

## THIRD DIVISION

[ G.R. No. 180587, March 20, 2009 ]

**SIMEON CABANG, VIRGINIA CABANG AND VENANCIO CABANG  
ALIAS "DONDON", PETITIONERS, VS. MR. & MRS. GUILLERMO  
BASAY, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Decision of the Court of Appeals in CA-G.R. CV No. 76755<sup>[1]</sup> dated May 31, 2007<sup>[2]</sup> which reversed the Order<sup>[3]</sup> of the Regional Trial Court of Molave, Zamboanga Del Sur, Branch 23 in Civil Case No. 99-20-127 which denied respondents' motion for execution on the ground that petitioners' family home was still subsisting. Also assailed is the Resolution dated September 21, 2007 denying the motion for reconsideration.

The facts as summarized by the appellate court:

Deceased Felix Odong was the registered owner of Lot No. 7777, Ts- 222 located in Molave, Zamboanga del Sur. Said lot was covered by Original Certificate of Title No. 0-2,768 pursuant to Decree No. N-64 and issued on March 9, 1966. However, Felix Odong and his heirs never occupied nor took possession of the lot.

On June 16, 1987, plaintiff-appellants bought said real property from the heirs of Felix Odong for P8,000.00. Consequently, OCT No. 0-2,768 was cancelled and in its stead, Transfer Certificate of Title No. T-22,048 was issued on August 6, 1987 in the name of plaintiff-appellants. The latter also did not occupy the said property.

Defendant-appellees, on the other hand, had been in continuous, open, peaceful and adverse possession of the same parcel of land since 1956 up to the present. They were the awardees in the cadastral proceedings of Lot No. 7778 of the Molave Townsite, Ts-222. During the said cadastral proceedings, defendant-appellees claimed Lot No. 7778 on the belief that the area they were actually occupying was Lot No. 7778. As it turned out, however, when the Municipality of Molave relocated the townsite lots in the area in 1992 as a big portion of Lot No. 7778 was used by the government as a public road and as there were many discrepancies in the areas occupied, it was then discovered that defendant-appellees were actually occupying Lot No. 7777.

On June 23, 1992, plaintiff-appellants filed a Complaint docketed as Civil Case No. 92-20-127 for Recovery of Property against defendant-

appellees.

On July 19, 1996, the trial court rendered its decision, the dispositive portion of which reads, thus:

WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff -

1. Holding that the rights of the plaintiffs to recover the land registered in their names, have been effectively barred by laches; and
2. Ordering the dismissal of the above-entitled case.

No pronouncement as to cost.

SO ORDERED.

Aggrieved, plaintiff-appellants filed an appeal before the Court of Appeals assailing the above-decision. Said appeal was docketed as CA-G.R. CV No. 55207.

On December 23, 1998, the Court of Appeals, through the then Second Division, rendered a Decision reversing the assailed decision and decreed as follows:

WHEREFORE, the judgment herein appealed from is hereby REVERSED, and judgment is hereby rendered declaring the plaintiffs-appellants to be entitled to the possession of Lot No. 7777 of the Molave Townsite, subject to the rights of the defendants-appellees under Article (sic) 448, 546, 547 and 548 of the New Civil Code.

The records of this case are hereby ordered remanded to the court of origin for further proceedings to determine the rights of the defendants-appellees under the aforesaid article (sic) of the New Civil Code, and to render judgment thereon in accordance with the evidence and this decision.

No pronouncement as to costs.

SO ORDERED.

Defendant-appellees thereafter filed a petition for review on certiorari under Rule 45 of the Rules of Court before the Supreme Court docketed as G.R. No. 139601. On October 18, 1999, the Supreme Court issued a Resolution denying the petition for late filing and lack of appropriate service.

Subsequently, or on February 15, 2000, the Supreme Court Resolution had become final and executory.

Consequently, the case was remanded to the court *a quo* and the latter commissioned the Municipal Assessor of Molave, Zamboanga del Sur to determine the value of the improvements introduced by the defendant-appellees.

The Commissioner's Report determined that at the time of ocular inspection, there were three (3) residential buildings constructed on the property in litigation. During the ocular inspection, plaintiff-appellants' son, Gil Basay, defendant-appellee Virginia Cabang, and one Bernardo Mendez, an occupant of the lot, were present. In the report, the following appraised value of the improvements were determined, thus:

<u>Owner</u>	<u>Lot No.</u>	<u>Area</u> <u>(sq.m.)</u>	<u>Improvement</u>	<u>Appraised Value</u>
Virginia Cabang	7777	32.55	Building	P21,580.65
Jovencio Capuno	7777	15.75	Building	18,663.75
Amelito Mata	7777	14.00	Building	5,658.10
			Toilet	1,500.00
			Plants & Trees	<u>2,164.00</u>
		TOTAL		P49,566.50

Thereafter, upon verbal request of defendant-appellees, the court *a quo* in its Order declared that the tie point of the survey should be the BLLM (Bureau of Lands Location Monument) and authorized the official surveyor of the Bureau of Lands to conduct the survey of the litigated property.

