

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

FRANCISCA GATCHALIAN,
Petitioner,

-versus-

**G.R. No. L-35615
February 17, 1977**

**HON. JESUS P. ARLEGUI, Judge, Court
of First Instance, Branch I, Bayombong,
Nueva Vizcaya; MIGUEL GUEVARA,
Provincial Sheriff, Nueva Vizcaya and
PAZ TANWANGCO,**
Respondents.

X-----X

TANG TEE and TIU TIK CHAY,
Petitioners,

-versus-

**G.R. No. L-41360
February 17, 1977**

**HON. JESUS P. ARLEQUI, in his
capacity as Presiding Judge of the Court
of First Instance of Nueva Vizcaya,
Branch 1, and FLORANTE TUPASI,
represented by his grandfather.
VICENTE M. TUPASI,**
Respondents.

X-----X

DECISION

AQUINO, J.:

These two related cases have a common factual background.

L-35615. — Before the war Francisca Gatchalian (Aling Kikay) and Paz Tanwangco (who are now both over eighty-seven years old) were good friends who lived together in the same house located at Solano, Nueva Vizcaya. Whether they were partners and acquired properties with common funds is a matter of controversy. They were separated because of the war. Paz Tanwangco evacuated to Pangasinan. Francisca Gatchalian presumably remained at Solano.

In 1965 Paz Tanwangco sued Francisca Gatchalian in the Court of First Instance of Nueva Vizcaya for the recovery of her alleged share in Lots 25 and 28 which were registered in Francisca's name (Civil Case No. 1454).

Judge Jose D. Parayno in a decision dated August 30, 1969 ordered Francisca Gatchalian (1) to reconvey and deliver the possession to Paz Tanwangco of "one-half undivided portion of Lots 25 and 28 of the Solano cadastre" and the improvements thereon and (2) to pay her the sum of P18,895 as one-half of the accrued rentals up to July, 1967 and P145 monthly until the possession is delivered to Paz, with legal rate of interest from the date of the finality of the judgment, plus P2,000 as attorney's fees.

Francisca Gatchalian appealed to the Court of Appeals. Her appeal was dismissed because she did not file her brief on time (Tanwangco vs. Gatchalian, CA-G.R. No. 45054-R, Resolutions of October 16, 1970 and August 31, 1971).

She filed in this Court a petition for certiorari to annul those resolutions. Her petition was dismissed for lack of merit Gatchalian

vs. Tanwangco, L-34138, Resolution of October 26, 1971. Entry of judgment therein was made on November 16, 1971).

After the remand of the record, the lower court, upon motion of Paz Tanwangco, issued an order of execution dated January 25, 1972. On that same date, the clerk of court under the direction of Judge Vicente M. Tupasi, instead of issuing only a writ of execution, issued also a "writ of possession", commanding the provincial sheriff "to require" Francisca Gatchalian "to reconvey one-half (1/2) undivided portion of Lots 25 and 28" and "to place" Paz Tanwangco "in possession of said one-half (1/2) undivided share." (Lot 25 appears to belong to a third person. See p. 2 of Request for Oral Argument dated November 17, 1971 in L-34138).

The deed of reconveyance in favor of Paz Tanwangco was executed by the clerk of court on February 8, 1972. On that same day it was registered. A title was issued to Paz Tanwangco for Lot 28-A, with an area of 1,925 square meters, as her one-half share.

The sheriff levied upon the other half of Lot 28, or Francisca Gatchalian's share, in order to satisfy the judgment in favor of Paz Tanwangco for the accrued rentals, attorney's fees and costs that had already reached the sum of P35,853.60. He scheduled the auction sale on May 2, 1972.

Meanwhile, on March 7, 1972 Francisca Gatchalian sued Judge Parayno, Paz Tanwangco and the provincial sheriff also in the Court of First Instance of Nueva Vizcaya in order to annul the 1969 judgment in Civil Case No. 1454 and the execution and levy on one-half of Lot No. 28. The second case was docketed as Civil Case No. 1944. It was predicated on the theory that Paz Tanwangco's action in Civil Case No. 1454 had already prescribed under the Code of Civil Procedure, the provisions of which were allegedly not applied by the trial court.

