

HECTOR L. ONG, PETITIONER, VS. MARILYN TATING AND ROBERT TATING, ET AL., RESPONDENTS.

G.R. No. L-61042. April 15, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

The issue in this case concerns the jurisdiction of an inferior Court to take cognizance of a motion impugning the sheriff's authority to execute a final judgment in an ejectment case — which commands payment of rentals in arrears — against personalty claimed as theirs by persons formerly residing in the leased premises together with the evicted defendant-lessee.

An action of desahucio was instituted in the City Court of Quezon City by petitioner Ong against his lessee, Evangeline Roces.[1] This in time culminated in a judgment by the Court of First Instance (Branch XVIII)[2] disposing of the case as follows:

"WHEREFORE, premises considered, the judgment of the City Court is set aside and in lieu thereof judgment is rendered ordering defendant Evangeline Roces and all persons claiming under her to vacate plaintiff's premises located at 169-D, Tolentino St., San Francisco del Monte, Quezon City; to pay rentals in arrears in the sum of P10,920.00 as of September 1978 and P260.00 a month from October 1978 until the premises are vacated with interest at 12% per annum; P1,000.00 as attorney's fees and the costs." [3]

The decision became final and executory, no appeal having been taken therefrom; and in due course, the records of the case were remanded to the City Court.

On Ong's application, the City Court directed execution of the judgment. Accordingly, the sheriff cleared the premises of its occupants, which included Anacleto Tating (Evangeline's stepfather and lawyer), Marilyn Tating (Anacleto's wife), and Robert Tating.[4]

The sheriff also levied on certain chattels found in the place: a "Citizen" stereo set; a "Sanyo" television set; a "Frigidaire" refrigerator; and a "Hitachi" electric desk fan. Marilyn and Robert Tating sought to retrieve these appliances from the sheriff, alleging that the articles belonged to them and not to the lessee, Evangeline Roces.[5] To this end, Robert filed with the sheriff a "Third Party Claim" dated September 13, 1979 as regards the "Citizen" stereo set; and Marilyn, a similar claim with respect to the other chattels.[6] When these proved unavailing, they filed with the City Court identical applications dated September 17, 1979, entitled "Urgent Motion for Suspension of Sheriff Sale and for Release of Properties Wrongfully Levied Upon on Execution," in which they set out their respective titles to the goods and prayed that the execution sale thereof scheduled on September 19, 1979 be abated and that, after hearing, said goods be released to them as the true and lawful owners thereof.[7]

To neutralize the Tatings' moves, and so that the execution sale might proceed as scheduled, Ong posted two (2) surety bonds[8] to indemnify the sheriff for any liability for damages.[9] But by Order dated September 19, 1979 the City Court restrained the sale and set the Tatings' motions for hearing.[10]

What Ong did was to present an "Omnibus Opposition, etc." dated October 2, 1979,[11] contending that the Tatings' motions should have been filed with the Court of First Instance since it was the latter's decision which was being executed; and that, in any event, the Tatings' remedy was "to file an action for damages against the indemnity bonds after the auction sale." He also theorized that —

" * * * Atty. Tating, and the third party claimants having stayed in the premises and having enjoyed the same should be required to pay the back rentals, attorney's fees and sheriff's and legal expenses * * * (and should not) escape by avoiding paying any amount as stated in the judgment * * *." [12]

Ong later filed a "Motion to Inhibit" dated January 9, 1980, which the City Court denied by Order dated January 23, 1980. The Court also directed Ong's counsel to explain certain apparently contumacious statements in the motion. The Order reads as follows:

"O R D E R

"Considering the Motion to Inhibit filed by the plaintiff, dated January 9, 1980, and the Manifestation filed by the third party claimants, Marilyn Tating and Robert Tating, dated January 16, 1980, this Court finds the motion without merit and hereby resolves to deny it.

"Furthermore, Atty. Manuel E. Yuzon, counsel for the plaintiff, is hereby ordered to explain in writing within ten (10) days from notice hereof why he should not be cited for indirect contempt of court for stating in his Motion to Inhibit that if this Court 'proceeds to hear and resolve the third-party claims, it is foregone conclusion that the third-party claimants will surely win and the plaintiff will lose,' thereby casting aspersions on the integrity of this Court and degrading the administration of justice.

"In the meantime, let the continuation of the hearing of the motion for suspension of sheriff's sale etc. be set for February 11, 1980, at 9:00 o'clock in the morning.

