

JOSEFINA A. PRADO, PLAINTIFF-APPELLANT, VS. SHERIFF OLIVER N. LANDINGIN, SHERIFF IV OF THE REGIONAL TRIAL COURT OF BAGUIO CITY, AND ABELARDO A. GAPUZ, DEFENDANTS-APPELLEES.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated April 12, 2012 by the Regional Trial Court of Urdaneta City, Pangasinan in Civil Case No. U-8991 which dismissed, for lack of jurisdiction, the Complaint for Declaration of Nullity of Notice of Levy, Auction Sale and Sheriff's Certificate, and Damages.

The facts and antecedents of the case are accurately summarized by the court a quo as follows:

Defendant Abelardo Gapuz (Abelardo) and his wife Magdalena Gapuz (Magdalena) filed before the Regional Trial Court of Baguio City a complaint for Recovery of Possession and Damages against Rodolfo Prado (Rodolfo), husband of herein plaintiff Josefina Prado (Josefina). The case was docketed as Civil Case No. 4475-R and raffled off to Branch 7 of said court (RTC-Baguio). Subsequently, RTC-Baguio rendered a Decision dated February 6, 2004, disposing of the case as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- a) Declaring the plaintiffs the legal awardee of Lot 153, Block 3 from the government and therefore entitled to the possession thereof;
- b) Ordering the defendant Prado to vacate immediately the 90 sq. m. portion of Lot 153, Block 3 which he occupies in bad faith, and to deliver the possession of said portion to the plaintiffs;
- c) In case the defendant Prado would not remove the improvement he constructed on the 90 sq. m. portion of Lot 153, Block 3, and deliver the possession to the plaintiffs, giving the plaintiffs the right to remove said improvements at the expense of the defendant Prado;
- d) Ordering the defendant Prado to pay to the plaintiffs as follows:
 - (1) P140,352.00 plus yearly increase of 10% representing rentals from August, 1989 to September, 2001; plus 6% legal interest per annum legal interest thereon;
 - (2) P23,392.00 plus 6% legal interest per annum – representing rentals and interest thereon from October, 2001 up to October, 2003.
 - (3) P50,000.00 attorneys fee and P1,500.00 times the number of time (sic) plaintiffs' lawyer actually participated in the trial of the case, as appearance fee, as expenses of litigation.
- e) To pay the costs of suit.

SO ORDERED.

Rodolfo appealed the decision to the Court of Appeals but said court dismissed the appeal and affirmed the decision of the RTC-Baguio. Rodolfo's motion for reconsideration was denied. Undaunted, Rodolfo brought the

matter to the Supreme Court by way of petition for review but his petition was, likewise, denied. The denial became final and executory on March 30, 2007.

On September 28, 2007, the RTC-Baguio issued a writ of execution upon motion of defendant Abelardo. Thereupon, defendant Sheriff Oliver Landingin (Sheriff) issued a Notice of Levy Upon Realty dated October 23, 2007, levying upon the parcels of land covered by Transfer Certificate of Title (TCT) No. T-219944 and TCT No. T-219946.

Subsequently, A Notice of Sale on Execution of Real Property was issued over the property covered by TCT No. T-219946 which is situated at Barrio Cablong, Pozorrubio, Pangasinan, containing an area of Five Thousand and Thirty Five (5,035) square meters. The subject property is the conjugal property of Rodolfo and plaintiff Josefina.

At the public auction held on December 19, 2007, the subject property was sold to defendant Abelardo who was the highest bidder in the amount of Six Hundred Sixteen Thousand Eight Hundred Nine Pesos (P616,809.00). A Sheriff's Certificate of Sale was issued in his favor.

Plaintiff Josefina now claims that the levy on execution, the auction sale and the resultant certificate of sale, are not valid, hence she filed the present complaint, praying that the notice of levy, the auction sale and the certificate of sale be declared null and void; the notice of levy on TCT No. T-219946 be cancelled; TCT No. T-219946 and the ownership of the subject be restored to her; and defendants be ordered to pay damages.

Plaintiff posits that the conjugal partnership should not be held liable for the personal obligation of her husband. It is her contention that the pecuniary liabilities adjudged against her husband by the RTC-Baguio in Civil Case No. 4475-R is the latter's personal obligation and, thus, the conjugal property should not be made to answer for its settlement.[2]

In his Answer with Motion to Dismiss,[3] defendant-appellee Abelardo A. Gapuz incorporated the following special and affirmative defenses:

X x x

- The plaintiff has no cause of action against the defendants because they were just implementing a valid and final decision of a co-equal court, affirmed by no less than the Court of Appeals and the Supreme Court;

- That the decision from which the Writ of Execution being questioned was based is an act of plaintiff's husband as head of the family and for the benefit of the conjugal partnership of gains, that is, constructing their residential house within the lot of the defendant Gapuz in bad faith. This is so because the plaintiff, her husband, their children, sons and daughters-in-law, as well as grandchildren are all living therein and are therefore benefiting from said act [of] plaintiff's husband. X x x

- The complaint should likewise be dismissed for having violated Section 4, Rule 3 of the 1997 Rules of Civil Procedure requiring [that] the husband and wife shall sue or be sued jointly and this case is not one among the exceptions when the plaintiff could sue alone without joining her husband. As such, this case should likewise be dismissed even on this ground alone.