Paz Tanwangco filed a motion to dismiss the complaint on the ground of res judicata. Judge Gabriel Dunuan in his order of March 27, 1972 dismissed it.

Francisca Gatchalian then filed in Civil Case No. 1454 a motion dated April 18, 1972 for stay of execution. She asked the court to “take cognizance” of the parties’ compromise agreement and to terminate the two cases.

In that motion Francisca Gatchalian quoted and annexed Paz Tanwangco’s letter of March 20, 1972 to her counsel, Dominador S. La Madrid, wherein Paz offered to compromise the judgment in Civil Case No. 1454 by waiving her claim to the rentals and cancelling the auction sale if Francisca would withdraw her complaint in Civil Case No. 1944, cancel her notice of lis pendens on the title of Lot 28-A and agree that they would simply divide that lot equally as adjudged in Civil Case No. 1454. Said letter reads as follows:

“923 R. Papa St. Sampaloc
Manila
March 20, 1972

TRANSLATION

“Dr. Dominador S. La Madrid
Abogado ni Francisca Gatchalian
Case Civil No. 1454 at Caso Civil No. 1944
Juzgado de Primera Instancia, Nueva Vizcaya
No. 266 E. Rodriguez, Sr. Blvd., Q.C.

“Dear Dr. La Madrid:

“I am thanking you for your goodness and kindness when I went to your house yesterday with my nephew Oscar Tanwangco.

“I received a copy of the new complaint of Francisca Gatchalian against me, Judge Parayno and the Sheriff of Nueva Vizcaya (Civil Case No. 1944 of the Court of First Instance of Nueva Vizcaya), which you signed as her lawyer.

“Because I want our case with Francisca Gatchalian terminated so that this new Civil Case No. 1944 will not continue any more, besides both of us are already old with Aling Kikay, I have

decided to amicably settle with Francisca Gatchalian in the following manner:

- “1. She will withdraw from the Court her case and not continue the same against me, what I mean is that she will have the case dismissed in Court;
- “2. Francisca Gatchalian will no longer complain against me with respect to damages because of our first case, Civil Case No. 1454;
- “3. That Francisca Gatchalian will no longer come to court and go after the one-half portion of the land already transferred to me and registered in my name in the Register of Deeds of Nueva Vizcaya;
- “4. That Francisca Gatchalian will do away or have cancelled or erased the Notice of lis Pendens which she filed against me in the Register of Deeds of Nueva Vizcaya and for her to allow free the new title now in my name with respect to the one-half portion of the land subject of our controversy in Civil Case No. 1454;
- “5. As for me, I will no longer run against Francisca Gatchalian with respect to the one-half rental of the land and the other properties mentioned in the Decision of Judge Jose D. Parayno in Civil Case No. 1454, dated August 31, 1969 against Francisca Gatchalian in Civil Case No. 1454, including others which she should pay according to the said Decision, like the attorney’s fee and the costs;
- “6. That I will have discontinued the public auction sale under the direction of the Sheriff of Nueva Vizcaya with respect to the one-half portion of the land under the sole ownership of Francisca Gatchalian TCT No. 4398 (RT-563), Solano Cadastre, so that the said public auction sale will not continue;

“Dr. La Madrid, if these conditions here are accepted by Francisca Gatchalian and she signs hereon, this is the amicable settlement which we can present to the Court in order to end the cases. Cost have this signed and inform me.

Respectfully,

(SGD.)
OSCAR F. TANWANGCO
(Nephew)”

(SGD.)
PAZ TANWANGCO

Francisca Gatchalian alleged in her motion that she had accepted Paz Tanwangco’s offer of compromise and that her counsel in a letter dated March 25, 1972 notified Paz of her acceptance. Francisca prayed that the two cases be terminated and that the court “take cognizance” of the amicable settlement.

