

## THIRD DIVISION

[ G.R. No. 193397, January 25, 2017 ]

**ESTRELLA MEJIA-ESPINOZA AND NORMA MEJIA DELLOSA,  
PETITIONERS, VS. NENA A. CARIÑO, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

Rule 47 of the Rules of Court allows an aggrieved party to file an action for annulment of judgment or final orders under extraordinary circumstances. The question before us in this petition for review on *certiorari*, which seeks to set aside the Decision<sup>[1]</sup> dated November 26, 2009 and Resolution<sup>[2]</sup> dated August 3, 2010 of the Court of Appeals in CA-G.R. CV No. 89905, is whether the same remedy may be used to annul court processes pursuant to a final and executory judgment whose validity is not being questioned. We hold that it cannot.

#### I

Petitioner Estrella Mejia-Espinoza (Espinoza) was the plaintiff in an action for ejectment against respondent Nena A. Cariño (Nena) before the Municipal Trial Court of Mangaldan, Pangasinan (MTC). The case was docketed as Civil Case No. 1420. The case was consolidated with another ejectment case, docketed as Civil Case No. 1419, involving Espinoza and one Alberto Cariño (Alberto) covering a different property.<sup>[3]</sup> On August 25, 1998, the MTC rendered a joint decision in favor of Espinoza. It ordered Nena and Alberto to vacate the respective properties and to pay rents from time of default, litigation expenses, and attorney's' fees.<sup>[4]</sup> Nena and Alberto separately appealed the joint decision to the Regional Trial Court of Dagupan City, Branch 43 (RTC Branch 43), which reversed the decision only with respect to Civil Case No. 1420 and dismissed the case against Nena for lack of cause of action.<sup>[5]</sup> On Espinoza's petition for review, the Court of Appeals Special Seventeenth Division<sup>[6]</sup> (CA 17<sup>th</sup> Division) reversed the decision of the RTC Branch 43 and affirmed the MTC decision.<sup>[7]</sup> Nena sought to elevate the case to us on *certiorari*, but we denied it as a result of Nena's failure to file her petition for review within the extended period. An entry of judgment was issued on December 3, 2003.<sup>[8]</sup>

Espinoza filed a motion for issuance of a writ of execution before the MTC, which Nena opposed.<sup>[9]</sup> The MTC granted the motion on October 14, 2004<sup>[10]</sup> and subsequently issued a writ of execution on March 10, 2005.<sup>[11]</sup> Sheriff Vinez A. Hortaleza (Sheriff Hortaleza) served the writ upon Nena on March 16, 2005.<sup>[12]</sup> When Sheriff Hortaleza proceeded to the property subject of the ejectment suit, he found out that Nena had voluntarily vacated the place and turned over the padlock to one Gertrudes Taberna, Nena's caretaker. Thus, Sheriff Hortaleza was able to peacefully turn over the property to co-petitioner Norma Mejia Delloso (Delloso),

Espinoza's attorney-in-fact.<sup>[13]</sup> Sheriff Hortaleza then levied a separate commercial lot owned by Nena to cover the monetary awards for rent, litigation expenses, and attorney's fees, and correspondingly issued a Notice of Sale on Execution of Real Property<sup>[14]</sup> scheduled on September 26, 2005.

On September 19, 2005, Nena filed a complaint captioned as "Annulment of Court's Processes with prayer for the issuance of a Temporary Restraining Order, Preliminary Injunction and/or Prohibition, and Damages" before the RTC of Dagupan City, which was raffled to Branch 41 (RTC Branch 41).<sup>[15]</sup> Nena argued that she was deprived of the opportunity to ask for reconsideration of the order granting Espinoza's motion for issuance of writ of execution because she was not furnished a copy of the order. She claimed that Espinoza, through Dellosa, illegally caused the demolition, without a special court order, of a one-story building which Nena allegedly constructed on the land subject of the ejectment suit. Furthermore, she questioned the levy on her commercial lot for being premature, as well as the computation of the judgment debt.<sup>[16]</sup>

In her Answer,<sup>[17]</sup> Espinoza emphasized that the writ of execution was properly served and received by Nena on March 16, 2005, and that Nena had already removed all her personal belongings from the premises weeks before the service of the writ. With respect to the demolition of the one-story building, Espinoza claimed that it was the previous owners of the land, the Penullars, who built the structure. On the levy of the commercial lot, Espinoza asserted that it was proper due to Nena's continued defiance of a final and executory judgment.<sup>[18]</sup>

In its Decision,<sup>[19]</sup> the RTC Branch 41 dismissed the complaint for lack of cause of action. It opined that the issue on the alleged irregularity of the issuance of the writ of execution was rendered moot by its implementation. It noted that Nena had already voluntarily relinquished her possession of the property-including the building-before the demolition. The RTC Branch 41 also found that the levy on Nena's commercial lot was proper because Sheriff Hortaleza found no personal properties belonging to Nena. With regard to the computation of the amount, the RTC ruled that the sheriff was guided by the decision in the ejectment suit. Finally, the RTC Branch 41 held that Nena availed of the wrong remedy; instead of a petition for annulment under Rule 47, Nena should have filed a petition for relief from judgment under Rule 38.

