

**MERCEDES RUTH COBB-PEREZ AND DAMASO P. PEREZ,
PETITIONERS, VS. HON. GREGORIO LANTIN, JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, RICARDO P. HERMOSO AND THE
CITY SHERIFF OF M...**

G.R. No. L-22320. May 22, 1968

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/32fee6517a7d/>

CASTRO, J.:

On January 10, 1964 the spouses Mercedes Ruth Cobb-Perez and Damaso P. Perez interposed the present petition for certiorari with urgent writ of preliminary injunction from the order of January 4, 1964 of the respondent Judge Gregorio T. Lantin of the Court of First Instance of Manila, which order denied a motion for reconsideration of a previous order rejecting a motion to quash the writ of execution herein controverted.

A chronology of the essential antecedent events is necessary for a clear understanding of the case at bar.

On February 25, 1959 the respondent Ricardo P. Hermoso commenced civil case 39407 in the Court of First Instance of Manila (Branch VII presided by the respondent Judge) against the petitioner Damaso P. Perez and one Gregorio Subong, for the recovery of the principal sum of P17,309.44 representing unpaid purchases of leather materials used in the shoe manufacturing business of the said petitioner. Because at the hearing neither the defendants nor their counsel appeared despite due notice to the latter, Hermoso was permitted to present his evidence ex parte. On April 11, 1960 judgment was rendered ordering Perez and Subong to pay Hermoso jointly and severally the sum of P17,309.44 with interest, attorney's fees and costs.

On June 21, 1960 Perez and Subong appealed to the Court of Appeals, which dismissed their appeal because it was filed beyond the reglementary period. Then on February 4, 1961 the defendants elevated the case to this Court on petition for certiorari, which was denied for lack of merit.

After the case was remanded to the court of origin, Hermoso moved for execution of judgment, which was granted on July 1, 1961, and the corresponding writ of execution was issued on August 15, 1961. Meantime, on July 11, 1961, Perez and Subong filed a petition for relief from judgment, alleging excusable negligence. This petition was denied by the respondent Judge on August 3, 1961. From the order of denial, Perez and Subong on August 21, 1961 served notice of appeal to the Court of Appeals.

On August 23, 1961 the respondent Sheriff of Manila levied upon 3,573 shares of common stock registered in the name of Damaso P. Perez with the Republic Bank. On August 30, 1961 Perez interposed an urgent motion to stay execution, alleging that the levy on said shares was highly excessive and unjust, considering that said shares have a total value of more than P357,300 while the judgment debt was only P17,309.44. On September 2, 1961 the Sheriff served and published the first notice of sale scheduling the auction sale of said shares for September 8, 1961. However, by order of September 7, 1961, the respondent Judge suspended the sale on execution pending resolution of the abovementioned urgent motion to stay execution.

On September 29, 1961 the respondent Judge promulgated two orders: the first denied the appeal of Perez and Subong from the abovementioned order of August 3, 1961 rejecting their petition for relief from judgment, and the second denied Perez' urgent motion to stay execution.

Consequently, on October 4, 1961 the respondent Sheriff served a second notice of sale resetting the auction for October 10, 1961. This was cancelled by the Court of Appeals which issued on October 9, 1961 a writ of preliminary injunction, pending hearing of Perez' petition for mandamus and certiorari with preliminary injunction (CA?G.R. 29962-R) filed on October 5, 1961 against the respondents Judge and Sheriff, in which petition Perez alleged that (1) the levy upon his 3,573 shares of stock was manifestly and patently unjust, and (2) the respondent Judge committed grave abuse of discretion in denying his statutory right to appeal.

On November 15, 1962 the Court of Appeals rendered judgment sustaining Perez' position with respect to the extent of the levy at the same time that it upheld the denial of his motion to appeal.

The case was remanded for the second time to the court of origin on January 14, 1963. Subsequently, on January 18, 1963, the Sheriff published the third notice of sale, this time for only 210 shares of stocks, setting the public sale for January 24, 1963.

Two days before the scheduled sale on execution, or on January 22, 1963, a new twist was added to the already protracted litigation when the petitioner Mercedes Ruth Cobb-Perez, the wife of Damaso P. Perez, filed with the Court of First Instance of Rizal a complaint for injunction with ex parte writ of preliminary injunction against Hermoso, the Republic Bank and the Sheriff of Manila (civil case 7532), wherein she contended that the levied shares are conjugal assets which are not answerable for the judgment debt of Damaso Perez, an obligation contracted not for the benefit or interest of their conjugal partnership. On the following day, January 23, 1963, Judge Eulogio Mencias of the Court of First Instance of Rizal granted the ex parte writ of preliminary injunction, enjoining once more the respondent Sheriff from carrying out the execution sale. However, on October 4, 1963, Judge Mencias lifted the writ, in obedience to the doctrine enunciated in *Acosta vs. Alvendia* (L-14598, October 31, 1960) to the effect that courts of first instance have no power to restrain acts outside their territorial jurisdictions. Incidentally, the abovementioned civil case 7532 was dismissed on November 9, 1963, upon motion of the complainant herself.

