

OFRECINO T. SANTOS, PETITIONER VS. THE COURT OF APPEALS, ET AL., RESPONDENTS.*G.R. No. L-6436. June 30, 1954*

Ponente: PARAS, C.J.

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On May 20, 1950, Ofrecino T. Santos (hereinafter to be referred to as petitioner) filed in the Court of First Instance of Cotabato an action for the recovery of the sum of P1,628 against Teodulo M. Cruz and Valentin C. Garcia (Civil Case No. 241). The petitioner secured a writ of preliminary attachment which was levied upon a tractor which, though believed by the petitioner to belong to the defendants in Civil Case No. 241, in fact was owned by the Philippine Reconstruction Corporation Inc. (hereinafter to be referred to as respondent), which in due time filed a third party claim. The petitioner filed an amended complaint including the respondent as a defendant, but upon motion filed by Teodulo M. Cruz and Valentin C. Garcia, Civil Case No. 241 was dismissed by the Court of First Instance of Cotabato for lack of jurisdiction, the amount involved being less than P2,000. The petitioner filed a similar action in the Justice of the Peace Court of Buayan, Cotabato, against the respondent as sole defendant, wherein the petitioner was awarded the sum of P1,638.10, with interest and costs, but this decision is still the subject matter of a pending certiorari proceeding in the Court of First Instance of Cotabato instituted by the respondent.

On May 9, 1951, the respondent filed in the Court of First Instance of Manila Civil Case No. 13778 against the petitioner, for damages resulting from the levy of its tractor under the writ of attachment issued in Civil Case No. 241. Paragraphs III and VII of the respondent's complaint in Civil Case No. 13778 read as follows:

"III

"That on or about the month of September, 1950 and in connection with the execution of a preliminary writ of attachment secured by the herein defendant Ofrecino T. Santos in Civil Case No. 241 of the Court of First Instance of Cotabato entitled Ofrecino T. Santos, plaintiff vs. Teodulo M. Cruz and Valentin C. Garcia, defendants, the above-named defendants conspiring, confabulating and conniving with one another procured and caused to be attached a certain Caterpillar D-8 tractor of herein plaintiff who was not a party in said case and that defendants herein fully knowing that the said tractor does not belong to any of the defendants Teodulo M. Cruz and Valentin C. Garcia in said Civil Case No. 241 of the Court of First Instance of Cotabato;

"VII

"That due to the said wrongful and malicious attachment levied by the herein defendants on plaintiffs' tractor and their subsequent refusal to release the same from attachment as above stated plaintiff was consequently forced to violate its contractual undertaking with a certain Mr. Tomas Gonzales as stated in the sworn third party claim so that it was compelled to pay a liquidated damages in the sum of Three Thousand Pesos (P3,000) aside from having lost a sure income from rent on said tractor in the sum of One Thousand Five Hundred Pesos (P1,500);"

The other necessary details are recited as follows in the decision of the Court of Appeals[1] promulgated on October 30, 1952 in CA-G.R. No. 9925-R, Ofrecino T. Santos, petitioner, vs. Philippine Reconstruction Corporation, Inc., and the Honorable Demetrio B. Encarnacion, Judge, Branch I, Court of First Instance of Manila, respondents :

"On June 10, 1951, petitioner (defendant in Civil Case No. 13778 of Manila) was duly summoned to answer the complaint filed in said Civil Case. A motion to dismiss, filed by defendant's counsel, was received on June 23, 1951, in the Court of First Instance of Manila. On the other hand, counsel for plaintiff Philippine Reconstruction Corporation (now respondent) filed on July 12, 1951, an ex-parte motion, praying that defendant Ofrecino T. Santos was declared in default on the ground that his motion to dismiss does not contain a notice for hearing as provided in Kule 26 of the Rules of Court, and therefore not a valid one. Copy of said order was received by defendant's counsel on August 2, 1951. On August 26th, plaintiffs counsel moved that the aforesaid Civil Case No. 13778 be set for hearing. In his turn, counsel for defendant Ofrecino T. Santos filed on September 1st a petition praying that the order of default dated July 23rd be set aside; that his motion to dismiss be given due course, either by sustaining or denying the same; and that if denied, defendant be allowed to file his answer.

"By virtue of an order dated February 12, 1952, the case was set for hearing on February 28th, and on the following day decision was rendered in favor of the plaintiff and against the defendants, ordering the later to pay the sum of P4,500 with legal rate of interest from the date of the filing of the complaint and to further pay the sum of P1 ,000.00 as attorney's fees and costs of the suit. A copy of this decision was on March 7, 1952, sent by registered mail to Ofrecino T. Santos' counsel who received the same in March 17th. Consequently, on April 5, 1952, defendant Ofrecino T. Santos, thru his counsel, moved for the reconsideration of the aforesaid decision, to which motion counsel for the plaintiff filed his opposition on April 20, 1952. On June 11, 1952,, said motion for reconsideration was denied.