Pursuant to that amicable settlement and in consonance with section 1, Rule 17 of the Rules of Court, Francisca Gatchalian filed in the lower court on April 25, 1972 a notice for the dismissal of her action in civil Case No. 1944. The defendants therein had not yet answered her complaint. (However, as already stated, the lower court upon Paz Tanwangco’s motion, dismissed Civil Case No. 1944 in its order of March 27, 1972).

Also pursuant to the amicable settlement, Francisca Gatchalian’s counsel wrote a letter to the register of deeds of Nueva Vizcaya cancelling her notice of lis pendens on Tanwangco’s title to Lot 28-A. The notice of lis pendens was cancelled on April 28, 1972 (See back of TCT No. T-32210, p. 134 Rollo).

Paz Tanwangco’s lawyer opposed Francisca Gatchalian’s motion to stay execution and for the taking cognizance of the compromise agreement, the cancellation of the auction sale and the termination of the two cases. He alleged that the signature of the eighty-six year old Paz Tanwangco in the compromise agreement, which was drafted by Francisca Gatchalian’s counsel, was secured by said counsel through trickery, deceit and intimidation.

Paz Tanwangco's counsel further observed that Francisca Gatchalian's counsel violated Canon No. 9 of the Code of Legal Ethics that "a lawyer should not in any way communicate upon the subject of the controversy with a party represented by counsel; much less should be undertake to negotiate or compromise the matter with him, but should deal only with his counsel."

Paz Tanwangco's lawyer also contended that Francisca Gatchalian's notice of dismissal and cancellation of the notice of lis pendens were unnecessary because of the lower court's order of dismissal dated March 27, 1972.

The opposition of Paz Tangwangco's counsel to Francisca Gatchalian's motion to stay execution provoked Francisca to file in the lower court on June 3, 1972 another case against Paz Tanwangco to enforce the compromise agreement and to claim damages in the sum of P90,000. Tanwangco's counsel, Eleodoro Benitez, was impleaded as a codefendant. The case was docketed as Civil Case No. 1974. (It was later dismissed in Judge Dunuan's order of August 1, 1973 because of the pendency in Civil Case No. 1454 of the motion for approval of the compromise.)

On August 22, 1972, the last time Francisca Gatchalian's motion to stay execution was set for hearing, she and her counsel did not appear. In view of their nonappearance, Judge Jesus P. Arlegui denied the motion. He directed that the auction sale should be held.

Francisca Gatchalian moved for the reconsideration of the order of denial. She alleged that she and her counsel never received any notice setting their motion for hearing on August 22, 1972.

Judge Arlegui denied the motion in his order of September 28, 1972. He reasoned out that the auction sale could no longer be suspended because the writ of execution had already been enforced. He intimated that the effect of the compromise on the judgment should have been raised in Civil Case No. 1944.

On October 12, 1972, Francisca Gatchalian filed the instant special civil actions of certiorari and prohibition in order to annul Judge Arlegui's orders of August 22 and September 28, 1972.

A temporary restraining order was issued. The auction sale was suspended. The respondents answered the petition.

Ruling. — The issue is whether the judgment in Civil Case No. 1454 was novated and superseded by the alleged compromise.

Should Lot 28 be divided equally between the two octogenarian female adversaries, as originally intended by the trial court? Should Paz Tanwangco's claim for P35,853.60 as rentals be deemed waived or extinguished because of the compromise?

We have set forth all the relevant facts so that the case can be viewed in proper perspective and the merits of the two antagonists' contentions can be justly evaluated. It is lamentable that due to the fault of Francisca Gatchalian's counsel she was deprived of her right to a review of Judge Parayno's 1969 decision.

After a scrupulous and painstaking study of the facts and equities of the case, we have reached the conclusion that the compromise already mentioned should be enforced but subject to the condition that Francisca Gatchalian should pay the attorney's fees of P2,000 adjudged in Judge Parayno's decision.

