

EVA ARANETA SERRA, PETITIONER, VS. HONORABLE JESUS S. RODRIGUEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, MANUEL LORING, JR., MILAGROS L. LORING, AND THE PROVINCIAL SHERI...

G.R. NO. L-25546. April 22, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner Eva Araneta Serra interposed this appeal by certiorari praying for the nullification of the order dated December 27, 1965 of the respondent Judge.

It is undisputed that on September 13, 1965, private respondents-spouses Manuel Loring, Jr. and Milagros L. Loring filed a complaint for the recovery of P101,000.00 against spouses Enrique Ordonez and Maria G. Ordonez based on a promissory note, docketed as Civil Case No. 6846 of the respondent Court of First Instance of Iloilo. Upon motion of said private respondents-spouses as plaintiffs in said civil case, pursuant to their prayer in their complaint, a writ of preliminary attachment was issued and on September 14, 1965, a notice of levy of said attachment was registered on TCT No. T-18847 covering the residential lot and the residential house of strong materials thereon of the Ordonez spouses. Because the value of the debtors' real estate levied upon as aforesated was insufficient to satisfy the claim, their personal properties consisting of pieces of furniture, chandeliers, silverware, electrical appliances, etc., were also attached on September 14, 1965.

On September 30, 1965, debtor Maria G. Ordonez, alone by herself without the prior consent of or authority from her husband, debtor Enrique Ordonez, executed a deed of chattel mortgage over the aforementioned personal properties in favor of herein petitioner Eva Araneta Serra allegedly as security for a loan of P20,000.00 which was duly registered on October 1, 1965 (pp. 19-20, rec.). By virtue of said chattel mortgage, on November 2, 1965, about a month and two days from its execution, petitioner Serra filed a third-party claim over the attached personal assets with the respondent provincial sheriff alleging that the aforementioned enlisted properties are valued no less than P35,000.00 (Annex C, pp. 15-18, rec.). By virtue of the said third-party claim, the respondent provincial sheriff accordingly informed the Loring spouses and required them to file a bond in the amount of P22,000.00 within three days from receipt, otherwise, he will be obliged to turn over the personal properties to the third-party claimant, herein petitioner Eva Araneta Serra (Annex B, p. 27, rec.). In a motion dated November 23, 1965, private respondents Manuel Loring and Milagros L. Loring prayed for the disapproval of the third-party claim of Serra as improper and invalid on the ground that Serra has neither title to the personal assets of the debtors nor right of possession thereof within the purview of Section 13 of Rule 57 of the Revised Rules of Court; because a chattel mortgagee is not entitled to the possession of the mortgaged personal properties as the chattel mortgage is merely a security for the loan and if possession is delivered to the chattel mortgagee, the contract becomes a pledge and ceases to be a chattel mortgage (Art. 2140 of the New Civil Code of the Philippines).

Sustaining the position of herein private respondents as creditors, respondent Court issued the questioned order

dated December 27, 1965 directing the respondent provincial sheriff to re-attach the personal properties of the Ordonez spouses as listed in the third-party claim of herein petitioner Serra (Annex F, pp. 32-34).

We affirm.

Under Section 14 of Rule 57 of the Revised Rules of Court, a third-party claimant to a property levied upon by a writ of attachment must show that he has title thereto or right to the possession thereof. This excludes a chattel mortgagee because a chattel mortgage is merely a security for a loan and does not transfer title of the property mortgaged to the chattel mortgagee. Neither is a chattel mortgagee entitled to the possession of the property upon the execution of the chattel mortgage for otherwise the contract becomes a pledge and ceases to be a chattel mortgage (see concurring opinion of Mr. Justice Padilla in *Contreras vs. Felix*, 78 Phil. 570, 5821). The old view that a chattel mortgage is a conditional sale and therefore transfers immediately the title to the chattel mortgagee who may thus properly file a third-party claim to a property subject matter of attachment (*Contreras vs. Molina*, 64 Phil. 1), has been expressly repudiated by Article 2140 of the new Civil Code, which defines a chattel mortgage, thus:

"ART. 2140. By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage."

The change was deliberate according to the Code Commission, which categorically stated that the "definition of the chattel mortgage even in the Chattel Mortgage Law is inaccurate for it considers a chattel mortgage as a conditional sale. Therefore, a new definition is given in Article 2140" (Report of the Code Commission, p. 158).

From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition by certiorari is the proper remedy (see *Santos vs. Mojica*, G.R. No. L-19618, Feb. 18, 1964, 10 SCRA 318, 320-321; *Potenciano vs. Dineros*, 97 Phil. 196, 200). The remedy of petitioner would be to file a separate and independent action to determine the ownership of the attached property or to file a complaint for damages chargeable against the bond filed by the judgment creditor in favor of the provincial sheriff.

Or herein petitioner could have filed a motion for intervention. However, such a motion is addressed to the wise discretion of the trial judge whose denial thereof may not be reviewed by this Court in the absence of grave abuse on his part.

Moreover, the chattel mortgage executed alone by the wife, Maria G. Ordonez, is of doubtful validity since only the husband, as administrator of the conjugal assets (Art. 165, New Civil Code), has the power to dispose of the same for the benefit of the family, especially for the purposes specified in Articles 161 and 162 of the New Civil Code). And the wife cannot bind the conjugal partnership without the husband's consent, except in cases provided by law (Art. 172, New Civil Code). There is no showing that the consent of the husband was obtained for the wife to execute the chattel mortgage or that the wife was granted special authority by the husband embodied in a public instrument to administer the conjugal assets (Art. 168, New Civil Code).

Furthermore, the chattel mortgage may be rescinded on the ground that it refers to things under litigation and entered into by the defendant debtor "without the knowledge and approval of the litigants or of competent judicial authority" or that the same was executed "in fraud of creditors when the latter cannot in any other manner collect the claim from them" (pars. 3 & 4, Art. 1381, New Civil Code). It should be recalled that the personal assets were levied by virtue of the writ of preliminary attachment on September 14, 1965; while the chattel mortgage was executed on September 30, 1965 and registered only on October 1, 1965. The execution of said chattel mortgage was without the knowledge and approval of the private respondents creditors much less the court, in which case said chattel mortgage is patently rescissible under paragraph 4 of Article 1381 of the New Civil Code. As

heretofore intimated, said chattel mortgage may likewise be rescinded as a fraudulent scheme to defeat the right of herein private respondents creditors under paragraph 3 of Article 1381 of the New Civil Code if it is shown that the creditor has no other remedy to completely recover his claim (*Panlilio vs. Victoria*, 35 Phil. 706), or because it is presumed to be fraudulent as the personal assets mortgaged has been levied upon under a writ of attachment 16 days prior to the execution of the chattel mortgage which was registered only on October 1, 1965, about 17 days after the writ of attachment (Art. 1387, New Civil Code: see *Gaston vs. Hernaez*, 58 Phil. 823; *Gaspar vs. Dorado, et. al.*, G.R. No. L-17884, Nov. 29, 1965, 15 SCRA 331).

WHEREFORE, the petition is hereby denied and the order dated December 27, 1965 is hereby affirmed, with costs against petitioner.

Makalintal, C.J., Castro, Teehankee, Esguerra, and Munoz Palma, JJ., concur.

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