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Fernandez, Jose Nuguid, Antonio de Pio, Lorenzo Teves, Faustino Tobia, Pedro Trono, Marcelino Veloso and Valeriano Yancha.

We are of the opinion that assignment of error need not be resolved in this case. Having shown that Peregrina has no cause of action to assail the award of Lot 16 to Mitra, it follows that in this particular case she cannot assail that award by invoking the provisions of the Anti-Graft and Corrupt Practices Law and the Constitution. This is not the proper forum for the ventilation of that question. (See Commonwealth Act No. 626; *Hernandez vs. Albano,* 112 Phil. 506; *Solidum and Concepcion, Jr. vs. Hernandez*, 117 Phil. 335).

WHEREFORE, the lower court's order of dismissal is affirmed. No costs.

SO ORDERED.

Barredo, Antonio and *Concepcion, Jr., JJ.*, concur.

Fernando (Chairman), J., concurs in the result.

SECOND DIVISION

[G.R. No. L-38317. September 22, 1976]

MARCELINO ARNADO, *petitioner, vs.* **COURT OF FIRST INSTANCE-CEBU, BRANCH IX, MARCELA ARROGACIA, ET, AL.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION AND DEMOLITION ORDER; NOT PROPER IN CASE AT BAR.**— Clearly, the order of the respondent court of November 23, 1973, directing the demolition of the house of Marcelino's wife, is patently null and void as having been issued

Supreme Court E-Library

without jurisdiction. The judgment rendered in the case between Marcelino and his mother has already been executed and for all purposes a closed file. The intrusion of Marcelino's wife on the land in question afterwards is a matter totally alien from that litigated between Marcelino and his mother so that to order the demolition of the house built by Marcelino's wife, without giving them an opportunity to plead, would be illegal.

2. **ID.; ID.; ID.; EXECUTION THEREOF AFTER THE LAPSE OF EIGHT YEARS FROM ITS FINALITY CANNOT BE MADE BY A MERE MOTION.**— The rule is that a judgment may be executed on 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 limitations, a judgment may be enforced by action. The private respondents herein should have filed a separate action in court for the enforcement of their right.

RESOLUTION

CONCEPCION, JR., *J.*:

Petition for *certiorari* to annul and set aside an order of the respondent court.

Sometime in 1956, Marcelino Arnado (now represented by his heirs as petitioners) sued his mother, Marcela Arrogancia, before the Court of First Instance of Cebu for the possession and ownership of a certain parcel of land situated at Tabuelan, Cebu. After trial thereof, the court adjudged Marcela Arrogancia to be the sole and exclusive owner of the property in question and ordered the dismissal of the complaint with costs. Marcelino Arnado was further ordered to pay his mother the amount of ₱300.00 as attorney's fees.[1] Not satisfied, he appealed to the Court of Appeals. On May 10, 1965, the said appellate court rendered a decision affirming that of the lower court.[2] The judgment was executed in due course.[3]

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[1] p. 6, *Rollo.*

[2] pp. 5-12, *Rollo.*

[3] p. 65, *Rollo.*

Supreme Court E-Library

On February 1, 1972, however, the private respondents filed a motion in said case seeking the issuance of an *alias* writ of execution upon the ground that the wife of the petitioner had entered the property in question and built a house thereon, refusing to vacate the same notwithstanding demands.[4]

Acting upon said motion, the respondent court issued an order on November 23, 1973 directing the deputy sheriff to turn over the physical possession of the property to the defendants (herein private respondents) and to remove or cause to be removed the house built thereon by the petitioners.[5]

As a consequence, the present petition was filed to annul and set aside said order.

Commenting on the petition, the private respondents, through counsel, manifested that they "have no more desire to pursue with the demolition of the house, are no longer interested in insisting upon the order of execution and demolition but would proceed instead with the partition of the land in question among the private respondents and the children of the late Marcelino Arnado."[6]

Clearly, the order of the respondent court of November 23, 1973, directing the demolition of the house of Marcelino's wife, is patently null and void as having been issued without jurisdiction. The judgment rendered in the case between Marcelino and his mother has already been executed and for all purposes a closed file. The intrusion of Marcelino's wife on the land in question afterwards is a matter totally alien from that litigated between Marcelino and his mother so that to order the demolition of the house built by Marcelino's wife, without giving them an opportunity to plead, would be illegal.

Besides, the order sought to be annulled and set aside was issued after the lapse of eight (8) years after the judgment sought

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[4] p. 13, *Rollo.*

[5] p. 19, *Rollo.*

[6] p. 64. *Rollo.*

Supreme Court E-Library

to be enforced had become final and executory. The rule is that a judgment may be executed on 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 limitations, a judgment may be enforced by action.[7] The private respondents herein should have filed a separate action in court for the enforcement of their right. More so, in view of the death of Marcela Arrogancia[8] which made the petitioners co-owners of the land in question, and hence, cannot be summarily evicted therefrom.

WHEREFORE, the petition is granted and the order of the respondent court of November 23, 1973 in Civil Case No. R-5372 of the CFI of Cebu is hereby annulled and set aside. No costs.

SO ORDERED.

Fernando, C.J. (Chairman), Barredo, Antonio, and *Aquino, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-28549. September 23, 1976]

In the Matter of the Change of Name of Milagros Llerena Telmo. MILAGROS LLERENA TELMO, *petitioner-appellee, vs.* **REPUBLIC OF THE PHILIPPINES,** *oppositor-appellant.*

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[7] Section 6, Rule 39, Rules of Court.

[8] p. 54, *Rollo.*