The lower court refused to enforce the compromise because in its opinion the judgment had already been executed and could no longer be novated by the parties. That stand is not well-taken. The undeniable fact is that the judgment has not yet been fully satisfied because the monetary liability of Francisca Gatchalian, under the lower court's judgment, in the sum of P35,853.60, has no yet been paid. (See sec. 47, Rule 39, Rules of Court as to the entry of satisfaction of judgment).

On the other hand, the lower court did not find that the offer of compromise made by Paz Tanwangco was vitiated by duress or undue influence.

Hence, the lower court's orders, which authorize the auction sale, should be set aside. It is to the interest of the two octogenarians (now nearing ninety years) that this long-drawn out litigation be

terminated as soon as possible. We believe that the ruling already announced is a judicious and equitable solution of the case.

L-41360 — Contempt incident. — As stated in our discussion of L-35615, the lower court in its judgment of August 30, 1969 ordered Francisca Gatchalian “to reconvey and deliver possession” of an undivided one-half portion of Lot 28 of the Solano cadastre (with an area of 3,851 square meters) and to pay rentals and attorney’s fees. That judgment became final. We have already stated that on January 25, 1972 Judge Vicente M. Tupasi issued an order of execution, writ of execution and a writ of possession to enforce that judgment. In the writ of possession the sheriff was commanded to eject all adverse occupants of Lot 28.

As also noted in L-35615, that judgment was enforced by conveying to Paz Tanwangco not merely the proindiviso one-half portion of Lot 28 but a segregated one-half share, identified as Lot 28-A (with an area of 1,925 square meters) and covered by TCT No. T-32210, and by the issuance of a “writ of possession” whereby Paz Tanwangco was given not merely the juridical or civil possession of a one-half portion but was placed in physical possession of Lot 28 and the improvements thereon. (See sheriff’s return of March 14, 1972, p. 45, Rollo).

It appears that Lot 28 was later subdivided into Lots 28-A and 28-B. The records shows that Florante Tupasi, the sixteen-year old grandson of former Judge Vicente Tupasi, bought on November 8, 1973 from Paz Tanwangco for P30,000 and other valuable considerations two-thirds of Lot 28-A (which 2/3 portion has an area of 1,283 square meters). TCT No. 37091 (T-38958) was issued to Florante Tupasi (pp. 69 and 292, Rollo).

Note that Judge Tupasi, who retired on July 19, 1973, was the same Judge who on January 25, 1972 issued the order of execution and the writs of execution and possession. (See art. 1491, Civil Code).

The other one-third portion of Lot 28-A appears to have been sold by Paz Tanwangco to the spouses Ricardo Tiongson and Anita Angeles and to Atty. Eleodoro M. Benitez (pp. 46 and 279, Rollo).

Former Judge Tupasi, as guardian ad litem of his minor grandson, Florante, filed in Civil Case No. 1454 a petition dated January 21, 1974 to declare Tan Chiao Chay, Tang Tee and Tiu Tik Chay, as alleged occupants of Lot 28-A, in contempt of court for having disobeyed the writ of possession (the same writ that Judge Tupasi issued on January 25, 1972). He prayed that an order be issued for the demolition of respondents' improvements.

Tang Tee and Tiu Tik Chay, in their answer to the petition to declare them in contempt of court, alleged that the parents of the minor, Florante Tupasi, should act as his guardians and not Judge Tupasi; that the lower court had no jurisdiction over them, and that the building on the lot sold to Florante Tupasi belongs to Solodonia Ramos and Rogelio Tiu and not to Tang Tee and Tiu Tik Chay and, therefore, they (Tang Tee and Tiu Tik Chay) did not disobey any court process and were not guilty of contempt of court.

Tang Tee and Tiu Tik Chay further contended that the motion for contempt is not in order because they, as well as Florante Tupasi, are strangers in Civil Case No. 1454.

The lower court in its order of December 4, 1974 held that Tang Tee and Tiu Tik Chay, as heads of the families occupying the buildings constructed on Lot 28-A, were bound to obey the writ of possession. It found them guilty of contempt of court and sentenced each of them to pay a fine of two hundred pesos, with subsidiary imprisonment in case of insolvency.

