

Angela Goyena de Quizon, plaintiff-Appellant vs. Philippine National Bank et al., Defendants-Appellees, G. R. No. L-2851, January 31, 1950.

1. PLEADING AND PRACTICE; CONTEMPT IN EXECUTING JUDGMENT. —

When, as in this case, the judgment requires the delivery of real property, it must be executed, not in accordance with section 9 of Rule 39, but in accordance with paragraph *d* of section 8, Rule 39, and any contempt proceeding arising therefrom must be based on paragraph *H* of section 3, Rule 64, and not on paragraph *b* of the same section in relation to section 9 of Rule 39.

ID.; EXECUTION OF JUDGMENT REQUIRING DELIVERY OF REAL PROPERTY. —

"According to these sections (provisions of Act 190 from which Rule 39, sec. 8-d was taken), it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and, in fact, it was he himself, and he alone, who was ordered by the justice of the peace who rendered that judgment, to place the plaintiff in possession of the land. The defendant in this case had nothing to do with that delivery of possession, and, consequently, his statements expressing his refusal or unwillingness to effect the same, are entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the alleged disobedience of the defendant, that the judgment was not duly executed. For that purpose the sheriff could even have availed himself of the public force, had it been necessary to resort thereto." (U.S. vs. Ramayrat, 22 Phil. 183.) This means that the sheriff must despoil or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejection the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, *then and only then* may the loser be charged with and punished for contempt under paragraph *h* of section 3, Rule 64.

Andres M. Hagad for appellant.
Meneses and Dimayuga for appellees.

DECISION

OZAETA, J.:

On June 18, 1946, upon agreement of the parties, judgment was rendered by the Court of First Instance of Batangas in the above-entitled case the dispositive part of which reads as follows:

"Wherefore, the Court hereby renders judgment approving the agreement above quoted and declaring:

a) Defendants Alex F. Magtibay and Paulina B. de la Cruz to be the absolute owners of the properties under litigation and described in the complaint;

b) Authorizing the plaintiff Angela Goyena de Quizon to buy the properties referred to above for the sum of FIVE THOUSAND FIVE HUNDRED PESOS (P5,500.00), THREE THOUSAND PESOS (P3,000.00) to be paid within 90 days from the date of the said agreement, and TWO THOUSAND FIVE HUNDRED (P2,500.00), within the period of one (1) year from the same date of said agreement, both payments to be made without interest. Failure, however, on the part of the said plaintiff Angela Goyena de Quizon to comply with any of the stipulations contained in the above-quoted agreement shall cause forfeiture of the plaintiff's right to purchase said properties, with the obligation on her part to vacate the premises and deliver the possession thereof to said defendant Alex F. Magtibay and Paulina B. de la Cruz; provided, however, that should the plaintiff pay the sum of THREE THOUSAND PESOS (P3,000.00), as above mentioned, but failed to pay the balance of TWO THOUSAND FIVE HUNDRED PESOS (P2,500.00) within the period stipulated as aforesaid, the plaintiff shall forfeit the amount already paid;

c) Ordering said defendants Alex F. Magtibay and Paulina B. de la Cruz that upon payment to them by said plaintiff of the amount of FIVE THOUSAND FIVE HUNDRED PESOS (P5,500.00), agreed upon as hereinabove mentioned, to execute a deed of absolute sale of the properties under litigation in favor of said plaintiff within 30 days from date of the last payment."

Plaintiff paid the first installment of P3,000 mentioned in said judgment but failed to pay the second installment of P2,500, alleging that her failure to do so was due to the subsequent separation of the defendants, the spouses Magtibay and her inability to determine who of said spouses was entitled to receive the payment.