"Ofrecino T. Santos now comes before us as petitioner, alleging that the respondent court committed a grave abuse of discretion when, as defendant in the aforesaid Civil Case No. 13778, he was arbitrarily declared in default; and when it declared his motion to dismiss not a valid one. Petitioner further claims that the respondent court again committed a grave abuse of discretion when, instead of acting upon his petition (Annex 'A') for relief from the order of default, it set the case for hearing and proceeded to hear plaintiff's evidence and rendered a decision. It is also alleged by petitioner that the Court of First Instance of Manila acted without jurisdiction, the cause of action in Civil Case No. 13778 having arisen from a supposed wrongful attachment ordered by the Court of First Instance of Cotabato in Civil Case No. 241, and for that reason, that the latter court has exclusive jurisdiction to determine whether its legal processes are wrongful or not; and even granting that the Court of First Instance of Manila had proper jurisdiction, the particular cause of action in said Civil Case No. 13778 is banned by the decision of the Justice of the Peace Court of Buayan, Cotabato."

From the decision of the Court of Appeals dismissing his petition for certiorari, the petitioner has interposed the present appeal by way of certiorari, assigning the following alleged errors:

"1. The Court of Appeals erred in finding the motion to dismiss dated June 19, 1951 in Civil Case No. 13778 of Manila as no motion at all.

"2. The Court of Appeals erred in sustaining the ruling of the Court of First Instance of Manila that Ofrecino T. Santos was in default in Civil Case No. 13778.

"3. The Court of Appeals erred in finding that the petition for relief from order dated August 28, 1951 was 'impliedly overruled when the respondent court set Civil Case No. 13778 for hearing, received plaintiff's evidence and finally rendered decision therein.'

"4. The Court of Appeals erred in holding Ofrecino T. Santos under estoppel to raise the 'issue of jurisdiction.'

"5. The Court of Appeals erred in sustaining a decision that was null and void, emanating as it did from a court which had no jurisdiction to try Civil Case No. 13778."

Without deciding whether the petitioner's motion to dismiss filed in Civil Case No. 13778 was a mere scrap of paper for lack of notice of hearing, it is clear that he could and should have appealed from the decision on the merits rendered therein by the Court of First Instance of Manila, of which he was duly notified, raising in said appeal the propriety of the ruling of default against him, the failure of the trial court to expressly dispose of his petition for relief, and the principal question of jurisdiction. It is elementary that certiorari will not lie where the remedy of appeal is available.

On the issue of jurisdiction, it is to be recalled that, when respondent's tractor was levied upon, it was not a party in Civil Case No. 241, and although an amended complaint was filed, no new writ of attachment was issued so as to cover respondent's properties. It is also significant that Civil Case No. 241 was dismissed by the Court of First Instance of Cotabato for lack of jurisdiction. We have no hesitancy in declaring that the Court of First Instance of Manila correctly took cognizance of Civil Case No. 13778, because the respondent sought damages, not on the allegation that the writ of attachment was illegally or wrongfully issued by the Court of First Instance of Cotabato in Civil Case No. 241, but on theory that said writ was caused by the petitioner to be levied upon the tractor of the respondent which was not a party defendant. The filing of the amended complaint did not cure the defect, since the seizure continued to be in virtue of the original writ, none having been issued under the amended complaint.

The petitioner is invoking the following pronouncement in our decision in *Cruz vs. Manila Surety & Fidelity Co., Inc.*, et al., 49 Off. Gaz. (3) 964; 92 Phil. 699:

"The procedure for recovery of damages on account of the issuance of a writ of attachment, injunction, receivership, and replevin proceedings, as interpreted in the cases adverted to, requires that the claim for damages should be presented in the same action which gave rise to the special proceeding in order that it may be included in the final judgment of the case, and it cannot be the subject of a separate action. The philosophy of the ruling seems to be that the court that had acted on the special proceeding which occasioned the damages has the exclusive jurisdiction to assess them because of its control of the case. This ruling is sound and tends to avoid multiplicity of action."

The citation is not controlling, for the reason that, apart from the circumstance that, as already stated, the respondent has never claimed that the writ of attachment was wrongfully issued in Civil Case No. 241, it appears that the latter case was dismissed for lack of jurisdiction, and no claim for damages could therefore properly have been presented in said case, because the Court of First Instance of Cotabato, thus lacking jurisdiction, was in fact prevented from rendering any final judgment therein which could include such damages. Avoidance of multiplicity of suit presupposes the competence of the court in the first or earlier case.

Wherefore, the appealed decision is affirmed, and it is so ordered with costs against the petitioner.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

[1] After the Court of First Instance of Manila rendered a decision in Civil Case No. 13778, sentencing the petitioner to pay to the defendant the sum of P4,500, with legal interest, attorney's fees in the sum of P1,000, and costs, the petitioner, instead of appealing instituted in the Court of Appeals a special civil action for certiorari.

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