Pursuant to the above Order, the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR)-Region XI designated Geodetic Engineer Diosdado L. de Guzman to [act] as the official surveyor. On March 2002, Engr. De Guzman submitted his survey report which stated, *inter alia*:

1. That on September 18, 2001, the undersigned had conducted verification survey of Lot 7777, Ts-222 and the adjacent lots for reference purposes-with both parties present on the survey;
2. That the survey was started from BLLM #34, as directed by the Order, taking sideshots of lot corners, existing concrete fence, road and going back to BLLM #34, a point of reference;
3. Considering that there was only one BLLM existing on the ground, the undersigned conducted astronomical observation on December 27, 2001 in order to check the carried Azimuth of the traverse;
4. That per result of the survey conducted, it was found out and ascertained that the area occupied by Mrs. Virginia Cabang is a portion of Lot 7777, with lot assignment to be known as Lot 7777-A with an area of 303 square meters and portion of Lot 7778 with lot assignment to be known as Lot 7778-A with an area of 76 square

meters. On the same lot, portion of which is also occupied by Mr. Bernardo Mendez with lot assignment to be known as Lot 7777-B with an area of 236 square meters and Lot 7778-B with an area of 243 square meters as shown on the attached sketch for ready reference;

5. That there were three (3) houses made of light material erected inside Lot No. 7777-A, which is owned by Mrs. Virginia Cabang and also a concrete house erected both on portion of Lot No. 7777-B and Lot No. 7778-B, which is owned by Mr. Bernardo Mendez. x x x;
6. That the existing road had been traversing on a portion of Lot 7778 to be know (sic) as Lot 7778-CA-G.R. SP No. with an area of 116 square meters as shown on attached sketch plan.

During the hearing on May 10, 2002, plaintiff-appellants' offer to pay P21,000.00 for the improvement of the lot in question was rejected by defendant-appellees. The court *a quo* disclosed its difficulty in resolving whether or not the houses may be subject of an order of execution it being a family home.

On June 18, 2002, plaintiff-appellants filed their Manifestation and Motion for Execution alleging therein that defendant-appellees refused to accept payment of the improvements as determined by the court appointed Commissioner, thus, they should now be ordered to remove said improvements at their expense or if they refused, an Order of Demolition be issued.

On September 6, 2002, the court *a quo* issued the herein assailed Order denying the motion for execution.<sup>[4]</sup>

Respondents thereafter elevated their cause to the appellate court which reversed the trial court in its May 31, 2007 Decision in CA-G.R. CV No. 76755. Petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution<sup>[5]</sup> dated September 21, 2007.

Hence, this petition.

Petitioners insist that the property subject of the controversy is a duly constituted family home which is not subject to execution, thus, they argue that the appellate tribunal erred in reversing the judgment of the trial court.

The petition lacks merit.

It bears stressing that the purpose for which the records of the case were remanded to the court of origin was for the enforcement of the appellate court's final and executory judgment<sup>[6]</sup> in CA-G.R. CV No. 55207 which, among others, declared herein respondents **entitled to the possession** of Lot No. 7777 of the Molave Townsite subject to the provisions of Articles 448,<sup>[7]</sup> 546,<sup>[8]</sup> 547<sup>[9]</sup> and 548<sup>[10]</sup> of the Civil Code. Indeed, the decision explicitly decreed that the remand of the records of the case was for the court of origin "**[t]o determine the rights of the defendants-appellees under the aforesaid article[s]**" of the New Civil Code,

**and to render judgment thereon in accordance with the evidence and this decision."**

A final and executory judgment may no longer be modified in **any** respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court in the land.<sup>[11]</sup> The only exceptions to this rule are the correction of (1) clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.<sup>[12]</sup>

Well-settled is the rule that there can be no execution until and unless the judgment has become final and executory, *i.e.* the period of appeal has lapsed without an appeal having been taken, or, having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution shall issue as a matter of right.<sup>[13]</sup> In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's **ministerial** duty.<sup>[14]</sup>

Furthermore, as a matter of settled legal principle, a writ of execution **must adhere to every essential particulars of the judgment sought to be executed.**<sup>[15]</sup> An order of execution may not vary or go beyond the terms of the judgment it seeks to enforce.<sup>[16]</sup> A writ of execution **must conform to the judgment** and if it is different from, goes beyond or varies the tenor of the judgment which gives it life, it is a nullity.<sup>[17]</sup> Otherwise stated, when the order of execution and the corresponding writ issued pursuant thereto is not in harmony with and exceeds the judgment which gives it life, they have *pro tanto* no validity<sup>[18]</sup> - to maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.<sup>[19]</sup>

As aptly pointed out by the appellate court, from the inception of Civil Case No. 99-20-127, **it was already of judicial notice that the improvements introduced by petitioners on the litigated property are residential houses** not family homes. Belatedly interposing such an extraneous issue at such a late stage of the proceeding is tantamount to interfering with and varying the terms of the final and executory judgment and a violation of respondents' right to due process because -

As a general rule, points of law, theories and issues not brought to the attention of the trial court cannot be raised for the first time on appeal. For a contrary rule would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of if at the time of the hearing before the trial court.<sup>[20]</sup>

The refusal, therefore, of the trial court to enforce the execution on the ground that the improvements introduced on the litigated property are family homes goes beyond the pale of what it had been expressly tasked to do, *i.e.* its **ministerial** duty of executing the judgment *in accordance with its essential particulars*. The foregoing factual, legal and jurisprudential scenario reduces the raising of the issue of whether or not the improvements introduced by petitioners are family homes into a mere afterthought.