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los perjuicios, concretamos asì! nuestra opinion: 1.º, que en caso de dolo de una obligacion con clausula penal, la prueba de aquél para reclamar mas indemnizacion corresponde al actor; 2.º, que también, caso de pedirla le corresponde la de existencia y cuantià los perjuicios; y 3.º, que probando ambos extremos, podra pedir la diferencia de dicha cuantià sobre el importe de la pena estipulada."[3]

It is evident from the foregoing that in case of fraud in the fulfillment of an obligation with a penal clause, proof of such fraud is incumbent upon the creditor, and in case he demands indemnity in addition to the penalty stipulated, proof of the existence and amount of the damages shall also correspond to him. However, the creditor may demand only the difference of such amount over the amount of the penalty stipulated as the creditor cannot recover *both* the proven damages and the stipulated penalty. In the case at bar, he is only entitled to the stipulated penalty *plus* the *difference* between the proven damages and the stipulated penalty.

SECOND DIVISION

[G.R. No. L-28201. December 14, 1979]

EVARISTO COLOMA, MODESTA COLOMA, AMADEA COLOMA, NICOLASA COLOMA, VICTORIO COLOMA and FORTUNATA COLOMA, *petitioners, vs.* **HON. PLACIDO C. RAMOS, District Judge of the Court of First Instance of Nueva Ecija, 4th Judicial District, Guimba Branch, and Spouses JESUS T. GARCIA and DIONISIA DOMINGO,** *respondents.*

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[3] VIII Manresa, *Codigo Civil*, pp. 482-483.

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SYLLABUS

CIVIL LAW; LAND REGISTRATION; DUTY OF LAND REGISTRATION COURT TO ISSUE WRIT OF POSSESSION.— The power of the Court of First Instance to issue a writ of possession in a land registration case is sanctioned by the generally accepted principles for the pragmatic administration of justice and by Section 5 of Act No. 1108 and Section 3 of Act No. 1680, amending Section 17 of Act No. 496, in relation to Section 10 of Act No. 2347 and Section 8(d), Rule 39 and Sections 5(c) and 6, Rule 135 of the Rules of Court. The judgment in a land registration case adjudicating ownership to a person impliedly carries with it the delivery of possession, if he is deprived thereof, because the right of possession is inherent in that of ownership. It is the duty of the registration court to issue the writ of possession when asked for by the successful claimant. And pending appeal from a decision granting an application for registration, the trial court, for special reasons, may issue a writ of possession to the winning party in accordance with section 144 of the Code of Civil Procedure, now Section 2, Rule 39 of the Rules of Court.

D E C I S I O N

AQUINO, *J.*:

This case is about the issuance of a writ of possession in a land registration case.

The Court of First Instance of Nueva Ecija in its decision of January 16, 1959 ordered the registration of a one-half *proindiviso* share of Lot 2541 of the Guimba, Nueva Ecija cadastre in favor of Maria Lucas, a widow, and the other one-half *proindiviso* share in favor of her six children named Evaristo, Modesta, Nicolasa, Amadea, Victorio, and Fortunata, all surnamed Coloma. It directed the issuance of the corresponding decree and title after the finality of the decision and the payment of the realty taxes. (Cadastral Case No. 22, G.L.R.O. Record No. 400).

From that decision, Manuela T. Lucas and the spouses Jesus T. Garcia and Dionisia Domingo appealed. The Court of Appeals

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on January 27, 1964 affirmed the lower court's judgment (CA-G.R. No. 25252-R, 5 CAR 1250). The petition for the review of the decision of the Court of Appeals was dismissed by this Court in its resolution of May 6, 1964 in L-22593, *Garcia vs. Coloma.*

After the record was returned to the lower court, the Colomas filed a motion dated January 20, 1965 for a writ of possession. They alleged that the decision adjudicating Lot 2541 to them and their mother had already become final and executory and that the lot was in the possession of the Garcia spouses.

On the other hand, the Garcia spouses filed a petition dated May 31, 1965 for the review of the decision on the ground of fraud. The Colomas opposed the petition.

The claim of the Colomas was later confined to Lots 2541-B and 2541-C, two of the three subdivision lots composing Lot 2541. The third subdivision lot, Lot 2541-A, was adjudicated to the Philippine National Railways on February 7, 1967 (p. 57, *Rollo*).

The lower court in its order of October 21, 1966 denied the petition for review but suspended action on the petition for a writ of possession because of the pendency of the PNR's claim for Lot 2541-A. (Presumably, that claim suspended also the issuance of the decree and title.).

In denying the petition for review, the lower court reasoned out that the issues involved in the alleged fraud were resolved in its decision and could no longer be re-litigated. The Garcias appealed to this Court from the order of denial.

Because of the pendency of that appeal, the lower court in its order of July 11, 1967 denied the petition for a writ of possession. That order is being assailed in this *certiorari* and *mandamus* case which was filed on October 25, 1967.

It is relevant to state that the appeal of the Garcias was dismissed by this Court in its resolution of February 5, 1968 in L-28041, *Director of Lands vs. Coloma; Jesus T. Garcia, et al.*, claimants-petitioners and appellants. The appeal was dismissed because the Garcias did not comply with the material

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data rule found in Section 6, Rule 41 of the Rules of Court. The dismissal of the appeal became final on June 26, 1968.

In view of the dismissal of the Garcias' appeal, which signified that the lower court's denial of their petition for review on the ground of fraud had become final, the lower court's refusal to issue the writ of possession has no more leg to stand on or has become baseless. We hold that the writ of possession should now be issued in favor of the Colomas and against the Garcias.

The power of the Court of First Instance to issue a writ of possession in a land registration case is sanctioned by the generally accepted principles for the pragmatic administration of justice and by Section 5 of Act No. 1108 and Section 3 of Act No. 1680, amending Section 17 of Act No. 496, in relation to Section 10 of Act No. 2347 and Section 8(d), Rule 39 and Sections 5(c) and 6, Rule 135 of the Rules of Court (*Romasanta vs. Platon*, 62 Phil. 857, 858).

The judgment in a land registration case adjudicating ownership to a person impliedly carries with it the delivery of possession, if he is deprived thereof, because the right of possession is inherent in that of ownership (*Romasanta vs. Platon, supra*; *Abulocion vs. CFI of Iloilo*, 100 Phil. 554).

It is the duty of the registration court to issue the writ of possession when asked for by the successful claimant (*Demorar vs. Ibañez and Poras*, 97 Phil. 72). And pending appeal from a decision granting an application for registration, the trial court, for special reasons, may issue a writ of possession to the winning party in accordance with Section 144 of the Code of Civil Procedure, now Section 2, Rule 39 of the Rules of Court (*Director of Lands vs. Court of First Instance of Tarlac*, 51 Phil. 805; *Soriano vs. Aquino*, 31 Phil. 176, 179).

WHEREFORE, the lower court's order of July 11, 1967 is reversed and set aside. It is directed to issue the corresponding writ of possession sought by the petitioners. No costs.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.