

**EMMA C. ONA, IN HER CAPACITY AS SHERIFF OF CALOOCAN CITY,  
PETITIONER, VS. HON. SERAFIN R. CUEVAS, IN HIS CAPACITY AS  
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA,  
BR...**

*G.R. No. L-44537. May 26, 1978*

Ponente: CONCEPCION JR., J.

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**CONCEPCION JR., J.:**

Petition for certiorari, with preliminary injunction, to annul and set aside the orders issued by the respondent judge on November 10, 1975 and August 10, 1976, in Civil Case No. 99508 of the Court of First Instance of Manila.

It appears that on July 29, 1975, the Sheriff of Caloocan City levied upon the properties of the spouses Wilfredo and Segundina Garcia pursuant to an order issued by the Court of First Instance of Rizal, Branch XII, Caloocan City, in Civil Case No. 3640, entitled: "Uniwide Marketing Co., plaintiff, versus Wilfredo Garcia, et al., defendants." Among those properties attached were several sewing machines.

On August 5, 1975, the Uni-Ace Sales Corporation filed a third-party claim with the Sheriff, alleging that it is the owner of the aforementioned sewing machines by virtue of a deed of sale executed in its favor by Wilfredo Garcia on June 2, 1975.[1]

The Uniwide Marketing Corporation opposed the third-party claim upon the ground that the affidavit of the third-party claimant is insufficient and does not meet the requirements of Section 14, Rule 57 of the Rules of Court since the deed of sale upon which the third-party claim is based, is simulated and fictitious[2] and on September 1, 1975, it filed an indemnity bond in the amount of P15,000.00, to protect and indemnify the Sheriff fully for all damages and liabilities which may arise therefrom.[3]

Unable to secure possession of the sewing machines, the Uni-Ace Sales Corporation filed an action against the Sheriff and/or his deputies before the Court of First Instance of Manila, docketed therein as Civil Case No. 99508, praying that the sewing machines in question be seized and thereafter delivered to it in accordance with Rule 60 of the Rules of Court; and, after hearing, to declare it the owner and rightful possessor of the property, and to order the Sheriff and/or his deputies to pay damages and costs of suit.[4]

On November 10, 1975, the Court of First Instance of Manila ordered the Sheriff of Caloocan City to take possession of the sewing machines described therein and deliver the same to the Uni-Ace Sales Corporation subject to the provisions of Sections 5, 6, and 7 of Rule 60, Rules of Court.[5]

On November 26, 1975, the Sheriff filed a Manifestation with the court, stating her inability to comply with the order of seizure for the reason that the said sewing machines are in custodia legis, having been previously attached pursuant to a valid order of attachment issued in Civil Case No. 3640 of the Court of First Instance of Rizal, and are held by the Sheriff subject to the control of the latter court.[6]

Nonetheless, the Court of First Instance of Manila, upon petition of the Uni-Ace Sales Corporation,[7] issued an order on August 10, 1976, finding the Sheriff guilty of indirect contempt for failure to obey an order issued by the said court and sentenced her to pay a fine of P100.00 with a warning that her failure to comply with the aforesaid order of November 10, 1975 would be dealt with more severely by the court.[8]

The Sheriff of Caloocan City filed a motion for the reconsideration of the order,[9] but her motion was denied on August 24, 1976.[10] So, the said Sheriff filed the instant petition to set aside the orders issued by the respondent judge on November 10, 1975 and August 10, 1976 in Civil Case No. 99508 of the Court of First Instance of Manila upon the ground that the said respondent exceeded his jurisdiction in issuing said orders since the property sought to be delivered is already in custodia legis.

The private respondent, Uni-Ace Sales Corporation, upon the other hand, maintains that even if the property subject of the "Order for the Seizure of Personal Property," issued on November 10, 1975, is in custodia legis by another court, such order (replevin) can be enforced and implemented.

Passing upon a similar question, the Court, in the case of *Montesa, etc., et al. vs. Manila Cordage Co.*,[11] ruled that courts have no jurisdiction to order the delivery of personal property (replevin) to the plaintiff if the property is under attachment. The Court said:

"El Buick Sedan con placa No. 1074 habia sido embargado por el Sheriff en virtud de una orden de embargo preventivo dictada, en la causa civil No. 9126, y el automovil no esta exento de embargo (Regla 39, art. 12). No podia, por tanto, el Hon. Juez Montesa, por medio de una orden interlocutoria, disponer la entrega a los demandantes de dicho automovil en la causa civil No. 10624, anulando ipso facto la orden de embargo preventivo dictada en la causa civil No. 9126. Fue una indebida intromision de un juez en la orden de otro juez de igual categoria. En realidad, la orden dictada en la causa civil No. 10624 deshizo la que otro juez decreto en la causa No. 9126. El juez de una sala de un juzgado no debe anular la orden de otro juez de otra sala del mismo juzgado porque ambos, son jueces de la misma categoria y actuan independiente pero coordinadamente, a menos que el segundo actue en lugar del primero sobre un mismo expediente. x x x.

"x x x (B)ajo el reglamento vigente, no se puede ordenar la entrega de los bienes embargados preventivamente porque la Regla 62, (now Rule 60) articulo 2, parrafo (c), dispone lo siguiente:

'Que no han sido secuestrados para satisfacer contribucion alguna, ni multa por mandato de la ley, ni embargados en virtud de ejecucion o embargo preventivo contra los bienes del demandante, o en caso de serlo asi, que son bienes exentos de embargo.'

"En la nueva disposicion se añadieron las palabras 'o embargo preventivo'. Esta es la innovacion adoptada por el nuevo reglamento, con el evidente proposito de impedir el triste espectaculo de que un juez revoque la orden dictada por otro juez, en perjuicio de la ordenada administracion de justicia."

In view thereof, the respondent Judge exceeded his jurisdiction ordering the Sheriff of Caloocan City to deliver the sewing machines in question unto the private respondent Uni-Ace Sales Corporation and in declaring the said Sheriff in contempt of court for not obeying said order.

WHEREFORE, the petition is given due course and the writ prayed for is hereby granted. The orders issued by the respondent Judge on November 10, 1975 and August 10, 1976 in Civil Case No. 99508 of the Court of First Instance of Manila are accordingly annulled and set aside. The temporary restraining order heretofore issued is hereby made permanent. Costs against the private respondent Uni-Ace Sales Corporation.

**SO ORDERED.**

Fernando, (Chairman), Barredo, and Santos, JJ., concur.

Aquino, J., see separate opinion.

Antonio, J., did not take part.

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[1] Rollo, p. 29.

[2] Id., p. 34.

[3] Id., p. 39.

[4] Id., p. 18

[5] Id., p. 27.

[6] Id., p. 28.

[7] Id., p. 42.

[8] Id., p. 51.

[9] Id., p. 59.

[10] Id., p. 67.

[11] 92 Phil. 25.

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**CONCURRING OPINION****AQUINO, J.:**

I concur. It would seem that the title to the sewing machines in question cannot be decided without impleading Uniwide Marketing Co. and Wilfredo Garcia in Civil Case No. 99508 of the Court of First Instance of Manila.

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