Resolving plaintiff's motion for interpleader and defendants' motion for execution of the judgment, the court on August 28, 1947, entered the following order:

"Con la conformidad de las partes y los abogados que representan a las mismas, se concede a Angela Goyena de Quizon un plazo hasta el Sabado, 30 del actual, a las 12:00 de dicho dia, para que deposite en poder del Escribano de este Juzgado y en beneficio de Paulina B. de la Cruz la suma de P2,500.00, corriendo a cuenta de la depositante los derechos y comision del juzgado, y de no hacerlo dentro de ese plazo, el juzgado declararia que dicha Angela Goyena de Quizon ha perdido el derecho sobre la finca envuelta en este asunto, de acuerdo con la decision dictada en el mismo."

Because the plaintiff failed to deposit the sum of P2,500 within the period mentioned in the order last above quoted, the defendant Paulina B. de la Cruz again asked for a writ of execution, and Judge Eugenio Angeles, on September 11, 1947, issued an order the dispositive part of which reads as follows:

"WHEREFORE, enforcing the judgment rendered herein, the Court hereby declares that, because of the failure of the plaintiff to pay the amount of P2,500.00 which said plaintiff had agreed to pay on or before June 18, 1947, the plaintiff has forfeited to the defendants, Alex F. Magtibay and Paulina B. de la Cruz the said amount of P3,000.00, and said plaintiff has lost the right to repurchase the property the subject matter of the present action, and said plaintiff is hereby ordered to vacate the promises and deliver the possession thereof to the said defendants Alex F. Magtibay and Paulina B. de la Cruz."

On October 2, 1947, the plaintiff deposited the sum of P2,500 with the clerk of the lower court, who in turn then and there deposited it with the provincial treasurer, as appears on folio 67 of the record below.

The record does not show action was taken by the lower court with regard to said belated deposit. But the record does show that by virtue of an order of Judge Juan P. Enriquez dated January 2, 1948, the clerk of court issued a writ of execution which reads as follows:

SHERIFF PROVINCIAL DE BATANGAS
SALUD :

"Por cuanto en 18 de Junio de 1946 se dicto decision en esta causa de conformidad con el convenio firmado por las partes y sus abogados;

"Por cuanto dicha decision quedo firme y ejecutoria, y en 2 del actual, el Juzgado ordeno la ejecucion de la decision aludida;

"POR TANTO es ordenamos que entregueis a los demandados Alex F. Magtibay y Paulina de la Cruz la siguiente propiedad:

"A parcel of residential land and building constructed on the same with all existing improvements thereon, situated in the poblacion of Rosario, province of Batangas, bounded on the N. by Provincial Road (San Juan-Batangas road); on the E. by property of Rufino Goyena and River; on the S. by River and on the W. by River also. x x x x which has a total assessment value of P2,040, under tax declaration No. 35883 in the name of Angela Goyena in the province of Batangas."

dichos Alex F. Magtibay y Paulina B. de la Cruz, los demandados, recorbaron en 11 de Septiembre de 1947 en nuestro Juzgado, de la demandante Angela Goyena de Quizon, y devolvais la presente dentro del plazo fijado por la Ley, consignando en su dorro vuestras diligencias correspondientes.

"Dada por el Honorable JUAN P. ENRIQUEZ, Juez de dicho Juzgado, en la Ciudad de Lipa, hoy a 3 de Enero de 1948.

(Sgd.) EUSTACIO S. LUSTRE
Escribano"

The return of the sheriff states that on the morning of January 5, 1948, he went to Rosario, Batangas, accompanied by Alejandro Magtibay, son of the defendant spouses Magtibay, and with one policeman of the town went directly to the place where the land and building were located, and "I contacted the occupants of the ground floor of the said house and explained to him (sic) the writ of execution issued by the Court of First Instance of Batangas, Lipa City. After determining the boundaries as described in the execution, I delivered the herein — described parcel of residential land and building to Mr. Alejandro Magtibay."

On May 22 and July 10, 1948, Paulina B. de la Cruz and Alex F. Magtibay, respectively, filed separate petitions in court asking that the plaintiff be declared in contempt of court and punished in accordance with Rule 64 on the ground that she had disobeyed the order of Judge Angeles of September 11, 1947, and the order of execution of Judge Enriquez of January 2, 1948, "by refusing to vacate the premises in question and to deliver the possession thereof to the defendants Alex F. Magtibay and Paulina B. de la Cruz."

