

CENTRAL SAWMILLS, INC., PLAINTIFF-APPELLEE, VS. ALTO SURETY & INSURANCE CO., ET ALS., DEFENDANTS, ALTO SURETY & INSURANCE CO., DEFENDANT-APPELLANT.

G.R. No. L-24508. April 25, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

This appeal from the order of the Court of First Instance of Manila dated October 4, 1960 in its Civil Case No. 27374, entitled Central Sawmills, Inc., vs. Alto Surety & Insurance Co., et al., ordering the appointment of a receiver of the properties of defend-ant-appellant Alto Surety & Insurance Company as well as from the order of October 25, 1960 denying the mo-tion for reconsideration thereof was certified to this Court by the Court of Appeals in a resolution, the per-tinent portions of which read thus:

"The undisputed evidence presented during the hearing on the petition for receivership is summarized by the court a quo, as follows:

"That a decision was rendered in the above-entitled case in favor of plaintiff and against the defend-ants, jointly and solidarily, one of which is the defendant Alto Surety & Insurance Co., Inc. (Exhibit A-Receivership); that a writ of execution (Exhibit B-Receivership) was issued to enforce said judgment; that said writ of execution was returned by the Sheriff of Manila unsatisfied (Exhibit C-Receivership); that on August 4, 1958, the Insurance Com-missioner wrote a letter addressed to Alto Surety & Insurance Co., Inc. (Exhibit E-Receivership), the last portion of which is quoted as follows:

"Financial Condition - The examination disclosed that the Alto Surety & Insurance Co., Inc., had, as of December 31, 1957, total admitted assets of P715,689.29, as against total liabilities of P645,096.94 and capital paid-up of P259,700.00 which was impaired in the amount of P189,097.65. The company's net worth amounted to P70,602.35 as of December 31, 1957. Com-pliance with our letter of July 18, 1958, regarding the cover-ing of said impairment is re-iterated.

"Your failure to comply with all the foregoing requirements within the time limit set forth in this letter will compel us to suspend or revoke the certi-ficates of authority to do insu-rance business issued in favor of the company, as well as all other certificates granted to the company's officers, general agents, and/or to recommend the prosecution of its officers."

that on May 16, 1960, the Insurance Commissioner addressed another let-ter marked Exhibit G-Receivership, the last portion of which is also quoted as follows:

"6. Financial Condition as of September 30, 1959. - The examination disclosed that the Alto Surety & Insurance Company Inc., had, as of September 30, 1959, total admitted assets of P161,121.84 as against total liabilities of P649,130.88 and total net worth or capital de-ficiency of P488,009.04. The capital stock paid-up of P59,700.00 was impaired to the ex-tent of P747,709.04, which is equal to the paid-up capital of P259,700.00 and capital

de-ficiency of P488,009.04.

"In view of the precarious financial condition of the company, it is required that the stockholders of the Alto Surety & Insurance Co., Inc., put up within fifteen (15) days from receipt of this letter, the amount of P747,709.04 in or-der to cover the impairment or deficit of an equal amount, and to comply immediately with all the other requirements mentioned in the foregoing.

"Receipt of your advice with-in the fifteen-day period given you for complying with the re-quirements stated above, will be appreciated."

"In granting the petition for receivership, the court a quo said:

'Firstly, plaintiff has offered the provisions of Section 1, Rule 61 of the Rules of Court, more particularly paragraph (d) thereof. In support of its claim, plaintiff has cited the case of Philippine Trust Co. vs. Francisco Santamaria, 53 Phil. 463, wherein the Supreme Court ordered the appointment of a receiver of all the properties and assets of a Judgment debtor in aid of execution of judgment rendered against it. The action against the judgment debtor in the said case was for the recovery of a sum of money.

'Secondly, plaintiff has cited the provisions of Section 2, Rule 61 of the Rules of Court, quoted as follows:

"Sec. 2. Creditor or stock-holder may apply for receiver for corporation. - When a corporation has been dissolved, or is insolvent, or is in im-minent danger of insolvency, or has forfeited its corporate rights, a receiver may be appointed on the complaint of a creditor, stockholder, or mem-ber of the corporation."

'In relation to this provision of law, Exhibit E-Receivership and G-Receivership tend, to show that de-fendant Alto Surety & Insurance Co., Inc., is in imminent danger of insolvency. As a matter of fact, no less than the Insurance Commissioner of the Philippines has manifested in his letter dated May 16, 1960 and marked as Exhibit G-Receivership that the defendant corporation was and is in a precarious financial condition.