- The complaint should be dismissed for failure to pay the correct docket and filing fees. X x x

13. The complaint should likewise be dismissed for violation of the Notarial Law. The complaint is a 'sham' or 'unsigned' pleading because the same was not properly verified in accordance with the Rules.

During the trial, plaintiff-appellant testified and presented her husband Rodolfo. Meanwhile, defendant-appellee testified and insisted that the court a quo had no jurisdiction over the subject matter of the case.

Subsequently, on April 12, 2012, the court a quo rendered its now assailed Decision which dismissed the complaint for lack of jurisdiction. It held that:

Unquestionably, the execution is under the authority and jurisdiction of the executing court until its final stage, in this case, the RTC-Baguio. Can this court then intervene in the acts of RTC-Baguio which is a co-equal court? The answer is in the negative.

Section 16, Rule 39 of the Rules of Court authorizes a third person, who is not the judgment debtor or his agent, to vindicate his claim to a property levied through an entirely separate and distinct action. X x x

x x x x x x x x

Clearly, plaintiff Josefina was not impleaded in Civil Case No. 4475-R. Be that as it may, she cannot file a separate action like the present case to assert her right over the levied property because she is not a third-party or a 'stranger' as contemplated in the aforecited rule. This is the ruling of the Supreme Court in Ching vs. Court of Appeals x x x.

x x x x x x x x

Verily, Josefina cannot maintain the present suit. The judgment or order of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed but is restricted to the court in which the judgment or order is rendered or issued. The filing of a mere motion by Josefina in Civil Case No. 4475-R before the RTC-Baguio to annul the execution, the auction sale, and the certificate of sale was the proper remedy. Resultantly, this court lacked jurisdiction over the nature of the action in the present case and the RTC-Baguio which rendered the decision and ordered the execution sale should settle the whole controversy.[4]

Not satisfied with the decision of the trial court, plaintiff-appellant filed the present appeal, alleging that:

- THE TRIAL COURT COMMITTED REVERSIBLE ERRORS OF FACTS AND LAW IN DISMISSING CIVIL CASE NO. U-8991 ON THE GROUND OF LACK OF JURISDICTION;
- THE TRIAL COURT COMMITTED REVERSIBLE ERRORS OF FACTS AND LAW IN FAILING TO RENDER THEREON A JUDGMENT ON THE MERITS AS WARRANTED BY THE EVIDENCE PRESENTED BY THE APPELLANT.[5]

In lieu of an Appellee's Brief, defendant-appellee filed a Manifestation,[6] praying that he be allowed to adopt the Answer with Motion to Dismiss which he filed with the court a quo. On January 23, 2014, this Court issued a Resolution[7] noting the Manifestation.

So, the issue in this appeal is whether or not the court a quo committed reversible error in dismissing the complaint for lack of jurisdiction.

The appeal is bereft of merit.

As the facts show, the notice of levy and the subsequent auction sale of the conjugal property of plaintiff-appellant and her husband Rodolfo located in Pozorrubio, Pangasinan, and embraced under TCT No. 219946, were pursuant to the execution of the final and executory judgment of the Regional Trial Court of Baguio City in Civil Case No. 4475-R. The rule is, during the execution stage, the power to supervise, even correct, the proceedings is vested with the court which rendered the decision. Thus, in Balais vs. Velasco,[8] the Supreme Court held that:

Jurisprudence is replete with the rule that a case in which an execution has been issued is considered as still

pending so that all proceedings on the execution are proceedings in the suit. Moreover, there is no dispute with the view that the tribunal which rendered the decision or award has a general supervisory control over the process of its execution, and this includes the power to determine every question of fact and law which may be involved in the execution. This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct error of its ministerial officers and to control its own processes. Hence, any irregularities which attended the execution of the decision or award brought out by the enforcement of a dead (sic) writ of execution must be litigated in the court which issued it. (Emphasis supplied)

Clearly, it is improper for the losing party, that is, the judgment obligor, to file a separate action in a separate court to assail the execution. It has been held that a court has the inherent power to correct errors of its ministerial officers and to control its own processes, and any claimed irregularities in the execution of a decision or award must be litigated in the court that issued it.[9] As correctly noted by the court a quo, the filing of a mere motion in Civil Case No. 4475-R to annul or set aside the notice of levy, auction sale and certificate of sale would have sufficed.

The plaintiff-appellant, however, is of the opinion that she is a stranger to Civil Case No. 4475-R and that, to protect the conjugal property, she may prosecute her claims in a separate action.

