



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**FELICITAS L. SALAZAR,**  
 Petitioner,

**G.R. No. 213972**

Present:

CARPIO, J.,  
*Chairperson,*  
 PERALTA,  
 PERLAS-BERNABE,  
 CAGUIOA, and  
 REYES, JR., JJ.

- versus -

**REMEDIOS FELIAS, on her own  
 behalf and representation of the other  
 HEIRS OF CATALINO NIVERA,**  
 Respondents.

Promulgated:

05 FEB 2018

*Maribel Perlas*

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**DECISION**

**REYES, JR., J.:**

*The movant's claim that his/her property is exempt from execution for being the family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and executory ruling. It is imperative that the claim for exemption must be set up and proven.*

This treats of the petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision<sup>2</sup> dated December 6, 2013, and Resolution<sup>3</sup> dated August 7, 2014, rendered by the Court of Appeals (CA) in CA-G.R. CV No. 97309, which affirmed the execution of the final and executory judgment issued by the Regional Trial Court, Branch 55, Alaminos, Pangasinan (RTC Branch 55).

<sup>1</sup> Rollo, pp. 8-17

<sup>2</sup> Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; id. at 19-33.

<sup>3</sup> Id. at 36-41.

*Reyes*

### The Antecedent Facts

On February 28, 1990, private respondent Remedios Felias, representing the heirs of Catalino Nivera (Heirs of Nivera) filed a Complaint for Recovery of Ownership, Possession and Damages against the Spouses Romualdo Lastimosa (Romualdo) and Felisa Lastimosa (Felisa). The former sought to recover from the latter four parcels of land located in Baruan, Agno, Pangasinan (subject property).

On March 3, 1997, during the trial of the case, Romualdo died.

Consequently, on July 6, 1998, a Motion for Substitution<sup>4</sup> was filed by the decedent's wife, Felisa, and their children Flordeliza Sagun, Reynaldo Lastimosa, Recto Lastimosa (Recto), Rizalina Ramirez (Rizalina), Lily Lastimosa, and Avelino Lastimosa (Heirs of Lastimosa).

On March 16, 2004, the RTC Branch 55 rendered a Decision,<sup>5</sup> declaring the Heirs of Nivera as the absolute owners of the parcels of land in question, and thereby ordering the Heirs of Lastimosa to vacate the lands and to surrender possession thereof. The dispositive portion of the decision of the RTC Branch 55, reads:

WHEREFORE, this Honorable Court renders judgment:

a. Declaring the [Heirs of Nivera] absolute owners of the parcels of land in question as described in the Amended Complaint, and ordering the [Heirs of Lastimosa] to surrender possession thereof and vacate the same;

b. Ordering the [Heirs of Lastimosa], jointly and severally, to pay the [Heirs of Nivera] actual damages in the amount of Php 270,000.00 for 1975 to 1995, and Php 10,000.00 annually from 1996 and through all the subsequent years until actual possession shall have been restored to the [Heirs of Nivera]; attorney's fees and litigation expenses in the amount of Php 21,000.00; and costs.

SO ORDERED.<sup>6</sup>

The Heirs of Lastimosa did not file an appeal against the trial court's ruling.

Meanwhile, Felicitas Salazar (Felicitas), daughter of Romualdo, along with Recto and Rizalina filed a Petition for Annulment of Judgment dated June 22, 2006 with the CA. Felicitas sought the nullification of the RTC

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<sup>4</sup> Id. at 46-48.

<sup>5</sup> Id. at 50-55.

<sup>6</sup> Id. at 55.

*Meyer*

Branch 55's Decision dated March 16, 2004, and the corresponding Writs of Execution and Demolition issued pursuant thereto.<sup>7</sup> In her Petition for Annulment of Judgment, Felicitas claimed that she was deprived of due process when she was not impleaded in the case for Recovery of Ownership, before the RTC Branch 55.<sup>8</sup>

On June 5, 2008, the Former Tenth Division of the CA rendered a Decision,<sup>9</sup> in CA-G.R. SP No. 95592, dismissing the Petition for Annulment of Judgment. The CA refused to give credence to the contention that the Heirs of Nivera are at fault for failing to implead Felicitas as a party defendant in the action for recovery of ownership. Rather, the failure to include Felicitas in the proceedings was due to the fault of the Heirs of Lastimosa, who neglected to include her (Felicitas) in their Motion to Substitute. The CA further ratiocinated that since the RTC acquired jurisdiction over the person of the original defendants Romualdo and Felisa, the outcome of the case is binding on all their heirs or any such persons claiming rights under them.<sup>10</sup>

On June 3, 2009, this Court affirmed the CA decision in the Petition for Annulment of Judgment.<sup>11</sup> The Court's ruling became final, as per Entry of Judgment, on October 5, 2009.