'Thirdly, plaintiff has cited the provision of Section 39, Rule 39 of the Rules of Court, quoted as follows:

"Sec. 39. Appointment and bond of receiver. - The judge may, by or-der, appoint the sheriff, or other proper officer or person, receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposi-tion of, or any interference with, the property of the judgment debtor not exempt from execu-tion. If a bonded officer be appointed receiver, he and his sureties shall be liable on his official bond as such receiver, but if another per-son be appointed he shall give a bond as receiver as in other cases."

'It must be remembered that plaintiff filed the present petition for receivership in view of the return, of the Sheriff of Manila (Exhibit C-Receivership) to the effect that the writ of execution marked Exhibit B-Receivership could not be satis-fied for the reasons stated therein.'

"It is not disputed by the appellant company that although in the years 1955 and 1956 it was in a position to pay installments, on September 1, 1958 and thereafter, it was no longer in a position to make any payments whatsoever.

"In view of all the above, the issue raised in this appeal is purely a question of law; this appeal is therefore beyond the competence of this Court.

"ACCORDINGLY, let this case be certified, as it is hereby certified, under the provisions of the Judiciary Act of 1948, as amended, to the Honorable Supreme Court for proper disposi-tion."

Accordingly, the only issue for resolution by this Court in this appeal is whether or not, in an action for the collection of a debt, where there is already a final and executory judgment, the Court has the authority to appoint a

receiver of the properties of the judgment debtor which are not involved in the action, in aid of the execution of said judgment.

This issue is not new. Almost on all fours with the present case is that of *Philippine Trust Co. vs. Santamaria*,^[1] decided way back on September 4, 1929. There it was held:

"This is a petition for mandamus in which the petitioner alleges that it is plaintiff in civil cases Nos. 6720 and 6721 pending in the Court of First Instance of Iloilo. That on October 19, 1927, that court in those actions rendered the following judgments:

CIVIL CASE NO. 6720

'Wherefore, judgment is rendered in so far as it refers to said case No. 6720, in favor of the Philippine Trust Co. and against the defendant F. M. Yaptico & Co., Ltd., for the sum of P25,000.00, with interest thereon at the rate of 9 per cent per annum from March 6, 1924, until paid, and with legal interest of 6 per cent per annum, on the accumulated interest from the filing of the complaint to the date of the judgment, together with the costs of the action.'

CIVIL CASE NO. 6721

'Wherefore, judgment is rendered against F. M. Yaptico & Co., Ltd., jointly with the Visayan General Supply Co., Inc., for the sum of P50,000.00, with interest: thereon at the rate of 9 per cent per annum from February 11, 1924, until paid, and with legal interest of 6 per cent per annum on the accumulated interest from the filing of the complaint to the date of the judgment. And judgment is rendered against the defendant F. M. Yaptico & Co., Ltd., for the sum of P25,000.00, with interest thereon at 9 per cent per annum from March 5, 1924, plus the legal interest of 6 per cent per annum on the accumulated interest from the date of filing of the complaint to that of the judgment, together with costs of this action.'

"It is alleged that on such judgments there is now due and owing from the defendant to the petitioner about P110,000.00. That on November 25, 1927, the plaintiff asked the court to issue an execution pending the defendant's appeal to this court, which request was denied on December 5, 1927. That an appeal was taken to this court which affirmed the judgments on October 25, 1928. That on November 23, 1928, plaintiff again asked the lower court to issue an execution on the judgments, and that execution was issued on December 14, 1928. That the sheriff made return that no property of defendant F. M. Yaptico & Co., Ltd., could be found to satisfy the judgments, and that F. M. Yaptico & Co., Ltd., could not pay them. That on January 18, 1929, the petitioner asked the lower court to appoint a receiver of the property of F. M. Yaptico & Co., Ltd. That on March 6, 1929, the court denied that petition. That on April 24, 1929, the petitioner prayed the court for an order to require the manager of F.M. Yaptico & Co., Ltd., to appear and answer interrogatories as to the assets of F. M. Yaptico & Co., Ltd. That on June 13, 1929, F. M. Yaptico & Co., Ltd., asked the court to suspend the execution of the judgments for a period of four months, which request was opposed by the petitioner on the ground that the court was without jurisdiction, and it again renewed its motion for the court to appoint a receiver. That the manager appear in court on June 29, 1929, from which it appeared that the property of the defendant was being disposed of to the damage of the petitioner; that F. M. Yaptico & Co., Ltd., had rendered the petitioner a false and misleading statement of its assets and liabilities; and that after an examination of the manager and as a result of the disclosures made by him, petitioner again prayed for the appointment of a receiver. That on June 30, 1929, the court denied the application, and 'suspended execution of the said judgments for a period of four months from and after the 30th day of June, 1929, to give the respondent F. M. Yaptico & Co., Ltd., more time to pay said judgments.' That on July 12, 1929, the court again affirmed its order of June thirtieth, and on July 15, 1929, denied the motion for reconsideration."