The Court is not persuaded.

We quote the ruling in *Ching vs. Court of Appeals*,[10] which is also cited in the appealed decision:

Is a spouse, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a 'stranger?' In *Mariano v. Court of Appeals*, we answered this question in the negative. In that case, the CFI of Caloocan City declared the wife to be the judgment obligor and, consequently, a writ of execution was issued against her. Thereupon, the sheriff proceeded to levy upon the conjugal properties of the wife and her husband. The wife initially filed a petition for certiorari with the Court of Appeals praying for the annulment of the writ of execution. However, the petition was adjudged to be without merit and was accordingly dismissed. The husband then filed a complaint with the CFI of Quezon City for the annulment of the writ of execution, alleging therein that the conjugal properties cannot be made to answer for obligations exclusively contracted by the wife. The executing party moved to dismiss the annulment case, but the motion was denied. On appeal, the Court of Appeals, in *Mariano*, ruled that the CFI of Quezon City, in continuing to hear the annulment case, had not interfered with the executing court. We reversed the Court of Appeals' ruling and held that there was interference by the CFI of Quezon City with the execution of the CFI of Caloocan City. We ruled that the husband of the judgment debtor cannot be deemed a 'stranger' to the case prosecuted and adjudged against his wife, which would allow the filing of a separate and independent action.

The facts of the *Mariano* case are similar to this case. Clearly, it was inappropriate for petitioners to institute a separate case for annulment when they could have easily questioned the execution of their conjugal property in the collection case. We note in fact that the trial court in the *Rizal* annulment case specifically informed petitioners that Encarnacion Ching's rights could be ventilated in the Manila collection case by the mere expedient of intervening therein. Apparently, petitioners ignored the trial court's advice, as Encarnacion Ching did not intervene therein and petitioners instituted another annulment case after their conjugal property was levied upon and sold on execution.

There have been instances where we ruled that a spouse may file a separate case against a wrongful execution. However, in those cases, we allowed the institution of a separate and independent action because what were executed upon were the paraphernal or exclusive property of a spouse who was not a party to the case. In those instances, said spouse can truly be deemed a 'stranger.' In the present case, the levy and sale on execution was made upon the conjugal property. (Emphasis supplied)

There is also basis in family law for holding that the conjugal partnership between plaintiff-appellant and her husband Rodolfo is bound by the decision in Civil Case No. 4475-R, even though only Rodolfo was impleaded as defendant. Article 121 of the Family Code (formerly Article 161 of the Civil Code) provides that:

Art. 121. The conjugal partnership shall be liable for:

- (1) The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
- (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;
- (3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited; (4) All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;
- (5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;
- (6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for self-improvement;
- (7) Ante-nuptial debts of either spouse insofar as they have redounded to the benefit of the family;
- (8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and
- (9) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

As the record shows, the obligation sought to be collected is one which benefited the conjugal partnership of plaintiff-appellant and her husband Rodolfo. More specifically, the amounts of P140,352.00 (plus interest) and P23,392.00 (plus interest) represent the rentals for the use by plaintiff-appellant's family of defendant-appellee's property from August 1989 to September 2001, and October 2001 to October 2003, respectively. Clearly, these amounts are chargeable against the conjugal partnership and plaintiff-appellant is bound by any action to collect the same.

Plaintiff-appellant's argument that the complaint is really one affecting title to, or possession of, real property and should be filed with the court having territorial jurisdiction over the place where the real property is located deserves scant consideration. Based on the allegations of the complaint, it is really intended to assail the levy on—and the subsequent auction sale of—TCT No. 219946. The complaint seeks to assail the execution proceedings, the issue of title to or possession of the real property is merely incidental thereto.

Besides, even assuming *arguendo* that it is an action affecting title to, or possession of, real property, the same is dismissible for failure of the plaintiff-appellant to allege in her complaint the assessed value of the property. As held in *Barangay Piapi vs. Talip*,^[11] where the ultimate objective of the plaintiff is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof. Hence, it was ruled that if the action involves the title to or interest in real property, the plaintiff should allege therein its assessed value.

WHEREFORE, the instant appeal is DISMISSED for lack of merit.

SO ORDERED.

Barrios, and Diy, JJ., concur.

[1] Rollo, p. 44-52.

[2] Decision, pp. 1-3; Rollo, 44-46.

[3] Record, pp. 40-49

[4] Decision, pp.6-9; Rollo, pp. 49-52.

[5] Appellant's Brief, p. 1; Rollo, p. 26.

[6] Rollo, pp. 56-57.

[7] Rollo, p. 59.

[8] G.R. No. 118491, January 31, 1996.

[9] Panado vs. Court of Appeals, G.R. No. 127936, October 14, 1998.

[10] G.R. No. 118830, February 24, 2003.

[11] G.R. No. 138248, September 7, 2005.

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