SO ORDERED." [13]

Ong promptly initiated proceedings to negate this Order. He filed with the Court of First Instance on February 7, 1980 a petition for certiorari and prohibition, with application for preliminary injunction.[14] Acting thereon, the Court (Branch IX) promulgated an Order dated April 2, 1980 directing the maintenance of the status quo and commanding that the City Court refrain "from hearing and deciding the third party claims and the urgent motion for suspension of Sheriff's Sale, etc. until the resolution of the injunction * * *." [15] It afterwards rendered a decision, dated December 15, 1981,[16] pertinently reading as follows:

"The issue in this petition boils down to this — Should the third-party claims be heard and decided by the lower court.

"While it is true that the respondents Marilyn and Robert Tating were not parties in the ejectment case because the lease was between the petitioner and Evangeline Roces, they stayed with her and the decision of the appellate court covered them as it ordered 'Evangeline Roces and all persons claiming under her to vacate plaintiff's premises' x x x Besides, the procedure followed by said private respondents in vindicating their rights over the four (4) levied appliances is not the one sanctioned by law for they should have filed a separate and independent action making parties the deputy sheriff and the petitioner and making them responsible for the execution (Santos et al., vs. Hon. Mojica, L-19618, Feb. 28, 1964).

"WHEREUPON, premises considered, the petitioner Hector L. Ong is entitled to relief. The decision of Branch XVIII of the CFI-Quezon City which is final and executory, stands.

"The preliminary injunction issued on April 2, 1980 is hereby ordered permanent." [17]

The Tatings appealed to the Court of Appeals by "a petition for review filed * * * on March 1, 1982." [18] In its

decision, promulgated on June 23, 1982, after due proceedings,[19] the Court of Appeals expressed puzzlement why the matter of the execution and related incidents were passed upon by the lower court, when the only issue was the correctness of the City Judge's refusal to inhibit himself.[20] It dismissed the petition, and sent the case back to the City Court for further proceedings." Said the Court:

"It is a puzzle to Us why the hearing went out of bounds. Instead of determining merely the propriety of the order of denial of the motion to inhibit, the parties and the Court of First Instance * * * went into the merits of the propriety of the execution of the decision of the City Court, the auction sale of the appliances claimed by the Tatings, the levy, the third party claim, the indemnity bond, and the motion to suspend the sale and the filing of the sheriff's bond - matters which are proper only to be treated in a separate proceeding.

"From the records, We see that if at all the matter of execution of the decision * * * (etc.) were mentioned, it was merely to give a background of the motion to inhibit Judge Laguio, Jr. from proceeding to take further participation in the incident of the execution, * * * and the incidents stemming therefrom.

"The propriety of the denial of the motion to inhibit was lost in the maze of the irrelevant facts and incidents taken during the hearing of this case in the court below.

"A thorough review of the decision of the Court of First Instance * * * Branch IX, in this certiorari case shows that the Presiding Judge * * * erroneously treated the pleadings before it in Civil Case No. 29245. Thus, We are constrained to set the same aside and remand the case to the City Court presided over by Judge Laguio, Jr. for further proceedings. Principally, We rule the denial of the motion for Judge Laguio, Jr. to inhibit himself from the ejectment case No. 28309, Quezon City Court, was well taken. The petition assailing the order of denial which is the main issue in Civil Case No. 29245 is without merit. * * * ."[21]

Ong is now before this Court, praying for the reversal of the decision of the Court of Appeals, and the perpetual inhibition of the City Judge "from further hearing and deciding the (Tatings') third-party claims".[22]

It will not do to dismiss the petition as the IAC did by declaring that the only issue involved is the propriety of the City Judge's denial of the motion for his inhibition, and pronouncing that denial to be correct. Not only is such a limitation of the issues disputed by Ong, but the resolution of that single point would leave unanswered several other nagging questions. The opportunity to resolve those questions having been presented, the Court will do precisely that, to the end that the controversy may be expeditiously laid to rest.