After hearing both parties Judge Gustavo Victoriano, on October 6, 1948, entered the following order:

"This is a petition to declare the plaintiff, Angela Goyena de Quizon, in contempt of court for having failed to comply with the orders of this Court of September 11, 1947, January 2, 1948, and August 28, 1947.

After considering the pleadings and arguments presented by both parties during the hearing of this petition for contempt, the Court is of the opinion and so holds that the plaintiff Angela Goyena de Quizon has committed contempt of court in failing to obey the aforementioned orders of this Court and, therefore, sentences her to be imprisoned until she complies with the same by vacating the premises in question and delivering the possession thereof to said defendants Alex F. Magtibay and Paulina B. de la Cruz.

In case of appeal, the appeal bond is hereby fixed at \$500.00."

From the order last above quoted, the plaintiff has appealed to this court.

The judgment involved here requires the plaintiff "to vacate the premises and deliver the possession thereof to the said defendants Alex F. Magtibay and Paulina B. de la Cruz." Under section 8 (d) of Rule 39, if the judgment be for the delivery of the possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejection the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto then and only then may the loser be charged with and punished for contempt under paragraph (h) of section 3, Rule 64.

In *United States vs. Ramayrat*, 22 Phil. 183, a similar writ of execution was invoked to punish the defendant for contempt of court. The defendant, who had been adjudged in a civil case to deliver the possession of a certain parcel of land to the plaintiff, manifested to the sheriff in writing that he was not willing "to deliver to Sabino Vayson (the plaintiff) or to the deputy sheriff of this municipality, Cosme Nonoy, the land in my possession, as I have been directed to do by the said sheriff, in order that, in the latter case, he might deliver the same to the aforementioned Vayson, in conformity with the order issued by the justice of the peace of this municipality." In affirming the order of the Court of First Instance acquitting the defendant of contempt, this court, interpreting the provisions of the Code of Civil Procedure from which paragraph (d) of section 8, Rule 39, was taken, held:

"According to these sections, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgement in question, and, in fact, it was he himself, and he alone, who was ordered by the justice of peace who rendered that judgment, to place the plaintiff, Vayson, in possession of the land. The defendant in this case had nothing to do with that delivery of possession, and, consequently, his statements expressing his refusal or unwillingness to effect the same, are entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the alleged disobedience of the defendant, that the judgment was not duly executed. For that purpose the sheriff could even have availed himself of the public force, had it been necessary to resort thereto."

In the present case it does not even appear that the plaintiff had been required by the sheriff, and had refused, to vacate the premises described in the writ of execution. All that appears in the return of the sheriff is that he contacted the occupants of the ground floor of the house and explained to them the writ of execution, and that after determining the boundaries as described in the execution he delivered the premises to Mr. Alejandro Magtibay, the son of the winning parties. Who those occupants of the ground floor were, has not been specified. For all we know, they may be strangers to the

Appellant cannot be punished for contempt under paragraph (b) of section 3, Rule 64, for disobedience or of resistance to the judgment of the trial court because said judgment is not a special judgment enforceable under section 9 of Rule 39, which reads as follows

"Sec. 9. *Writ of execution of special judgment.*—When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and may be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such

party or person may be punished for contempt if he disobeys such judgment."

In other words, when as in this case, the judgment requires the delivery of real property, it must be executed not in accordance with section 9 above quoted but in accordance with paragraph (d) of section 8, Rule 39, and any contempt proceeding arising therefrom must be based on paragraph (h) of section 3, Rule 64, and not on paragraph (b) of the same section in relation to section 9 of Rule 39.

Acquitting appellant of contempt of court, we reverse the order appealed from with costs against the appellees Alex F. Magtibay and Paulina B. de la Cruz.

Moran, Paras, Bengzon, Tuason, Reyes, Pablo, Padilla, Montemayor, Torres, J.J. concur.

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