It required them to vacate Lot 28-A, to remove or demolish their improvements within sixty days from the finality of the order, and, in case they fail to do so, the sheriff was directed to eject them and to demolish their buildings at their expense.

The issues are whether Tang Tee and Tiu Tik Chay could be adjudged in contempt of court in Civil Case No. 1454, although they were not parties therein, and whether the lower court could order them to vacate the portions of Lot 28-A allegedly occupied by their families and compel the demolition of their alleged improvements.

We hold that in civil Case No. 1454 the lower court has no jurisdiction to adjudge petitioners Tang Tee and Tiu Tik Chay in contempt of court and to eject them from Lot 28-A.

The 1969 judgment of Judge Parayno is a judgment in personam, requiring Francisca Gatchalian to deliver to Paz Tanwangco the possession of “one-half undivided portion of” Lot 28. It is not a judgment in rem. It is conclusive, not against the whole world, but only “between the parties and their successors in interest by title subsequent to the commencement of the action”, “litigating for the same thing and under the same title and in the same capacity” (Sec. 49, Rule 39, Rules of Court; Lopez vs. Director of Lands, 47 Phil. 23, 30).

Since the judgment orders the delivery of the possession of the one-half proindiviso portion of Lot 28, it is evident that what it contemplates is the symbolical or constructive delivery of the civil or juridical possession and not the natural or material possession (possession de facto) which has been actually held for Francisca Gatchalian by other persons (See arts. 523, 525 and 531, Civil Code).

It should be noted that in co-ownership “each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract because until the division is effected, such share is not concretely determined” (Lopez vs. Gonzaga Vda. de Cuaycong, 74 Phil. 601, 604-605). While there is co-ownership, a co-owner’s possession of his share is co-possession which is linked to the possession of the other co-owners.

Under the judgment, Paz Tanwangco was entitled to a writ of execution but not specifically to a so-called “writ of possession” commanding the sheriff “to eject all adverse occupants” of Lot 28.

The law specifies the instances when a “writ of possession” may be issued. Thus, a writ of possession is available in a land registration proceeding, a proceeding in rem (Sec. 17, Act 496; Estipona vs. Navarro, L-41825, January 30, 1976, 69 SCRA 285, 291) and in case of extrajudicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135), and even in judicial foreclosure (a quasi in rem proceeding) provided that the debtor is in possession of the mortgaged realty and no third

person, not a party to the foreclosure suit, had intervened (Rivera vs. Court of First Instance of Nueva Ecija and Rupac, 61 Phil. 201; Ramos vs. Manalac and Lopez, 89 Phil. 270, 275).

The judgment in Civil Case No. 1454 did not authorize the issuance of a writ of possession or the ejectment of the occupants of Lot 28. The issuance of such writ varied the terms of the judgment. The writ was void. Hence, Tang Tee and Tiu Tik Chay could not be adjudged in contempt for having allegedly disobeyed the void writ.

Even in execution sales, the possession of the property sold cannot be given to the purchaser or last redemptioner if “a third party is actually holding the property adversely to the judgment debtor” (Sec. 35, last par., Rule 39, Rules of Court).

Moreover, there is merit in petitioners’ contention that the judgment in Civil Case No. 1454 is not binding on them since they (like respondent Florante Tupasi, the movant in this contempt incident) were not parties thereto. Generally, it is axiomatic “that no man shall be affected by proceedings to which he is a stranger” (Ed. A Keller & Co. vs. Ellerman & Bucknall Steamship Co., 38 Phil. 514, 520).

“As a general rule, persons who are not parties to an action or proceeding are not subject to the jurisdiction of a court trying a case, are not supposed to be aware of the court’s order and cannot, therefore, be declared guilty of contempt for violating its orders” (Ferrer vs. Rodriguez, 110 Phil. 1.5).

