

FIRST DIVISION

[G.R. No. 157659, January 25, 2010]

**ELIGIO P. MALLARI, PETITIONER, VS. GOVERNMENT SERVICE
INSURANCE SYSTEM AND THE PROVINCIAL SHERIFF OF
PAMPANGA, RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

By petition for review on *certiorari*, the petitioner appeals the decision promulgated on March 17, 2003, whereby the Court of Appeals (CA) dismissed his petition for *certiorari*.

Antecedents

In 1968, the petitioner obtained two loans totaling P34,000.00 from respondent Government Service Insurance System (GSIS). To secure the performance of his obligations, he mortgaged two parcels of land registered under his and his wife Marcelina Mallari's names. However, he paid GSIS about ten years *after* contracting the obligations only P10,000.00 on May 22, 1978 and P20,000.00 on August 11, 1978.^[1]

What followed thereafter was the series of inordinate moves of the petitioner to delay the efforts of GSIS to recover on the debt, and to have the unhampered possession of the foreclosed property.

After reminding the petitioner of his unpaid obligation on May 2, 1979, GSIS sent on November 2, 1981 a telegraphic demand to him to update his account. On November 10, 1981, he requested a final accounting, but did not do anything more. Nearly three years later, on March 21, 1984, GSIS applied for the extrajudicial foreclosure of the mortgage by reason of his failure to settle his account. On November 22, 1984, he requested an updated computation of his outstanding account. On November 29, 1984, he persuaded the sheriff to hold the publication of the foreclosure notice in abeyance, to await action on his pending request for final accounting (that is, taking his payments of P30,000.00 made in 1978 into account). On December 13, 1984, GSIS responded to his request and rendered a detailed explanation of the account. On May 30, 1985, it sent another updated statement of account. On July 21, 1986, it finally commenced extrajudicial foreclosure proceedings against him because he had meanwhile made no further payments.

On August 22, 1986, the petitioner sued GSIS and the Provincial Sheriff of Pampanga in the Regional Trial Court (RTC), Branch 44, in San Fernando, Pampanga, docketed as Civil Case No. 7802,^[2] ostensibly to enjoin them from proceeding against him for injunction (with an application for preliminary injunction). The RTC ultimately decided Civil Case No. 7802 in his favor, nullifying

the extrajudicial foreclosure and auction sale; cancelling Transfer Certificate of Title (TCT) No. 284272-R and TCT No. 284273-R already issued in the name of GSIS; and reinstating TCT No. 61171-R and TCT No. 54835-R in his and his wife's names.^[3]

GSIS appealed the adverse decision to the CA, which reversed the RTC on March 27, 1996.^[4]

The petitioner elevated the CA decision to this Court *via* petition for review on *certiorari* (G.R. No. 124468).^[5]

On September 16, 1996, this Court denied his petition for review.^[6] On January 15, 1997, this Court turned down his *motion for reconsideration*.^[7]

As a result, the CA decision dated March 27, 1996 became final and executory, rendering unassailable both the extrajudicial foreclosure and auction sale held on September 22, 1986, and the issuance of TCT No. 284272-R and TCT No. 284273-R in the name of GSIS.

GSIS thus filed an *ex parte* motion for execution and for a writ of possession on September 2, 1999.^[8] Granting the *ex parte* motion on October 8, 1999,^[9] the RTC issued a *writ of execution cum writ of possession* on October 21, 1999,^[10] ordering the sheriff to place GSIS in possession of the properties.

