

## FIRST DIVISION

[ G.R. No. 136203, September 16, 1999 ]

**LOREÑO TERRY, PETITIONER VS. PEOPLE OF THE PHILLIPPINES,  
RESPONDENT.**

**D E C I**

**S I O N**

**PARDO, J.:**

The case before the Court is an appeal *via* certiorari from a decision of the Court of Appeals<sup>[1]</sup> affirming with modification the [amended] order of the Regional Trial Court<sup>[2]</sup> declaring petitioner guilty of contempt of court for re-entering Lot No. 13118 subject of Civil Case No. 740, after being evicted therefrom and sentencing him to suffer two (2) months imprisonment and a fine of five hundred (P500.00) pesos, and to vacate Lot Nos. 13118 and 10627.

The facts are as follows:

On August 13, 1979, the Court of First Instance of Virac, Catanduanes, in Civil Case No. 740, entitled "Eugenio Arcilla vs. Pedro Arcilla" decided the case in favor of Pedro and Leoncia Arcilla and against plaintiffs Eugenio and Maria Arcilla and third party defendant Loreño Terry, declaring Pedro and Leoncia Arcilla the lawful owners of Lot Nos. 13118 and 10627. Petitioner did not appeal from the decision and on November 22, 1979, the trial court issued a writ of execution against petitioner. Apparently, the writ was not served on petitioner and became stale by operation of law five years thereafter.

On December 9, 1985, after the lapse of more than six (6) years, the trial court, reorganized into a regional trial court, issued an *alias* writ of execution.

On January 13, 1986, Deputy Sheriff Carlos M. Ubalde submitted his sheriff's return stating that upon service of the alias writ upon petitioner, "he learned that petitioner was no longer in occupation over the aforesaid Lot Nos. 13118 and 10627." Sheriff Ubalde further stated in his return "that petitioner is allegedly not in possession of any land or real estate property declared in his name as per certification issued by the Office of the Provincial Assessor of Catanduanes."

On the same date, January 13, 1986, Deputy Sheriff Ubalde certified that pursuant to the *alias* writ of execution, possession of the lots was turned over to Leoncia S. Arcilla "for and in behalf of the heirs of Pedro S. Arcilla." Leoncia S. Arcilla acknowledged the turn-over of the lots.

On July 5, 1991, Leoncia S. Arcilla filed with the Regional Trial Court, Virac, Catanduanes an action for reconveyance or annulment of sale, recovery of

possession and damages against petitioner, docketed as Civil Case No. 1586, entitled Leoncia Vda. de Arcilla vs. Loreño and Violeta Terry, involving one of the lots subject of Civil Case No. 740.

On October 27, 1992, the trial court dismissed the case.

By filing such action for reconveyance and recovery of possession, Leoncia Arcilla acknowledged that petitioner was occupying the lots in question.

On March 27, 1995, Leoncia Arcilla filed with the trial court in Civil Case No. 740, a motion for contempt against petitioner for re-occupying Lot No. 13118.

On March 19, 1996, the trial court issued an order finding petitioner guilty of contempt and sentencing him to suffer the penalty of two (2) months imprisonment and to pay a fine of P500.00. However, on May 2, 1996, the trial court reduced the penalty to one (1) month imprisonment and a fine of P100.00 and to vacate Lot Nos. 13118 and 19627.

In due time, respondents appealed from the aforesaid order to the Court of Appeals.

After due proceedings, on October 30, 1998, the Court of Appeals promulgated its decision affirming with modification the trial court's order and sentencing petitioner to two (2) months imprisonment and a fine of P500.00. The appellate court likewise affirmed the trial court's order for petitioner to vacate Lot Nos. 13118 and 10627.

Hence, this appeal.

On February 3, 1999, the Court resolved to require respondent to comment on the petition, not to file a motion to dismiss, within ten (10) days from notice.<sup>[3]</sup>

On May 28, 1999, the Solicitor General filed his comment.<sup>[4]</sup> In brief, the Solicitor General submits that "even if indeed there was no effective service of the writ and alias writ of execution on him,"<sup>[5]</sup> as he was admittedly served with a copy of the decision, petitioner's re-entry upon the land is contemptuous and punishable.

At issue in this petition is whether or not petitioner's re-entry on the disputed lots and exercise of acts of ownership constitute indirect contempt.

We find the petition meritorious and give due course thereto. We resolve the issue in favor of petitioner. Even if it be a fact that petitioner re-entered the lots in question after he was judicially evicted therefrom, there can be no contempt of court because the case below for eviction has become *functus officio*.

Let us restate the essential facts.

**On August 13, 1979**, the Court of First Instance of Virac, Catanduanes, rendered judgment in Civil Case No. 740, against petitioner, declaring Pedro and Leoncia Arcilla owners of Lot Nos. 13118 and 10627.

**On November 22, 1979**, the trial court issued a writ of execution as against petitioner. This writ was not served on him which implies that petitioner remained in