A month before the aforementioned writ was lifted, or on September 3, 1963, Mrs. Perez filed in the basic civil case 39407 an urgent motion to recall or lift the writ of execution issued on August 15, 1961, alleging the same reasons she advanced in civil case 7532 then pending in the Court of First Instance of Rizal, which are the self-same grounds upon which the herein petitioners anchor the petition at bar -- the conjugal nature of the levied shares of stock and the personal nature of the obligation of Damaso Perez. Neither Mrs. Perez nor her counsel attended the scheduled hearings. On October 19, 1963 the respondent Judge promulgated an order denying the motion on the ground that "Mercedes Ruth Cobb-Perez is not a part in this case and that this [the motion to lift execution] is not the remedy prescribed by the Rules of Court in its Section 15 of Rule 39 for the protection of her right".

The writ of preliminary injunction having been lifted by the Court of First Instance of Rizal, and the urgent motion to lift the writ of execution having been denied by the court a quo, the respondent Sheriff on October 18, 1963 caused the publication for the fourth time of a notice of sale setting the execution sale of 220 shares of stock for October 29, 1963.

On October 23, 1963 Mrs. Perez filed with the respondent Sheriff a third-party claim over the aforesaid 220 shares of stock, but the latter was determined to proceed with the scheduled auction sale as he was protected by an indemnity bond filed by the respondent Hermoso. On October 25, 1963 Mrs. Perez, assisted by her husband,

commended civil case 55292, denominated an action to vindicate third-party claim with petition for preliminary injunction, in Branch XXII of the Court of First Instance of Manila, presided by Judge Federico Alik-pala. As a consequence of the new action, the projected execution sale was suspended for the fourth time. On November 8, 1963 Judge Alikpala denied the preliminary injunction prayed for in the aforesaid civil case 55292, on the grounds that (1) he has no power to interfere by injunction with the judgment or decree of a court of concurrent or coordinate jurisdiction; and (2) the remedy of plaintiff (Mrs. Perez) is to lodge the third-party claim filed by her with the court which issued the execution, "as it has the inherent control of its ministerial officers and to do all things reasonably necessary for the administration of justice."

The aforesaid civil case 55292 was dismissed on March 20, 1964, upon agreement of the parties after the institution of the petition at bar.

On the same day (November 8, 1963), Damaso Perez filed in the basic civil case 39407 an "Urgent Motion for Reconsideration" of the order of October 19, 1963 which denied his wife's motion to recall the controverted writ of execution. In this latest motion, Perez adopted his wife's previous motion, and at the same time offered in lieu of the levied stocks his alleged cash dividends in the Republic Bank in the sum of P19,985. In the same motion he asked for the suspension of the fifth scheduled auction sale set for November 11, 1963, which was granted *ex parte*.

On January 4, 1964, the motion for reconsideration was denied by the respondent Judge.

After the respondent Sheriff had scheduled (for the sixth time) the execution sale of the levied 240 shares of stock, the herein petitioners on January 10, 1965 interposed the present petition, which was given due course on January 15, 1964; the writ of preliminary injunction prayed for was issued upon petitioners posting a bond of P10,000.

The movants-petitioners main contention is that the respondent judge committed grave abuse of discretion in refusing to recall the controverted writ of execution despite their avowal that the levied 240 shares of stock belong to their conjugal partnership and as such cannot be made to answer for a judgment debt which is a personal obligation only of Damaso Perez.

After a thorough review of the record, we hold that the respondent Judge acted correctly in refusing to quash the writ in dispute.

It is conceded that courts have jurisdiction to entertain motions to quash their writs of execution because every court has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.[1] However, the exercise of this power is well circumscribed. Thus, the proper court may quash the writ only in certain situations, as when it appears that (a) it has been improvidently issued, or (b) it is defective in substance, or (c) it has been issued against the wrong party, or (d) the judgment debt has been paid, or (e) the writ has been issued without authority, or (f) there has been a change in the situation of the parties which makes such execution inequitable, or (g) the controversy has never been submitted to the judgment of the court, and therefore no judgment at all has ever been rendered thereon.[2] In the instant controversy, not one of these accepted grounds exists.

Significantly, the spouses have not questioned the intrinsic validity or regularity of the writ of execution. They have alleged none of the circumstances earlier enumerated or other similar grounds which may warrant the quashal of the writ in dispute.

In reality, what they attacked is not the writ of execution, the validity and regularity of which are unchallenged, but the levy made by the respondent Sheriff. In this regard, the remedy is not the recall of the writ, but an independent action to enjoin the Sheriff from proceeding with the projected sale, in which action the conjugal

nature of the levied stocks should be established as a basis for the subsequent issuance of a permanent injunction, in the event of a successful claim. Incidentally, in the course of the protracted litigation, the petitioners had already availed of this remedy in civil cases 7532 and 55292, only to abandon it as they incessantly sought other, and often simultaneous, devices of thwarting satisfaction of the judgment debt.