Three theories are advocated by Ong, namely:

1. From the decision of the Court of First Instance (Branch IX) on his petition for certiorari and prohibition, the Tatings' remedy was appeal (by writ of error), not a petition for review, to the Court of Appeals.
2. The City Court lost jurisdiction to hear and determine the Tatings' third-party claims upon the filing by him (Ong) of the bonds prescribed by Section 17, Rule 39, the purpose of which is precisely to hold the sheriff free from liability for damages for proceeding with the execution sale despite said third-party claims.
3. Corollarily, the Tatings' remedy was to file a separate suit to recover against said bonds posted by Ong, whatever damages might be suffered by them by reason of the effectuation of the execution sale.[23]

Ong is correct in arguing that the mode of appeal to the Court of Appeals available to the Tatings from the adverse judgment of the CFI in the action of certiorari and prohibition instituted by him, was not by "petition for review" under Section 22 of B. P. Blg. 129,[24] but an ordinary appeal (by writ of error) under Rule 41, Rules of Court and Section 39, of B.P. Blg. 129 (also, Section 20 of the Interim Rules). A "petition for review" is the correct mode of appeal from a judgment rendered by a CFI (RTC) in the exercise of appellate jurisdiction, i.e., when it decides a case appealed to it from the inferior court. In such a case, the appeal is not a matter of right, its

acceptance being discretionary on the Court of Appeals, which "may give it due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or judgment sought to be reviewed." On the other hand, when a CFI (RTC) adjudicates a case in the exercise of its original jurisdiction, the correct mode of elevating the judgment to the Court of Appeals is by ordinary appeal, or appeal by writ of error, involving merely the filing of a notice of appeal — except only if the appeal is taken in special proceedings and other cases wherein multiple appeals are allowed under the law, in which event the filing of a record on appeal is additionally required.[25] Of course, when the appeal would involve purely questions of law or any of the other cases (except criminal cases as stated hereunder) specified in Section 5(2), Article X of the Constitution,[26] it should be taken to the Supreme Court by petition for review on certiorari in accordance with Rules 42 and 45 of the Rules of Court.[27] However, in criminal cases in which the penalty imposed is death or life imprisonment, the appeal to the Supreme Court is by ordinary appeal on both questions of fact and law. In cases where the death penalty is imposed, there is an automatic review by the Supreme Court. (Sec. 3 of the 1985 Rules on Criminal Procedure)

The mode by which the Tatings thus brought up to the Court of Appeals the adverse judgment of the CFI — i.e., by petition for review — was erroneous. This aspect of the case apparently escaped the Appellate Court's attention; it did not treat of it at all. This is however of no moment. The need to finally resolve this case makes this defect inconsequential. In any event, the defect has been waived, no issue concerning it having been raised in the proceedings before the Court of Appeals.[28]

Ong's second contention — that the posting by him of a bond to indemnify the sheriff for damages for proceeding with an execution sale despite the existence of third-party claims on the property levied on (pursuant to Section 17, Rule 39) caused the Trial Court to lose jurisdiction to deal with the third-party claimants' plea for relief against what they deemed to be an act of trespass by the sheriff — is incorrect.

Certain it is that the Trial Court has plenary jurisdiction over the proceedings for the enforcement of its judgments. It has undeniable competence to act on motions for execution (whether execution be a matter of right or discretionary upon the Court), issue and quash writs, determine if property is exempt from execution, or fix the value of property claimed by third persons so that a bond equal to such value may be posted by a judgment creditor to indemnify the sheriff against liability for damages, resolve questions involving redemption, examine the judgment debtor and his debtors, and otherwise perform such other acts as may be necessary or incidental to the carrying out of its decisions. It may and should exercise control and supervision over the sheriff and other court officers and employees taking part in the execution proceedings, and correct them in the event that they should err in the discharge of their functions.

Now, it is axiomatic that money judgments are enforceable only against property unquestionably belonging to the judgment debtor. One man's goods shall not be sold for another man's debts, as the saying goes.[29] Therefore, the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor. But to the extent that he levies on assets of a third person, in which the judgment debtor has no interest, to that extent he acts as a trespasser, and to that extent he is amenable to control and correction by the Court.[30]

When the sheriff thus seizes property of a third person in which the judgment debtor holds no right or interest, and so incurs in error, the supervisory power of the Court which has authorized execution may be invoked by the third person. Upon due application by the third person, and after summary hearing, the Court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What the Court can do in these instances however is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The Court does not and cannot pass upon the question of title to

the property, with any character of finality. It can treat of that matter only in so far as may be necessary to decide if the Sheriff has acted correctly or not.[31] The Court can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. If the claimant's proofs do not however persuade the Court of his title or right of possession thereof, the claim will of course be denied.