On appeal, the Court of Appeals Fourth Division (CA 4<sup>th</sup> Division) reversed the RTC.<sup>[20]</sup> It held that Nena correctly filed the petition for annulment with the RTC of Dagupan City in accordance with Section 10 of Rule 47. It brushed aside the RTC Branch 41's ruling that Nena availed of the wrong remedy because according to the CA 4<sup>th</sup> Division, regardless of the caption of the pleading, Nena had a cause of action accruing from the violations of her rights. The CA 4<sup>th</sup> Division opined that because Nena did not receive a copy of the order granting Espinoza's motion for issuance of writ of execution, it "did not become final and executory insofar as [Nena] is concerned."<sup>[21]</sup> The CA 4<sup>th</sup> Division concluded that the writ of execution was "premature and without legal basis"<sup>[22]</sup> and, therefore, void.<sup>[23]</sup> Next, the CA 4<sup>th</sup> Division ruled that the levy on Nena's commercial property was void because the dispositive portion of the CA 17<sup>th</sup> Division Decision in the ejectment suit did not

mention any monetary award. Lastly, the CA 4<sup>th</sup> Division held that Nena was entitled to damages because the one-story building was demolished without the benefit of a writ of demolition as required by Section 10(d)<sup>[24]</sup> of Rule 39.<sup>[25]</sup> The CA 4<sup>th</sup> Division then remanded the case to the RTC for the determination of the amount of damages that Nena is entitled to.<sup>[26]</sup>

After the CA 4<sup>th</sup> Division denied Espinoza's motion for reconsideration, Espinoza filed this petition for review on *certiorari*.<sup>[27]</sup> She asserts that the issuance of a writ of execution based on a final and executory decision is a ministerial duty of the MTC, and that Nena was nonetheless given her day in court when she filed her opposition to the motion for execution. She also faults the CA 4<sup>th</sup> Division for failing to properly appreciate the dispositive portion of the CA 17<sup>th</sup> Division Decision in the ejectment suit. In that case, the CA 17<sup>th</sup> Division affirmed the MTC Decision, which in turn ordered Nena to vacate the premises and to pay rentals, litigation costs, and attorney's fees.<sup>[28]</sup> Espinoza likewise disputes the necessity for a writ of demolition because Section 10(d) of Rule 39 only applies to "improvements constructed or planted by the judgment obligor or his agent." Espinoza maintains that since it was the Penullars who constructed the building, the provision is inapplicable. In any case, Espinoza contends that Nena's claim that she built the building was unsubstantiated.<sup>[29]</sup> Finally, Espinoza argues that Nena is estopped from questioning the validity of the writ of execution because she already voluntarily surrendered possession of the property.<sup>[30]</sup> In her Comment,<sup>[31]</sup> Nena reiterates the reasoning of the CA 4<sup>th</sup> Division that the court processes were void.

## II

A petition for annulment of judgment or final order under Rule 47 is an extraordinary remedy that may be availed of only under certain exceptional circumstances. Under the Rules, there are three requirements that must be satisfied before a Rule 47 petition can prosper. *First*, the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner.<sup>[32]</sup> This means that a Rule 47 petition is a remedy of last resort—it is not an alternative to the ordinary remedies under Rules 37, 38, 40, 41, 42, 43, and 45. *Second*, an action for annulment of judgment may be based only on two grounds: extrinsic fraud and lack of jurisdiction.<sup>[33]</sup> *Third*, the action must be filed within the temporal window allowed by the Rules. If based on extrinsic fraud, it must be filed within four years from the discovery of the extrinsic fraud; if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel.<sup>[34]</sup> There is also a formal requisite that the petition be verified, and must allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.<sup>[35]</sup>

The averments of Nena's complaint *a quo*, however, do not make out an action for annulment of judgment or final order. It was therefore inaccurate for both the CA 4<sup>th</sup> Division and the RTC Branch 41 to characterize it as a Rule 47 petition. While the non-compliance with the requisites laid down in Rule 47 is glaring—there is neither any averment in the complaint showing *prima facie* compliance with the

aforementioned requisites nor even a reference to Rule 47—the first thing the lower courts should have considered is the subject of the complaint. Nena is challenging the MTC's order granting the issuance of the writ of execution, the writ of execution itself, as well as the sheriff's notice of levy and notice of sale on her real property. Clearly, these are not the judgments or final orders contemplated by Rule 47. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court.

