

VENTURA GUZMAN, PETITIONER, VS. ALFREDO CATOLICO AND SIMEON RAMOS, JUDGE OF FIRST INSTANCE OF ISABELA, RESPONDENTS.

G. R. No. L-45720. December 29, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition filed by Ventura Guzman, praying this court, after proper proceedings, to render judgment declaring illegal and void and setting aside the writ of preliminary attachment issued by the respondent judge, Honorable Simeon Ramos, as judge of the Court of First Instance of Isabela, and ordering the dissolution thereof.

The pertinent facts necessary for the resolution of the legal question raised in the present case are as follows:

On March 8, 1937, the respondent Alfredo Catolico brought an action against the herein petitioner Ventura Guzman in the Court of First Instance of Isabela, for the recovery from the latter of the amount of his fees for services rendered by him as attorney, praying, at the same time, for the issuance of a writ of preliminary attachment against all of the properties adjudicated to said petitioner in special proceedings No. 179 of said court. As grounds for the issuance of said writ of preliminary attachment, he alleged: "That the herein defendant is trying to 'sell and dispose of the properties adjudicated1 to him, with intention to defraud his creditors, particularly the herein plaintiff, thereby rendering illusory the judgment that may be rendered against him, inasmuch as he has no other properties outside the same to answer for the fees the court may fix in favor of the plaintiff, this case being one of those mentioned by the Code of Civil Procedure warranting the issuance of a writ of preliminary attachment" (paragraph 8 of the complaint). At the foot of the complaint there appears the following affidavit: "I, Alfredo Catolico, of age, married and resident of Tuguegarao, Cagayan, after being duly sworn, declare: That I am the same plaintiff in this case; that I have prepared and read the same (complaint) and that all the allegations thereof are certain and true, to the best of my knowledge and belief."

In view of said complaint and affidavit, the respondent judge, on March 10, 1937, issued an order granting the petition and ordering the issuance of a writ of preliminary attachment, after the filing of the corresponding bond by the plaintiff.

On April 15,, 1937, said defendant Ventura Guzman filed a motion for the cancellation of said writ of preliminary attachment on the ground that it had been improperly, irregularly and illegally issued, there being no allegation, either in the complaint or in the affidavit solemnizing it, that there is no other sufficient security for the claim sought to be enforced by the action; that the amount due to the plaintiff, above the legal set-off and counterclaim, is as much as the sum for which the preliminary attachment has been granted, and that the affidavit of the plaintiff is based on mere information and belief.

Said motion was denied by the respondent judge in an order of July 10, 1937.

The only question to be decided in this case is whether or not the requisites prescribed by law for the issuance of a

writ of preliminary attachment have been complied with.

Section 426 of the Code of Civil Procedure provide that "A judge or justice of the peace shall grant an order of attachment when it is made to appear to the judge or justice of the peace by the affidavit of the plaintiff, or of some other person who knows the facts, that a sufficient cause of action exists, and that the case is one of those mentioned in section four hundred and twenty-four, and that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the plaintiff above all legal set-offs or counterclaims is as much as the sum for which the order is granted."

The petitioner, in attacking the legality and validity of the writ of preliminary attachment, which is the subject matter of this petition, relies on the alleged lack of an allegation in the complaint or in the affidavit to the effect "that there is no sufficient security for the claim sought to be enforced by the action and that the amount alleged to be due to the plaintiff above all legal set-offs and counterclaims is as much as the sum for which the writ has been granted", and on the fact that the affidavit is based on mere information and belief of the plaintiff.

With respect to the last requisite just stated above, the affidavit is not defective because in it the therein plaintiff and herein respondent Alfredo Catolico states "that all the allegations thereof are certain and true, to the best of my knowledge and belief", and not that they are so according to his information and belief.

As to the other two requisites, there is no allegation, either in the complaint or in the affidavit solemnizing it, to the effect that there is no other sufficient security for the claim which the plaintiff seeks to enforce by his action, and that the amount due him from the defendant, above all legal set-offs and counterclaims, is as much as the sum for which the writ of preliminary attachment has been granted. Now then, does the omission of these two requisites constitute a defect preventing a judge of the Court of First Instance from issuing a writ of preliminary attachment?

Attachment is a juridical institution which has for its purpose to secure the outcome of the trial, that is, the satisfaction of the pecuniary obligation really contracted by a person or believed to have been contracted by him, either by virtue of a civil obligation emanating from contract or from law, or by virtue of some crime or misdemeanor that he might have committed, and the writ issued, granting it, is executed by attaching and safely keeping all the movable property of the defendant, or so much thereof as may be sufficient to satisfy the plaintiff's demands (sec. 428, Act No. 190), or by filing a copy of said writ with the register of deeds for the province in which the real property is situated, whether standing upon the records in the name of the defendant or not appearing at all upon the record, which constitutes a limitation of ownership or the right to enjoy or dispose of a thing without further limitations than those established by law (art. 348, Civil Code), since the owner of the property attached cannot dispose of the same free of all liens and encumbrances. The law authorizing the issuance of a writ of preliminary attachment should, therefore, be construed strictly in favor of the defendant, and before issuing an order to that effect, the judge should require that all the requisites prescribed by law be complied with, without which a judge acquires no jurisdiction to issue the writ. If he does so in spite of noncompliance with said requisites, he acts in excess of his jurisdiction and the writ so issued by him will be null and void.

"The jurisdiction of attachment proceedings being a special one, it cannot be legitimately exercised unless the attaching creditor pursues substantially the essential requirements of the statute, and the court can act only under the special power limited by the statute and according to the forms of procedure it prescribes. * * *" (6 C. J., 88, paragraph 121.)

"Where the statute requires the affidavit to show that defendant is indebted to plaintiff in an amount specified, or that the latter is entitled to recover such an amount, over and above all legal payments, set-offs, or counterclaims, compliance with this requirement is essential to confer jurisdiction to issue the writ." (6 C. J., 132, paragraph 201.)

"An affidavit is fatally defective where it fails to comply, at least substantially, with a statutory requirement that it shall state that the indebtedness for which the action is brought has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if so secured, that the security has become valueless. * * *" (6 C. J., 146, paragraph 231.)

For the foregoing considerations, this court is of the opinion and so holds that failure to allege in a complaint or in the affidavit solemnizing it, or in a separate one, the requisites prescribed by section 426 of the Code of Civil Procedure for the issuance of a writ of preliminary attachment that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the plaintiff above all legal set-offs or counterclaims is as much as the sum for which the order is sought, renders a writ of preliminary attachment issued against the property of a defendant fatally defective, and the judge issuing it acts in excess of his jurisdiction.

Wherefore, the writ of certiorari applied for is granted, and the writ of preliminary attachment issued by the respondent judge in civil case No. 1460 of the Court of First Instance of Isabela, wherein the herein respondent Alfredo Catolico is plaintiff and the herein petitioner Ventura Guzman is defendant, is declared null and void, with costs to respondent Alfredo Catolico. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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