This remedy is not that of intervention, which is dealt with in Rule 12 of the Rules of Court, and may be availed of only before or during trial, not thereafter, and certainly not when judgment is executory. It is rather simply an invocation of the Court's power of supervision and control over the actuations of its officers and employees to the end that it be assured that these conform to the law.[32]

Independently of the recourse just indicated, and even before or without availment thereof, the person who claims that his property has been wrongfully seized may resort to the remedy known as *terceria* set out in Section 17, Rule 39 of the Rules of Court, viz:

"SEC. 17. Proceedings where property claimed by third person. — If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

* * * * *

The remedies just mentioned are without prejudice to "any proper action" that a third-party claimant may deem suitable, to vindicate "his claim to the property." Such a "proper action", in the context of Section 17 of Rule 39, has been held to refer to an action distinct and separate from that in which the judgment is being enforced.

Such a "proper action" is, quite obviously, entirely distinct from that explicitly described in Section 17 of Rule 39, i.e., "an action for damages * * * brought (by a third-party claimant) * * * against the officer within one hundred twenty (120) days from the date of the filing of the bond * * * for the taking or keeping of the property" subject of the *terceria*. Quite obviously, too, this "proper action" would have for its object the recovery of the possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim; and it may be brought against the sheriff, of course, and such other parties as may be alleged to have colluded with the sheriff in the supposedly wrongful execution proceedings, such as the judgment creditor himself. And such a "proper action", as above pointed out, is and should be an entirely separate and distinct action from that in which execution has issued, if instituted by a stranger to the latter suit.[33]

"* * * (C)onstruing Section 17 of Rule 39 of the Revised Rules of Court, the rights of third-party claimant over certain properties levied upon by the sheriff to satisfy the judgment should not be decided in the action where the third-party claims have been presented, but in the separate action instituted by the claimants.

"This is evident from the very nature of the proceedings. In *Herald Publishing*, supra, We intimated that the levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under authority of the court only when the property levied upon unquestionably belongs to the defendant. If he attaches properties other than those of the defendant, he acts beyond the limits of his authority. Otherwise stated, the

court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor, and should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action.

"As we explained in the Quebral case (Quebral v. Garduno, 67 Phil., 316), since the third-party claimant is not one of the parties to the action, she could not strictly speaking, appeal from the order denying her claim, but should file a separate reivindicatory action against the execution creditor or the purchaser of her property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff.

"We reiterated this in Potenciano v. Dineros, et al. (97 Phil. 196; Agricultural Credit Administration v. Lasam, 28 SCRA 1098) when We ruled that 'such reivindicatory action is reserved to the third-party claimant by Section 15 of Rule 39 despite disapproval of his claim by the court itself (Planas v. Madrigal, 94 Phil. 754, Lara v. Bayona, G.R. No. L-7920, decided May 10, 1955).' This rule is dictated by reasons of convenience, as 'intervention is more likely to inject confusion into the issues between the parties in the case * * * with which the third-party claimant has nothing to do and thereby retard instead of facilitate the prompt dispatch of the controversy which is the underlying objective of the rules of pleading and practice' (Herald Publishing, supra, p. 101). Besides, intervention may not be permitted after trial has been concluded and a final judgment rendered in the case." [34]

In such separate action, the court may issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale. [34-A]

Upon the other hand, if the claim of impropriety on the part of the sheriff in the execution proceedings is made by a party to the action, not a stranger thereto, any relief therefrom may be applied for with, and obtained from, only the executing court; and this is true even if a new party has been impleaded in the suit. [35]

In any case, Ong's claim that the filing of the judgment creditor's bond operated to divest the Court of jurisdiction to control and supervise the conduct of the execution sale must be rejected. That bond had absolutely no effect on the Court's jurisdiction. It was merely "equivalent to the personal interference of the indemnitor and his bondsmen in the course of the proceeding by directing or requesting the sheriff to hold and sell the goods as if they were the property of the defendants in attachment. In doing this they (the indemnitor and his bondsmen) assume the direction and control of the sheriff's future action so far as it constitutes a trespass; and they became to that extent the principals and he their agent in the transaction. This makes them responsible for the continuance of the wrongful possession and for the sale and conversion of the goods; in other words, for all the real damages which plaintiff sustains (Lovejoy vs. Murray, 70 U.S. 129)." [36]

Ong's third theory — that the Tatangs' remedy in the event of the denial of their application for relief by the Trial Court is a separate action for recovery of possession of the goods by them claimed plus damages for wrongful detention — is correct and should be sustained, in line with the doctrine in Bayer, supra, [37] and the other cases which followed it. [38]

As regards the matter of the inhibition of the City Court Judge, the incident has been correctly determined by the Court of Appeals. No proper ground exists to disqualify His Honor from continuing to act in Civil Case No. 28309.