The “writ of possession” was addressed to the sheriff, not to Tang Tee and Tiu Tik Chay. It was a process intended to enforce a judgment “for the delivery of the possession of real or personal property as contemplated in section 8[d], Rule 39 of the Rules of Court. The “writ of possession” was not intended to enforce a special judgment for the delivery of real property as contemplated in section 9 of Rule 39. It is that disobedience to the execution of a special judgment which may be punished as contempt.

In this case, the sheriff did not execute the mandate in the “writ of possession” to eject the adverse occupants. Mere disobedience to the writ of possession, which was addressed to the sheriff and not to the

adverse occupants, did not render the adverse occupants guilty of contempt of court (*Goyena de Quizon vs. Philippine National Bank*, 85 Phil. 459; *U. S. vs. Ramayrat*, 22 Phil. 183; *Mendoza vs. Alano and Salceda*, 112 Phil. 445).

In adjudging the petitioners in contempt of court, the trial court relied on *Heirs of B. A. Crumb vs. Court of Appeals*, L-26167, January 30, 1970, 31 SCRA 271. That case, wherein it was held that a contempt order is appealable (here, petitioners' appeal from the contempt order was not allowed), is different from the instant case.

Paz Tanwangco herself could not have ejected Tang Tee and Tiu Tik Chay by means of a writ of possession. Francisca Gatchalian, as their lessor, could not forcibly drive them away from the leased premises if they refused to vacate it. She has to resort to an ejectment action.

In *Omnas vs. Rivera*, 67 Phil. 419, which involves an execution sale, it was noted that "the writ of possession is nothing more than a complement of the writ of execution which, without the former, is ineffective; for it would be useless to order a sheriff to sell a real property of a judgment debtor if after the sale is made in the manner provided by law the purchaser, after the expiration of the period of redemption, may not enter upon the possession of the property thus purchased" That ruling in the *Omnas* case has no application to this case because here there was no execution sale.

The lower court, in sanctioning the summary procedure or shortcut resorted to by Florante Tupasi in order to get possession of the portions of Lot 28, held by the lessees of Francisca Gatchalian, acted in excess of jurisdiction and with grave abuse of discretion. Its order declaring Tang Tee and Tiu Tik Chay in contempt of court and ordering the demolition of the improvements is arbitrary and oppressive.

The issue of whether Florante Tupasi could recover possession of the portions occupied by Tang Tee and Tiu Tik Chay should be litigated in a separate action. He cannot recover possession by means of a writ of execution or "writ of possession" (See *Roman Catholic Archbishop of Caceres vs. De la Cruz*, L-25496, December 27, 1969, 39 SCRA 881; *Olego vs. Rebueno*, L-39350. October 29, 1975, 67 SCRA 446, 456).

The cases relied upon by Tupasi (p. 276 of Rollo) refers to land registration cases or to the recovery of possession “from the losing party” and not from third persons who were not parties to the case.

Tupasi’s contention that, to require him to file an accion publiciana against Tang Tee and Tiu Tik Chay would only result in multiplicity of suits, is not tenable. Due process requires the filing of such an action.

WHEREFORE, in L-35615, the lower court’s orders of August 22 and September 28, 1972 are set aside.

The compromise agreement, whereby Paz Tanwangco and Francisca Gatchalian agreed to divide equally Lot 28 (Lot 28-A as Paz Tanwangco’s share and Lot 28-B as Francisca Gatchalian’s share) and Paz Tanwangco waived her claim to the rentals, is hereby approved subject to the condition that Francisca Gatchalian should pay to Paz Tanwangco the attorney’s fees amounting to P2,000, as adjudged in the final and executory judgment in Civil Case No. 1454. No costs.

In L-41360, the contempt incident, the lower court’s orders of December 4, 1974 and March 12, 1975, which were issued in excess of jurisdiction and with grave abuse of discretion, are also set aside without prejudice to litigating in a separate action the issue of whether Florante Tupasi can recover possession of the portions of Lot 28-A allegedly occupied by petitioners Tang Tee and Tiu Tik Chay. No costs.

SO ORDERED.

**Fernando, J., (Chairman), Barredo, Antonio and
Concepcion, Jr., JJ., concur.**