The sheriff failed to serve the writ, however, partly because of the petitioner's request for an extension of time within which to vacate the properties. It is noted that GSIS acceded to the request.^[11]

Yet, the petitioner did not voluntarily vacate the properties, but instead filed a *motion for reconsideration and/or to quash the writ of execution* on March 27, 2000.^[12] Also, the petitioner commenced a second case against GSIS and the provincial sheriff in the RTC in San Fernando, Pampanga (Civil Case No. 12053), ostensibly for consignment (coupled with a prayer for a writ of preliminary injunction or temporary restraining order). However, the RTC dismissed Civil Case No. 12053 on November 10, 2000 on the ground of *res judicata*, impelling him to appeal the dismissal to the CA (C.A.-G.R. CV No. 70300).^[13]

In the meanwhile, the petitioner filed a motion dated April 5, 2000 in Civil Case No. 7802 to hold GSIS, *et al.*^[14] in contempt of court for painting the fence of the properties during the pendency of his *motion for reconsideration and/or to quash the writ of execution*.^[15] He filed another motion in the same case, dated April 17, 2000, to hold GSIS and its local manager Arnulfo B. Cardenas in contempt of court for ordering the electric company to cut off the electric services to the properties during the pendency of his *motion for reconsideration and/or to quash the writ of execution*.^[16]

To prevent the Presiding Judge of Branch 44 of the RTC from resolving the pending incidents in Civil Case No. 7802, GSIS moved to inhibit him for alleged partiality towards the petitioner as borne out by his failure to act on the *motion for*

reconsideration and/or to quash writ of execution, motions for contempt of court, and motion for issuance of break open order for more than a year from their filing, praying that the case be re-raffled to another branch of the RTC.^[17] Consequently, Civil Case No. 7802 was re-assigned to Branch 48, whose Presiding Judge then denied the motions for contempt of court on July 30, 2001, and directed the Branch Clerk of Court to cause the re-implementation of the *writ of execution cum writ of possession* dated October 21, 1999.^[18]

The petitioner sought reconsideration,^[19] but the Presiding Judge of Branch 48 denied his *motion for reconsideration* on February 11, 2002.^[20]

Ruling of the CA

By petition for *certiorari* dated March 15, 2002 filed in the CA, the petitioner assailed the orders of February 11, 2002, July 30, 2001, October 21, 1999, and October 8, 1999.^[21]

On March 17, 2003, however, the CA dismissed the petition for *certiorari* for lack of merit,^[22] stating:

We find the instant petition patently devoid of merit. This Court is not unaware of the legal tactics and maneuvers employed by the petitioner in delaying the disposition of the subject case (Civil Case No. 7802) which has already become final and executory upon the final resolution by the Supreme Court affirming the judgment rendered by the Court of Appeals. We construe the actuation of the petitioner in resorting to all kinds of avenues accorded by the Rules of Court, through the filing of several pleadings and/or motions in litigating this case, as running counter to the intendment of the Rules to be utilized in promoting the objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

The issues raised in the present controversy have already been settled in our existing jurisprudence on the subject. In the case of *De Jesus vs. Obnamia, Jr.*, the Supreme Court ruled that "*generally, no notice or even prior hearing of a motion for execution is required before a writ of execution is issued when a decision has already become final.*"

The recent accretion to the corpus of our jurisprudence has established the principle of law, as enunciated in *Buaya vs. Stronghold Insurance Co., Inc.* that "*once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a Writ of Execution becomes a ministerial duty of the court.*"

The rule is also firmly entrenched in the aforecited *Buaya* case that "the effective and efficient administration of justice requires that once a judgment has become final, the prevailing party should not be deprived of the fruits of the verdict by subsequent suits on the same issues filed by the same parties. Courts are duty-bound to put an end to controversies. Any attempt to prolong, resurrect or juggle them should

be firmly struck down. The system of judicial review should not be misused and abused to evade the operation of final and executory judgments."

As succinctly put in *Tag Fibers, Inc. vs. National Labor Relations Commission*, the Supreme Court is emphatic in saying that "*the finality of a decision is a jurisdictional event that cannot be made to depend on the convenience of a party.*"

We find no cogent reason to discompose the findings of the court below. Thus, we sustain the assailed Orders of the court a quo since no abuse of discretion has been found to have been committed by the latter in their issuance. Moreover, this Court finds this petition to be part of the dilatory tactics of the petitioner to stall the execution of a final and executory decision in Civil Case No. 7802 which has already been resolved with finality by no less than the highest tribunal of the land.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit. Costs against the petitioner.

