

ROBERT L. WEADOCK AND JAMES T. WALKER, PETITIONERS VS. MACARIO OFILADA, SHERIFF FOR THE CITY OF MANILA, AND BATANGAS BASE R. SURPLUS COMPANY, RESPONDENTS.

G.R. No. L-2949. June 24, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an "Urgent Ex-Parte Petition to Require Sheriff of Manila to Re-attach Properties" filed in case No. L-2949, Robert L. Weadock and James T. Walker vs. Macario Ofilada, Sheriff for the City of Manila, and Batangas Base R. Surplus Company, entitled "Petition for a Writ of Prohibition."

The pertinent facts are as follows:

Robert L. Weadock and James T. Walker, the petitioners, brought an action in the Court of First Instance of Manila (civil case No. 6877, now pending in the said court) against Arthur H. Merritt and Insular Trades, Inc. to compel defendants to render an accounting of the profits in certain business transactions between them, it being alleged that said profits had been misapplied by defendants to their own use.

Acting on plaintiffs' petition, Judge Potenciano Pecson issued a writ of preliminary attachment, plaintiffs put up a bond, duly approved by the court, in the amount of P150,000, and the sheriff of the City of Manila attached the articles of personal property inventoried in Annex B.

On February 15, 1949, W. O. Merritt, said to be a brother of defendant Arthur H. Merritt, filed for and in behalf of Batangas Base R. Surplus Company, an alleged California partnership not registered in the Philippines, a third party claim for all or most of the attached property.

As A result of the filing of this third party claim, the sheriff required plaintiffs to put up a bond in the sum of P551,425, said to be the value of the property attached, with the warning that if they failed to post such bond he, sheriff, would deliver the said property to the third party claimant.

Plaintiffs opposed the third party claim on the grounds (a) that the affidavit in support of it was insufficient under section 14, Rule 59, of the Rules of Court; (b) that the valuation of the property claimed, at P551,425, was highly excessive; and (c) that Batangas Base R. Surplus Company was not a person under Philippine laws, the same having been allegedly organized under the California laws but not registered nor licensed to transact business in the Philippines. As an affirmative remedy, plaintiffs prayed that the sheriff be prohibited from releasing the said property and asked the court to make a reasonable assessment thereof.

On March 23, 1949, Judge Pecson denied plaintiffs' opposition and their motion to prohibit the sheriff from releasing the property. It was at this stage of the case that plaintiffs filed, on May 31, the urgent ex-parte petition.

Section 14, Rule 59, of the Rules of Court reads:

"If property taken be claimed by any other person than the defendant or his agent, and such person makes an

affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer while he has possession of the property, and a copy thereof upon the plaintiff, the officer shall not be bound to keep the property under the attachment, unless the plaintiff or his agent, on demand of said officer, indemnifies him against such claim by a bond in a sum not greater than the value of the property attached and in case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. * * *

The third party claimant's affidavit, by reason of which he claimed the release of the properties in question and on the strength of which the plaintiffs were required to file a bond, states that "the affiant's right to the possession of said personal property is derived from the fact that the attached properties listed in Appendices A, B, and C have been purchased by the defendant Insular Trades, Inc. with the funds money of the said partnership Batangas Base R. Surplus Company and are therefore of the ownership of the said partnership."

The interest which W.O. Merritt claims to have in the attached property does not meet the requirements of section 14 of Rule 59, and should be ignored. He does not allege that Insular Trades, Inc. used Batangas Base R. Surplus Company's funds as the latter's agent or in the latter's name. The allegations are more susceptible of the interpretation that Batangas Base R. Surplus Company is a mere creditor of Insular Trades, Inc. It is not inferable from these allegations that W. O. Merritt's interest, or the interest of the partnership which he claims to represent, constitutes title to, or a lien on, the attached property and entitles him or his principal to its possession.

This being the case, the discharge of the attachment and the release of the property were improper and illegal. In consequence, the sheriff should retake, re-seize or re-attach the property which he has released and keep it in his possession or under his control, under the original order of attachment and the bond filed in pursuance of that order.

The urgent ex-parte petition is granted and the sheriff of Manila is ordered to proceed according to the tenor of this resolution.

Moran, C.J., Ozaeta, Feria, Bengzon, Montemayor, and Reyes, JJ., concur.

Paras, J., concurs in the result.

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