

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

ROMANA T. TORRALBA,
Petitioner,

-versus-

G.R. No. L-27592
February 14, 1980

HON. WALFRIDO DE LOS ANGELES,
Presiding Judge of Branch IV, Court of
First Instance of Rizal (Quezon City),
PEOPLE'S HOMESITE AND HOUSING
CORPORATION, FLORENCIA and
LUIS, both surnamed SAN JUAN and
the REGISTER OF DEEDS OF QUEZON
CITY,

Respondents.

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DECISION

CONCEPCION, JR., J.:

AQUINO, J., concurring:

Petition for *Certiorari*, Mandamus, and Prohibition, with a Prayer for the Issuance of a Writ of Preliminary Injunction, to Annul and Set Aside the Order of Demolition issued by the respondent Judge in Civil Case No. Q-3548 of the Court of First Instance of Rizal, entitled:

“People’s Homesite & Housing Corporation, plaintiff, versus Romana T. Torralba, defendant,” as well as the deed of sale executed by the People’s Homesite & Housing Corporation in favor of Florencia San Juan, and TCT No. 114516 issued by the Register of Deeds of Quezon City pursuant thereto.

It appears that on January 15, 1948, the People’s Homesite & Housing Corporation, PHHC for short, entered into a conditional contract to sell a parcel of land situated at Quezon City, more particularly known as Lot No. 2, Block K-7, Psd-7365-A of the Diliman Estate Subdivision, containing an area of 507.8 square meters, more or less, with the herein petitioner, Romana T. Torralba, upon the conditions, among others, that the petitioner shall pay to the PHHC the sum of P431.63, as down payment, and the sum P41.20 as monthly installment within the first five days of each and every month commencing on the first day of February, 1948 and ending on January, 1958; and that should the petitioner violate, refuse or fail to comply with the terms and conditions of the contract, or default in the payment of three monthly installments, the contract shall be deemed annulled and cancelled and the PHHC shall be at liberty to dispose of the property to any person, in the same manner as if the contract has never been made, and, the PHHC shall be entitled to immediate re-possession of the premises and the payments made thereunder shall be considered as rentals for the use and occupation of the property.^[1]

The petitioner paid the PHHC the sum of P1,431.63 on account of the contract, but failed to make further payments thereon from November, 1949. As a result, the PHHC notified the petitioner in writing on July 11, 1952 of the cancellation of the conditional contract to sell and gave her 30 days from notice within which to revive the contract by paying in cash all installments and interests due. The petitioner, however, failed to make any payment. On February 15, 1954, the PHHC again notified the petitioner in writing of the definite annulment and cancellation of the conditional contract to sell and required her to vacate the premises within 15 days from notice.^[2] But, the petitioner did not vacate the premises. As a result, the PHHC filed an action against the petitioner for the recovery of possession of the land with the Court of First Instance of Rizal, docketed therein as Civil Case No. Q-3548.^[3]

The petitioner filed her answer thereto on January 16, 1959,^[4] but the trial judge ordered it discarded for having been filed after the expiration of the reglementary period, and declared the petitioner in default.^[5] The PHHC was allowed to present its evidence before the Clerk of Court who was commissioned to receive it, and on October 28, 1959, the trial court issued a decision, the dispositive portion of which reads, as follows:

“WHEREFORE, judgment is hereby rendered ordering the defendant and all persons claiming right under her to vacate the premises in question and to restore possession thereof to the plaintiff; to pay the plaintiff the sum of P1,194.80 corresponding to the installment due from December, 1949 up to and including April, 1952, plus interest thereon at 12% per annum until fully paid; to pay the plaintiff the sum of P42.00 per month as reasonable rental for the use and occupation of the premises in question from May, 1952 when the contract was cancelled until the possession of the premises in question is restored to plaintiff; to pay the plaintiff the further sum of P200.00 as attorney’s fees; and to pay the costs.”^[6]

A copy of the decision was received by the PHHC on November 5, 1959,^[7] and on March 16, 1960, it filed a motion for the execution of the judgment.^[8] Pursuant thereto, a writ of execution was issued on June 22, 1960, and served upon the petitioner on August 21, 1960.^[9] On November 23, 1960, the petitioner deposited the amount of P1,000.00 with the PHHC.^[10]

On January 25, 1967, the Board of Directors of the PHHC adopted Resolution No. 970, awarding the disputed parcel of land to herein respondent Florencia San Juan,^[11] and on February 10, 1967, the PHHC executed a deed of sale in her favor.^[12] Thence, TCT No. 114516 was issued in the name of Florencia San Juan.^[13]

On March 21, 1967, the PHHC filed a motion in Civil Case No. Q-3548 praying for the issuance of an order of demolition to enforce the decision against the petitioner.^[14] The motion was granted by the respondent Judge on the same day,^[15] and on April 7, 1967, the premises were turned over to Florencia San Juan.^[16]

However, on that same day, April 7, 1967, the petitioner filed a motion for the issuance of a restraining order, to restrain the Sheriff from enforcing the writ of execution previously issued.^[17] The motion was granted on April 11, 1967.^[18] Whereupon, the petitioner filed an urgent motion for the reconsideration of the order granting the writ of demolition, contending, among others, that the decision cannot be executed for the reason that she had paid to the PHHC the amount of P1,000.00, which payment reinstated her as a bona fide awardee of the lot in question; and that the said decision cannot be enforced by a mere motion, but that a new action based upon said decision should be instituted.^[19] When the respondent Judge denied the motion on April 24, 1967,^[20] the petitioner filed the instant recourse. As prayed for, a writ of preliminary injunction was issued by the Court.^[21] A notice of *lis pendens* was also inscribed in the certificate of title.^[22]

The petitioner claims that the respondent Judge acted with grave abuse of discretion, amounting to lack of jurisdiction, in issuing the order of demolition complained of, contending that the decision upon which it is based cannot be enforced by mere motion since more than five (5) years had elapsed from its promulgation. The petitioner invokes Section 6, Rule 39 of the Rules of Court.