Meanwhile, the Heirs of Lastimosa filed with the RTC Branch 55 an Urgent Motion to Order the Sheriff to Desist from Making Demolition dated April 24, 2010. The Motion to Desist was premised on the fact that the Sheriff cannot execute the lower court's decision considering that Felicitas had an aliquot share over the property, which had not yet been partitioned.<sup>12</sup>

At about the same time, the Heirs of Nivera filed a Motion for Execution and Demolition dated May 28, 2010. The Motion for Execution was anchored on the fact that the Decision dated March 16, 2004, in the case for recovery of ownership, possession and damages had long attained finality.<sup>13</sup>

On July 9, 2010, the RTC Branch 55 issued an Order granting the Motion for Execution and Demolition, and denying the Motion to Desist.<sup>14</sup> The dispositive portion of the order reads:

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<sup>7</sup> Id. at 25-26.

<sup>8</sup> Id. at 13.

<sup>9</sup> Id. at 82-93.

<sup>10</sup> Id. at 92.

<sup>11</sup> Id. at 26.

<sup>12</sup> Id.

<sup>13</sup> Id. at 27.

<sup>14</sup> Id.

*Meyer*

After going over the allegations in both motions, the Court resolves to deny the motion, to order the Sheriff to desist from making demolition filed by the defendants through counsel, it appearing that the grounds raised in the said motion are already mooted by the subsequent filing of the motion for execution and demolition filed by plaintiff through counsel.

The motion for execution and demolition is hereby granted.

Accordingly, let [a] Writ of Execution and Demolition issue to satisfy judgement rendered in this case.

SO ORDERED.<sup>15</sup>

Dissatisfied with the ruling, the Heirs of Lastimosa<sup>16</sup> filed an appeal before the CA, questioning the Writ of Execution and Demolition issued by the lower court.

On December 6, 2013, the Fifteenth Division of the CA rendered the assailed Decision<sup>17</sup> dismissing the appeal on the following grounds, to wit: (i) the Heirs of Lastimosa availed of the wrong remedy by filing an appeal, instead of a petition for *certiorari* under Rule 65; (ii) the matter pertaining to the non-inclusion of Felicitas is already barred by *res judicata*, as it has been settled with finality in CA-G.R. SP No. 95592, and affirmed by the Supreme Court in G.R. No. 185056; and (iii) the execution of the decision rendered by the RTC Branch 55 is proper considering that case has long attained finality. The dispositive portion of the assailed CA decision reads:

ACCORDINGLY, the appeal is DENIED. The assailed Order dated April 6, 2011 is AFFIRMED.<sup>18</sup>

Felicitas filed a Motion for Reconsideration against the same Decision, which was denied by the CA in its Resolution<sup>19</sup> dated August 7, 2014.

Undeterred, Felicitas filed the instant petition for review on *certiorari*<sup>20</sup> under Rule 45 of the Revised Rules of Court seeking the reversal of the assailed CA decision and resolution.

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<sup>15</sup> Id.

<sup>16</sup> The CA decision indicates that therein defendants-appellant were Spouses Romualdo and Felisa Lastimosa.

<sup>17</sup> *Rollo*, pp. 19-33.

<sup>18</sup> Id. at 32.

<sup>19</sup> Id. at 36-41.

<sup>20</sup> Id. at 8-17.

### The Issue

The main issue for this Court's resolution rests on whether the CA erred in ordering the execution of the Decision dated March 16, 2004.

In seeking the reversal of the assailed decision, Felicitas claims that the Writ of Execution and Demolition issued by the RTC Branch 55 was executed against the wrong party.<sup>21</sup> She points out that she was not impleaded in the case for recovery of ownership and possession, and thus the decision cannot bind her.<sup>22</sup> Felicitas argues that she was deprived of her property as an heir without due process, as she was left out of the proceedings, "completely unable to protect her rights."<sup>23</sup> In addition, Felicitas contends that the execution cannot continue as the Writ of Execution is being enforced against property that is exempt from execution, as what is sought to be demolished is her family home. In this regard, Article 155 of the Family Code ordains that the family home shall be exempt from execution.<sup>24</sup>