Considering the antecedent facts, particularly CA-G.R. 29962-R, even the remedy indicated above must fail, as Damaso Perez is now estopped from asserting that the levied shares are conjugal assets. All along he has nurtured the impression that the said shares are his exclusive property, which representation was enhanced by the fact that the same are registered in his name alone.

It bears emphasis that in CA-G.R. 29962-R, Damaso Perez practically asserted exclusive ownership of the levied shares; although he challenged the legality and propriety of the levy with respect to its excessive coverage, he never raised the question of the conjugal nature of the levied shares. Having represented himself before the court a quo and in the Court of Appeals as the exclusive owner of the shares in dispute, he is now precluded from asserting that the levied shares are conjugal assets, an assertion that he should have advanced with expected alacrity when he first questioned the legality of the levy.

Coming now to the other petitioner, Mrs. Perez, although she was not a party in CA-G.R. 29962-R, the judgment therein similarly binds her for she stands in privity with her husband. Moreover, she cannot feign utter ignorance of the affairs of her husband as to justify her delay in questioning the legality of the levy on the ground aforesaid in civil case 7532, which case was commenced only on January 22, 1963, 17 months after the original levy was made on August 23, 1961.

Even granting that the court a quo could properly take cognizance of the said motion to quash the writ of execution, the movants-petitioners failed to substantiate their claim that the levied shares are conjugal assets and that the judgment debt is a personal obligation only of Damaso Perez.

Anent their claim that the shares in question are conjugal assets, the spouses Perez adduced not a modicum of evidence, although they repeatedly invoked article 160 of the New Civil Code which provides that "All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." As interpreted by this Court, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. In other words, proof of acquisition during coverture is a condition sine qua non for the operation of the presumption in favor of conjugal ownership. Thus in *Camia de Reyes vs. Reyes de Ilano*,^[3] it was held that "according to law and jurisprudence, it is sufficient to prove that the property was acquired during the marriage in order that the same may be deemed conjugal property." In the recent case of *Maramba vs. Lozano, et al.*,^[4] this Court, thru Mr. Justice Makalintal, reiterated that "the presumption under Article 160 of the Civil Code refers to property acquired during the marriage," and then concluded that since "there is no showing as to when the property in question was acquired. . . the fact that the title is in the wife's name alone is determinative." Similarly, in the case at bar, since there is no evidence as to when the shares of stock were acquired, the fact that they are registered in the name of the husband alone is an indication that the shares belong exclusively to said spouse.

Conceding, however, that the shares in question are conjugal assets, they must still prove that their ganancial partnership is not liable for the payment of the aforesaid judgment debt. This, they were unable to do. Their contention that the judgment debt is a personal obligation of only one of them is devoid of evidentiary foundation. It is, to say the least, a futile attempt to rebut the presumption that the husband, as head of the family and administrator of the conjugal partnership, contracts obligations for the benefit of his family or the partnership.^[5] The aforesaid obligation was contracted in the purchase of leather used in the shoe manufacturing business of the

petitioner husband. Said business is an ordinary commercial enterprise for gain, in the pursuit of which Damaso Perez had the right to embark the partnership.[6] It is well-set-tled that the debts contracted by the husband for and in the exercise of the industry or profession by which he contributes to the support of the family, cannot be deemed to be his exclu-sive and private debts.[7]

We feel compelled to observe that during the protracted li-tigation below, the petitioners resorted to a series of actions and petitions, at some stages alternately, abetted by their counsel, for the sole purpose of thwarting the execution of a simple money judgment which has long become final and executory. Some of the actions were filed, only to be abandoned or with-drawn. The petitioners and their counsel, far from viewing courts as sanctuaries for those who seek justice, have tried to use them to subvert the very ends of justice.

ACCORDINGLY, the instant petition is dismissed, and the writ of preliminary injunction heretofore issued is hereby dissolved. Treble costs are assessed against the petitioners, which shall be paid by their counsel.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Angeles, JJ., concur.
Fernando, J., is on official leave.

[1] Dimayuga vs. Raymundo, 76 Phil., 143.

[2] Moran, comments On The Rules of Court, Vol. 2, p. 258, and the cited therein.

[3] 63 Phil., 629, 639.

[4] L-21533 June 29, 1967, 20 SCRA 474.

[5] See J.B.L. Reyes and R.C. Puno, An Outline of Philippine Civil Law, 1964 ed., Vol. I, p. 186; Tolentino, Civil Code of the Philippines, 1960 ed., Vol. I, pp. 402-403; Francis-co, Civil Code of the Philippines, 1953 ed., Bk. I, pp. 522?523.

[6] Abella de Diaz vs. Erlanger and Galinger, 56 Phil. 326.

[7] Javier vs. Osmeña, 34 Phil. 336.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.