One last issue remains, and that is, whether the Tatangs, who were living with Evangeline Roces in the premises leased by the latter from Ong, are liable for the payment of rentals in arrears jointly or solidarily with said Evangeline Roces. They are not. They were never impleaded as parties and never served with summons in the suit for ejectment initiated by Ong against Evangeline Roces. The Court therefore never acquired jurisdiction over them. And while the judgment against Evangeline Roces, in so far as it decrees her ouster from the leased

premises, may be enforced not only against her but also against "any person or persons claiming under" her,[39] that judgment, in so far as it directs payment of money by way of arrearages in rents, is not binding on the Tatings and definitely not enforceable against them.

WHEREFORE, the petition is dismissed for lack of merit. The case shall be remanded to the Metropolitan Trial Court at Quezon City which shall forthwith resolve the Tatings' pending motions in Civil Case No. 28309, consistently with the principles herein set forth. Costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Case No. 28309 of Branch IX, Judge Laguio presiding.

[2] Case No. Q-25609 of Branch XVIII, Judge Paño presiding.

[3] Rollo, pp. 22, 25-26.

[4] Rollo, pp. 47, 81, 82, 89-90; 94.

[5] In accordance, obviously with Sec. 17, Rule 39 of the Rules of Court.

[6] Rollo, pp. 34-39.

[7] Rollo, pp. 27-33; 91.

[8] Rollo, pp. 40-44.

[9] Sec. 17, Rule 39, Rules of Court.

[10] Rollo, pp. 11-12; 67.

[11] Rollo, pp. 45-48.

[12] Rollo, pp. 47, 83.

[13] Rollo, pp. 58, 68-69, 110.

[14] Case No. Q-29245 of Branch IX, Judge Castro presiding.

[15] Rollo, pp. 52, 69.

[16] Rollo, pp. 52-54, 70.

[17] Rollo, p. 54.

[18] Rollo, pp. 51, 54.

[19] Rollo, pp. 51-60.

[20] See footnotes 13 and 14, and related text, *supra*.

[21] Rollo, pp. 59-60; 70-71.

[22] He has appealed in accordance with Rule 45 of the Rules of Court.

[23] Rollo, pp. 12-19.

[24] Sec. 22(b) of the Interim Rules; Sec. 29, Judiciary Code of 1948 as amended by RA 5433.

[25] Third par., Sec. 39, B.P. Blg. 129; Sec. 19(b) of the Interim Rules.

[26] i.e., cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question; cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto; cases in which the jurisdiction of any inferior court is in issue.

[27] Not under Rule 65 of the Rules.

[28] See *Maniñgat v. Castillo*, 75 Phil. 532.

[29] *Bayer Phil., Inc. v. Agana*, 63 SCRA 355; *Special Services Corp. v. Centro La Paz*, 121 SCRA 242.

[30] See *Alzua and Arnalot v. Johnson*, 21 Phil. 311; *Bayer Phil., Inc. v. Agana*, supra.

[31] See *Quebral v. Garduno*, 67 Phil. 316; *Lara v. Bayona*, 97 Phil. 951; *Planas v. Madrigal*, 94 Phil. 754; *Potenciano v. Dineros*, 97 Phil. 196.

[32] See *in re Parazo*, 82 Phil. 230; *U.S. v. Manalo*, 16 Phil. 645; *Dimayuga v. Raymundo, et al.*, 76 Phil. 143; 21 C.J.S. 138.

[33] *Bayer Phil. v. Agana*, supra, 63 SCRA 355 (citing *Manila Herald Publishing, etc. v. Ramos*, 88 Phil. 94); *Polaris Marketing Corp. v. Plan*, 69 SCRA 93; *Lorenzana v. Cayetano*, 78 SCRA 485; *Arabay v. Salvador*, 82 SCRA 138; *Roque v. C.A.*, 93 SCRA 540.

[34] *Bayer Phil., Inc. v. Agana*, 63 SCRA 366-367.

[34-A] *Abiera v. Court of Appeals*, 45 SCRA 314; *Bayer Phil. v. Agana*, supra.

[35] *Rejuso v. Estipona*, 72 SCRA 509; see also *National Power Corp. v. De Veyra*, 3 SCRA 646.

[36] *Alzua, et al. v. Johnson*, 21 Phil. 311.

[37] 63 SCRA 356.

[38] See footnote No. 33.

[39] Sec. 1, Rule 70; see also, Sec. 49 (b), Rule 39, Rules of Court.

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