 113 Phil. 636, supra, and Penuela and Pedregosa v. Hornada, 111 Phil. 618.

[7] SEE Sec. 9 (2), B.P. Blg. 129, and Moran, Comments on the Rules, 1979 ed., Vol. 2, p. 235.

[8] They say, for instance, that they could not have set up the defense of being builders in good faith because this would have been inconsistent with their claim of being owners of the disputed land. However, Sec. 2, Rule 8 allows the averment of two or more statements of a claim or defense alternatively or hypothetically * * *;" and this rule was applied in Camara v. Aguilar, 94 Phil. 527, 530-531, involving an identical situation.

[9] See Tayag v. Yuseco, 105 Phil. 484 (1959).

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