

BIBLIA T. BANAGA v. HON. JOSE S. MAJADUCON, et al.
G.R. No. 149051, 30 June 2006, Tinga, J. (Third Division)

The rule that no appeal lies from an order or writ directing the execution of a final judgment is not absolute. One of the exceptions thereto is where the writ of execution varies the judgment. The Court recognizes the filing of an ordinary appeal as a proper remedy to assail a writ or order issued in connection with the execution of a final judgment, where a factual review in the manner of execution is called for to determine whether the challenged writ or order has indeed varied the tenor of the final judgment.

On February 19, 1992, the Supreme Court upheld Biblia T. Banaga's right to redeem a parcel of land from Candelario Damalerio. However, she failed to exercise the said right within the given period. The 30-day redemption period was declared terminated, which was affirmed by the Supreme Court on May 11, 1994. A writ of execution eventually issued. However, the Registry of Deeds refused to issue a certificate of title in the name of Damalerio. Upon the latter's petition, the Court of Appeals directed the Registry of Deeds to issue certificates of title in the name of Damalerio and the trial court to issue a writ of execution and a writ of possession in favor of Damalerio. This was affirmed by the Supreme Court on January 28, 1999.

The trial court issued a writ of execution and a writ of possession for the delivery of the subject property, denominated as Lot 2-G-2, to Damalerio. The corresponding certificate of title was also issued to the latter, who was then placed in possession of the lot. Subsequently, Damalerio moved for the issuance of a special order for demolition of a structure alleged to be erected within Lot 2-G-2. Upon the trial court's order, the Department of Environment and Natural Resources (DENR) conducted a relocation survey. The survey report indicated that the adjacent property retained and still owned by Banaga, Lot 2-G-1, had encroached on Lot 2-G-2 by some 136 square meters. Banaga filed an Urgent Omnibus Motion for the conduct of a verification survey, alleging that the survey conducted was incomplete. The trial court, however, failed to rule on the said motion.

The trial court approved the survey report and subsequently denied Banaga's notice of appeal. Banaga, thus, instituted a special civil action for *certiorari*, prohibition and *mandamus*, but this was dismissed by the Court of Appeals, which held that Banaga failed to show that the trial court committed grave abuse of discretion in approving the survey report. It further ruled that in accordance with Section 1(f), Rule 41 of the Rules of Court, no appeal may be taken from the trial court's order because the resolution of the boundary dispute was an incident of the execution proceedings. According to the appellate court, Banaga should have first moved for the reconsideration of the trial court's order instead of immediately filing a notice of appeal.

ISSUE:

Whether or not the trial court correctly denied Banaga's notice of appeal notwithstanding the allegation that the trial court's order approving the survey report varied the terms of the final judgment dated January 28, 1999

HELD:

The petition is GRANTED.

The rule that no appeal lies from an order or writ directing the execution of a final judgment is not absolute. In *Limpin v. LAC* (G.R. No. L-70987, January 30, 1987, 147 SCRA 516), the Supreme Court enumerated the exceptional circumstances where a party may elevate the matter of an

improper execution for appeal, and one of them is where the writ of execution varies the judgment. Indeed, the Court recognizes the filing of an ordinary appeal as a proper remedy to assail a writ or order issued in connection with the execution of a final judgment, where a factual review in the manner of execution is called for to determine whether the challenged writ or order has indeed varied the tenor of the final judgment.

Banaga's vigorous objection to the survey report centered on her position that it would alter the present boundaries and result in awarding to Damalerio a portion of Lot 2-G-1 belonging to her. The determination of the correctness of the survey findings in relation to the boundary limits of Lot 2-G-2 and Lot 2-G-1 is ultimately a factual question. The technical findings of the surveyor as well as the trial court's appreciation thereof must undergo the scrutiny of the appellate process. Therefore, the more appropriate remedy is an ordinary appeal. To rule that a special civil action for *certiorari* constitutes the sole and exclusive remedy to assail a writ or order of execution would unduly restrict the remedy available to a party prejudiced by an improper or illegal execution.

It was also error for the Court of Appeals to have ruled that Banaga should have first moved for the reconsideration of the trial court's order approving the survey report before filing a notice of appeal. A reading of the said trial court order shows that the trial court found the survey report accurate. Besides, Banaga had already raised her objections in the Urgent Omnibus Motion and extensively discussed them in her memorandum. Thus, a motion for reconsideration would only be repetitious and useless. Moreover, a motion for reconsideration is not required before appealing a judgment or final order.