On the other hand, the Heirs of Nivera counter that the petition for review on *certiorari* is nothing but a dilatory tactic employed by Felicitas to overthrow and delay the execution of the judgment rendered in as early as March 16, 2004.<sup>25</sup> The Heirs of Nivera maintain that Felicitas' claim that she was deprived of her property as an heir without due process of law has already been settled with finality in the Petition for Annulment of Judgment, which was dismissed by the CA, and this Court.<sup>26</sup> Likewise, anent the claim that the subject property is exempt from execution, the Heirs of Nivera aver that Felicitas failed to present an iota of evidence to prove her claim. On the contrary, Felicitas herself admitted in her pleadings that she does not reside in the subject property in Alaminos, but actually lives in Muñoz, Nueva Ecija.<sup>27</sup> Moreover, the subject property belonged to the Heirs of Nivera in as early as the 1950s, thereby negating Felicitas' claim that it is her family home.<sup>28</sup>

### Ruling of the Court

**The petition is bereft of merit.**

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<sup>21</sup> Id. at 11.  
<sup>22</sup> Id.  
<sup>23</sup> Id. at 12.  
<sup>24</sup> Id. at 11.  
<sup>25</sup> Id. at 106.  
<sup>26</sup> Id. at 107.  
<sup>27</sup> Id. at 105.  
<sup>28</sup> Id. at 106.

*Meyer*

Nothing is more settled than the rule that a judgment that is final and executory is immutable and unalterable. It may no longer be modified in any respect, except when the judgment is void, or to correct clerical errors or to make *nunc pro tunc* entries. In the same vein, the decision that has attained finality becomes the law of the case, regardless of any claim that it is erroneous. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.<sup>29</sup> Accordingly, the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or stay its implementation.<sup>30</sup>

Concomitantly, neither may the parties object to the execution by raising new issues of fact or law. The only exceptions thereto are when: “(i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has been submitted to the judgment of the court; (v) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (vi) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.”<sup>31</sup>

In the case at bar, there is no dispute that in as early as March 16, 2004, the RTC Branch 55 of Alaminos, Pangasinan rendered a Decision in the case for Recovery of Ownership, Possession and Damages, ordering the Heirs of Lastimosa to vacate the subject properties and surrender them to the Heirs of Nivera. There is no dispute that this ruling of the RTC had become final and executory. Pursuant thereto, the lower court issued a Writ of Execution and Demolition.

This notwithstanding, Felicitas seeks to prevent the execution of the same order, arguing that the writ was issued against the wrong party; and that the property sought to be executed is exempt from execution.

The Court is not persuaded.

It must be noted at the outset that the matter of whether Felicitas was deprived of due process of law for not having been impleaded in the case for recovery of ownership and possession has long been settled with finality.

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<sup>29</sup> *Mayor Vargas, et al. v. Cajucom*, 761 Phil. 43, 54 (2015).

<sup>30</sup> *Id.* at 53.

<sup>31</sup> *Id.* at 56, citing *Philippine Economic Zone Authority v. Borreta*, 519 Phil. 637, 642-643 (2006).

*Meyer*

In the decision of the CA in the case for Petition for Annulment of Judgment (CA-G.R. SP No. 95592),<sup>32</sup> the Former Tenth Division of the CA squarely and judiciously passed upon the issue of whether the judgment of the lower court in the action for recovery of ownership and possession was void for failure to implead Felicitas. The CA held that:

Finally, the intimation of the petitioners that private respondent is at fault for failing to implead [Felicitas] as party defendant in this case is patently without basis. It must be recalled that the lower court acquired jurisdiction over the person of the original defendants Romualdo and Feliza Lastimosa. Hence, the outcome of this case is binding on all the heirs or persons claiming rights under the said defendants. When [Romualdo] died on March 3, 1997, the defendants filed an Urgent Motion to Substitute Other Heirs of the said defendant listing the names of the heirs to be substituted. It is therefore crystal clear that if [Felicitas] was not impleaded in this case as party defendant being the daughter of [Romualdo], that omission could not be attributed to the private respondent but the defendants themselves.<sup>33</sup> (Underscoring in the original)

This ruling of the CA was affirmed by this Court in the Resolution dated June 3, 2009, and attained finality as per Entry of Judgment. Markedly, it is crystal clear that the issues pertaining to Felicitas' non-inclusion in the proceedings, and the consequent validity of the lower court's judgment have long attained finality. It bears reiterating that a judgment that is final and executory cannot be altered, even by the highest court of the land. This final judgment has become the law of the case, which is now immutable.

Additionally, as an heir of the original defendants in the action for recovery of ownership, Felicitas is bound by the decision rendered against her predecessors-in-interest. Thus, there is nothing that exempts her from the enforcement of the Writ of Execution.

In another attempt to thwart the execution of the RTC's final and executory judgment, Felicitas claims that the execution cannot proceed, as the subject property is her family home and is therefore exempt from execution.

Indeed, the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated. It confers upon a particular family the right to enjoy

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<sup>32</sup> *Rollo*, pp. 82-93.