[36] Rule 47 does not apply to an action to annul the levy and sale at public auction. Neither does it apply to an action to annul a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.[37]

The proper remedy for Nena was to file a motion to nullify the writ of execution and notices of levy and sale before the MTC, instead of instituting a new complaint before the RTC.[38] This is because the execution of a decision is merely incidental to the jurisdiction already acquired by a trial court. As we explained in *Deltaventures Resources, Inc. v. Cabato*:[39]

Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated. **Whatever irregularities attended the issuance and execution of the alias writ of execution should be referred to the same administrative tribunal which rendered the decision.** This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.

[40] (Emphasis supplied; citations omitted.)

Ostensibly, Nena's complaint before the RTC may be viewed as one for prohibition and damages insofar as it also prayed for the issuance of a permanent injunction and award of damages. While a petition for prohibition may be an available remedy to assail the actions of a sheriff who performs purely ministerial functions, in excess or without jurisdiction,[41] the filing of the aforementioned motion with the MTC is still a precondition to such action. This is because the motion is the "plain, speedy, and adequate remedy in the ordinary course of law." [42]

Therefore, while the RTC Branch 41 is partially correct in dismissing the complaint for being the wrong remedy, it incorrectly identified a petition for relief under Rule 38 as the proper recourse. The correct remedy is a motion to nullify court processes filed with the MTC.

### III

Even assuming that Nena availed of the appropriate remedy, her complaint is still without merit.

### A

Nena sought to annul the writ of execution because she did not receive a copy of the MTC order granting the issuance of the writ of execution. Yet, she received a copy of

the writ without any protest and voluntarily vacated the premises and turned over possession to Espinoza's representative. These actions evince Nena's recognition of and acquiescence to, the writ of execution; she is therefore estopped from questioning its validity. After all, she is fully aware of the finality of the decision in the ejectment case and that execution of the decision is its logical consequence. "[W]hen a judgment has been satisfied, it passes beyond review, satisfaction being the last act and the end of the proceedings, and payment or satisfaction of the obligation thereby established produces permanent and irrevocable discharge; hence, a judgment debtor who acquiesces to and voluntarily complies with the judgment is estopped from taking an appeal therefrom."<sup>[43]</sup> Furthermore, as a result of Nena's voluntary compliance with the writ, any issue arising from the issuance or enforcement of such writ is rendered moot. Injunction is no longer available to question the transfer of possession to Espinoza, as the act sought to be enjoined is already *fait accompli*.<sup>[44]</sup>

Nena's contention that her failure to receive a copy of the order deprived her of the opportunity to file a motion for reconsideration is without legal basis, because she is not entitled to file a motion for reconsideration in the first place. We have repeatedly held that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution and its issuance is the trial court's ministerial duty.<sup>[45]</sup> When a prevailing party files a motion for execution of a final and executory judgment, it is not mandatory for such party to serve a copy of the motion to the adverse party and to set it for hearing. The absence of such advance notice to the judgment debtor does not constitute an infringement of due process.<sup>[46]</sup> Ergo, it follows that the opportunity to move for reconsideration of an order granting execution is likewise not indispensable to due process. This renders of little significance Nena's lack of opportunity to file a motion for reconsideration. In fact, such motion for reconsideration may be considered as a mere dilatory pleading, as it would serve no other purpose than to frustrate the execution of a final judgment. In any case, the MTC actually gave Nena more than enough opportunity to contest Espinoza's application for execution when it allowed her to file her opposition to the motion for execution and heard the parties' arguments on the matter.

We are convinced that Nena's complaint for annulment of court processes, filed six months after she voluntarily complied with the writ of execution, was a mere afterthought designed to evade the execution of a decision that has long attained finality. Public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.<sup>[47]</sup>

## B

The CA 4<sup>th</sup> Division ordered the remand of the case to determine the amount of damages Nena is entitled to as a result of the demolition of the one-story building without a special writ of demolition. It relied on Section 10(d) of Rule 39 which prohibits a sheriff from destroying, demolishing or removing any improvements constructed or planted by the judgment obligor without a special order of the court. We agree with the view of the CA 4<sup>th</sup> Division that the special writ for the purpose of