SO ORDERED.^[23]

Issues

Hence, this appeal.

The petitioner insists herein that the CA gravely erred in refusing "to accept the nullity of the following orders" of the RTC, to wit:

1. THE ORDER OF THE TRIAL COURT DATED OCTOBER 8, 1999, GRANTING THE EX-PARTE MOTION FOR EXECUTION AND/OR ISSUANCE OF THE WRIT OF EXECUTION OF POSSESSION IN FAVOR OF THE RESPONDENT GSIS;
2. THE ORDER OF THE TRIAL COURT DATED OCTOBER 21, 1999 GRANTING THE ISSUANCE AND IMPLEMENTATION OF THE WRIT OF EXECUTION CUM WRIT OF POSSESSION IN FAVOR OF RESPONDENT GSIS;
3. THE ORDER OF THE TRIAL COURT DATED JULY 30, 2001 DIRECTING TO CAUSE THE RE-IMPLEMENTATION OF THE WRIT OF EXECUTION CUM WRIT OF POSSESSION IN FAVOR OF THE RESPONDENT GSIS; and
4. THE ORDER OF THE TRIAL COURT DATED FEBRUARY 11, 2002, DENYING THE MOTION FOR RECONSIDERATION OF THE ORDER DATED SEPTEMBER 14, 2001, IN RELATION TO THE COURT ORDER DATED JULY 30, 2001.^[24]

Ruling of the Court

The petition for review on *certiorari* absolutely lacks merit.

I

Petition for *Certiorari* in CA Was Filed Beyond Reglementary Period

The petition assailed before the CA on *certiorari* the following orders of the RTC, to wit:

1. The order dated October 8, 1999 (granting the *ex parte motion for execution and/or issuance of the writ of execution cum writ of possession* of GSIS);^[25]
2. The order dated October 21, 1999 (directing the issuance of the *writ of execution cum writ of possession* in favor of GSIS);^[26]
3. The order dated July 30, 2001 (requiring the Branch Clerk of Court to cause the re-implementation of the *writ of execution cum writ of possession*, and dismissing the motions to hold GSIS, *et al.* in contempt);^[27] and
4. The order dated February 11, 2002 (denying the *motion for reconsideration* dated August 17, 2001 seeking the reconsideration of the order dated July 30, 2001).^[28]

The July 30, 2001 order denied the petitioner's *motion for reconsideration and/or to quash writ of execution*, and *motion to hold GSIS, Tony Dimatulac, et al. and Arnulfo Cardenas in contempt*; and declared GSIS's *motion for issuance of break open order and for designation of special sheriff from GSIS Legal Services Group* as premature. In turn, the *motion for reconsideration and/or to quash writ of execution* denied by the order of July 30, 2001 had merely challenged the orders of October 8, 1999 and October 21, 1999 (granting the *writ of execution cum writ of possession* as a matter of course).

Considering that the *motion for reconsideration* dated August 17, 2001 denied by the order dated February 11, 2002 was in reality and effect a *prohibited second motion for reconsideration vis-à-vis* the orders dated October 21, 1999 and October 8, 1999, the assailed orders dated July 30, 2001, October 21, 1999, and October 8, 1999 could no longer be subject to attack by *certiorari*. Thus, the petition for *certiorari* filed only in March 2002 was already improper and tardy for being made beyond the 60-day limitation defined in Section 4, Rule 65, 1997 *Rules of Civil Procedure*, as amended,^[29] which requires a petition for *certiorari* to be filed "not later than sixty (60) days from notice of the judgment, order or resolution," or, in case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, "the sixty (60) day period shall be counted from notice of the denial of the said motion."