<sup>33</sup> *Id.* at 92.

*Meyer*

such properties.<sup>34</sup> It cannot be seized by creditors except in certain special cases.<sup>35</sup>

However, the claim that the property is exempt from execution for being the movant's family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and executory ruling. It must be noted that it is not sufficient for the claimant to merely allege that such property is a family home. Whether the claim is premised under the Old Civil Code or the Family Code, the claim for exemption must be set up and proved.<sup>36</sup>

In fact, in *Ramos, et al. v. Pangilinan, et al.*,<sup>37</sup> the Court, citing *Spouses Kelley, Jr. v. Planters Products, Inc., et al.*,<sup>38</sup> laid down the rules relative to the levy on execution of the family home, viz.:

No doubt, a family home is generally exempt from execution provided it was duly constituted as such. There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family. The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas.<sup>39</sup>

In addition, residence in the family home must be actual. The law explicitly mandates that the occupancy of the family home, either by the owner thereof, or by any of its beneficiaries must be actual. This occupancy must be real, or actually existing, as opposed to something merely possible, or that which is merely presumptive or constructive.<sup>40</sup>

Guided by the foregoing jurisprudential tenets, it becomes all too apparent that Felicitas cannot conveniently claim that the subject property is her family home, sans sufficient evidence proving her allegation. It bears emphasis that it is imperative that her claim must be backed with evidence showing that the home was indeed (i) duly constituted as a family home, (ii) constituted jointly by the husband and wife or by an unmarried head of a family, (iii) resided in by the family (or any of the family home's beneficiaries), (iv) forms part of the properties of the absolute community or

<sup>34</sup> *Ramos, et al. v. Pangilinan, et al.*, 639 Phil. 192, 198 (2010).

<sup>35</sup> *Josef v. Santos*, 592 Phil. 438, 445 (2008), citing *Taneo, Jr. v. CA*, 363 Phil. 652, 663 (1999).

<sup>36</sup> *Honrado v. CA*, 512 Phil. 657, 666 (2005).

<sup>37</sup> 639 Phil. 192 (2010).

<sup>38</sup> 579 Phil. 763 (2008).

<sup>39</sup> *Ramos, et al. v. Pangilinan, et al.*, supra note 37, at 198.

<sup>40</sup> *Manacop v. CA*, 342 Phil. 735, 744 (1997), citing Moreno, *Philippine Law Dictionary*, 3rd Ed., p. 26.

*Meyer*



the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or property of the unmarried head of the family, and (v) has an actual value of Php 300,000.00 in urban areas, and Php 200,000.00 in rural areas.

A perusal of the petition, however, shows that aside from her bare allegation, Felicitas adduced no proof to substantiate her claim that the property sought to be executed is indeed her family home.

Interestingly, Felicitas admitted in her Motion for Reconsideration dated December 23, 2013, and her Petition for Annulment of Judgment dated June 22, 2006, that she is, and has always been a resident of Muñoz, Nueva Ecija.<sup>41</sup> Similarly, the address indicated in Felicitas' petition for review on *certiorari* is Muñoz, Nueva Ecija.<sup>42</sup>

Equally important, the Court takes judicial notice of the final ruling of the RTC Branch 55 in the case for recovery of ownership, that the subject property has belonged to the Heirs of Nivera since the 1950s.<sup>43</sup> This automatically negates Felicitas' claim that the property is her family home.

Undoubtedly, Felicitas' argument that the property subject of the writ of execution is a family home, is an unsubstantiated allegation that cannot defeat the binding nature of a final and executory judgment. Thus, the Writ of Execution and Demolition issued by the RTC Branch 55 must perforce be given effect.

In fine, an effective and efficient administration of justice requires that once a judgment has become final, the winning party should not be deprived of the fruits of the verdict. The case at bar reveals the attempt of the losing party to thwart the execution of a final and executory judgment, rendered by the court thirteen (13) long years ago. The Court cannot sanction such vain and obstinate attempts to forestall the execution of a final ruling. It is high time that the case be settled with finality and the ruling of the RTC Branch 55 be given full force and effect.

**WHEREFORE**, premises considered, the instant petition is **DENIED for lack of merit**. Accordingly, the Decision dated December 6, 2013 and Resolution dated August 7, 2014, rendered by the Court of Appeals in CA-G.R. CV No. 97309 are **AFFIRMED in toto**.

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<sup>41</sup> *Rollo*, p. 105.

<sup>42</sup> *Id.* at 8.

<sup>43</sup> *Id.* at 106.



**SO ORDERED.**

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

*Antonio T. Carpio*  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*Antonio T. Carpio*  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