Section 6, Rule 39 of the Rules of Court provides that a judgment can only be enforced by motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitation, a judgment may be enforced by action. In this particular case, the judgment was rendered on October 28, 1959, and a copy of the same was received by the PHHC on November 5, 1959. It being a judgment in default, the judgment became final and executory thirty (30) days thereafter, or on December 5, 1959. On March 16, 1960, the PHHC filed a motion for the execution of the judgment which was granted by the trial court on June 22, 1960. But, the ejectment of the petitioner was not carried out because of her representations with the PHHC. On March 21, 1967, the PHHC filed a motion for the issuance of an order of demolition which was granted by the trial court the same day. From December 5, 1959, when the judgment sought to be enforced by motion became final and executory, to the filing of the controversial motion for the issuance of an order of demolition on

March 21, 1967, seven (7) years, three (3) months, and seventeen (17) days elapsed. Seemingly, the five-year period for the execution of the judgment by motion has expired. However, the running of the period was interrupted on March 16, 1960, when the PHHC filed a motion for the issuance of a writ of execution and did not run again because the order for the petitioner's ejectment was not carried out due to her representations with the PHHC to withhold the execution of the judgment owing to her financial difficulties and that of her family and that said execution could not be fully satisfied no matter how willing she may be to comply therewith. The agreement of the parties to defer or suspend the enforcement of a judgment interrupts the period of limitations prescribed.^[23]

The petitioner further claims that with the payment to and acceptance by the PHHC of the amount of P1,000.00, she should be considered to have been reinstated as a bona fide awardee of the lot in question, and as there was a renewal of the contract, petitioner could not be dispossessed of the lot; nor could respondent Florencia San Juan exercise any dominical rights over the property.

There is no merit in the contention. The mere deposit of the amount of P1,000.00 by the petitioner with the PHHC on November 23, 1960 cannot have the effect of reviving the contract to sell executed by the PHHC and the petitioner. For the revival of the contract after its annulment and cancellation for nonpayment of the installments due, Clause 12 of said contract provides that "in those cases where default arose from nonpayment of installments due, the APPLICANT may, at any time within ninety (90) days after this contract has been cancelled and declared forfeited to the CORPORATION, as herein set forth, redeem the property by paying in cash all the installments and interests due in accordance with this contract on the date of redemption and this contract shall be considered revived and the parties subject to its provisions as it had never been cancelled." The contract to sell was cancelled on July 11, 1952, when the PHHC notified the petitioner, in writing, of the cancellation and annulment of the contract. To revive the contract, the petitioner should pay to the PHHC all the installments due and interests thereon within ninety (90) days from notice. But, the petitioner did not pay the amount of money within the period agreed upon. The deposit of P1,000.00 was made only on November 23, 1960, after a judgment was rendered

against the petitioner to pay the PHHC certain sums of money, and more than 90 days after the cancellation of the contract. Besides, the amount of P1,000.00 is less than the credit due the PHHC, For sure, the payment of P1,000.00 cannot be considered as payment to revive the contract since there was no compliance with the requirements for the revival of the same. Having been made after the rendition of the judgment, the deposit of P1,000.00 was apparently made in partial satisfaction of the judgment.

The petitioner also claims that the PHHC should have resorted to a judicial decree rescinding the contract to sell before awarding the lot in question to Florencia San Juan in order to avoid unnecessary litigation or conflict.

This contention is untenable. The contract executed by the petitioner and the PHHC expressly provided that the contract shall be deemed annulled and cancelled and the PHHC shall be at liberty to take possession of said property and dispose the same to any other person upon default of the petitioner to pay the installments due. Hence, there was no contract to rescind in court because from the moment the petitioner defaulted in the timely payment of the installments, the contract between the parties was deemed ipso facto rescinded.

WHEREFORE, the petition should be, as it is hereby, dismissed. The writ of preliminary injunction heretofore issued is hereby lifted and set aside. With costs against the petitioner.

SO ORDERED.

Barredo, Antonio and Abad Santos, JJ., concur.

SEPARATE OPINION

AQUINO, J., concurring:

I concur. Since the writ of execution was served upon the petitioner within five years from entry of judgment, the trial court could issue

the order of demolition (an incident of the writ of execution) even after the expiration of the five-year period (*Albetz Investments, Inc. vs. Court of Appeals*, L-32570, February 28, 1977, 75 SCRA 310, 317).

- [1] Rollo, p. 9.
- [2] *Id.*, p. 81.
- [3] *Id.*, p. 14.
- [4] *Id.*, p. 19.
- [5] *Id.*, p. 22.
- [6] *Id.*, p. 23.
- [7] *Id.*, p. 64.
- [8] *Id.*, p. 84.
- [9] *Id.*, pp. 26, 35.
- [10] *Id.*, p. 28.
- [11] *Id.*, p. 29.
- [12] *Id.*, p. 30.
- [13] *Id.*, p. 32.
- [14] *Id.*, p. 34.
- [15] *Id.*, p. 35.
- [16] *Id.*, p. 58.
- [17] *Id.*, p. 36.
- [18] *Id.*, p. 40.
- [19] *Id.*, p. 38.
- [20] *Id.*, p. 40.
- [21] *Id.*, pp. 41, 120.
- [22] *Id.*, p. 78.
- [23] *Lancita vs. Magbanua*, 117 Phil. 39; *MRR vs. CIR*, 117 Phil. 192.