x x x x

"We are clearly of the opinion that the lower court exceeded its jurisdiction in suspending the execution for the period of four months from June 30, 1929. We are also of the opinion that upon the facts shown in this record, it was the duty of the court to appoint a receiver for the F. M. Yaptico & Co., Ltd., to protect and preserve its property and assets for the use and benefit of its creditors and, in particular, this petitioner, under the provisions of section 483 of the Code of Civil Procedure. The very fact that the judgments in question were rendered on October 19, 1927, and that no part of them has yet been paid, and that F. M. Yaptico & Co., Ltd., has so far been able to defeat the petitioner in the collection of its judgments, is a very strong and cogent reason why a receiver should be appointed.

"It is the order of the court that a writ of mandamus be forth-with issued as prayed for in the petition, and that the lower court at once appoint a receiver of all the property and assets of F. M. Yaptico & Co., Ltd., and that petitioner have judgments for costs. So ordered."

With this precedent, it is obvious that the order of receivership appealed from should be affirmed.

Only one point of procedure need be clarified now. In its petition for the appointment of a receiver, plain-tiff-appellee relied expressly only on the provisions of Section 1(d) of Rule 61 (Rules of 1940) which provided as follows:

"Section 1. When and by whom receiver appointed. - One or more receiver of the property, real or personal, which is the subject of the action, may be appointed by the judge of the Court of First Instance in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court, in the following cases:

x x x x

"(d) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment debtor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;"

This specific citation naturally gave defendant-appellant cause to oppose the petition on the ground that under the provision thus cited, the receivership contemplated is only that "of the property, real or personal, which is the subject of the action." It was only in its memorandum, which is not included in the record on appeal but mentioned only in the opposition to the motion for reconsideration of the order granting the receivership (p. 50, Record on Appeal), that plaintiff-appellant must have referred the court a quo to other provisions of the Rules, particularly, Section 2 of Rule 61 and Section 39 of Rule 39. Thus, as may be seen from the above-quoted portions of its order of receivership, the said court, made reference to all the three provisions which it said were "offered" or cited by the plaintiff-appellee, namely: Section 1(d), Rule 61, Section 2, Rule 61 and Section 39, Rule 39. Seemingly, the court a quo was uncertain as to which particular one of these provisions was the proper basis of authority because it simply ruled that "after considering the evidence and the argument adduced by the parties in relation to plaintiff's petition for receivership and further considering the outstanding obligations of defendant corporation, the Court is of the opinion that plaintiff's motion for receivership is well-taken" and made no commitment as to which rule or provision it was relying upon for its action.

It will be noted that in that case of Philippine Trust Co. vs. Santamaria, above-referred to, this Court cited Section 483 of the Code of Civil Procedure (Act 190) in holding that "it was the duty of the court to appoint a receiver for the F.M. Yaptico & Co., Ltd. to protect and preserve its property and assets for the use and benefit of its creditors and, in particular, this petitioner." The section cited reads thus:

"SEC. 483. Judge may Appoint Receiver and Prohibit Transfers, and so forth. - The judge may, by order, appoint the governor, or his deputy, of the proper province, or other suitable person, a receiver of the property of the judgment debtor, and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not; exempt by law."

This section was under Chapter XX entitled "Proceedings Supplementary to the Execution". In other words, it was part of the rules of procedure governing aids to the execution of judgments. In the Rules of Court of 1940, the said section had its counter-part in Section 39 of Rule 39 reading as follows:

"SEC. 39. Appointment and bond of receiver. - The judge may, by order, appoint the sheriff, or other proper officer or person, receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. If a bonded officer be appointed receiver, he and his sureties shall be liable on his official bond as such receiver, but if another person be appointed he shall give a bond as receiver as in other cases." [2]

Indeed, this is the provision applicable to the circumstance of the case at bar. Clearly, Section 1(d) of Rule 61 [3] is not applicable here because, as contended by defendant-appellant, all the cases of receivership contemplated in said section are only cases wherein the property or properties being placed under receivership are those involved in the very litigation in which such receivership is ordered. This is evident from the opening paragraph of said section which says that "one or more receivers of the property, real or personal, which is the subject of the action may be appointed in the following cases," and paragraph (d) is one of those cases. [Underscoring Ours]. In other words, this qualifying clause, "the property, real or personal, which is the subject of the action" applies to all the cases specified in the five paragraphs in said Section 1, which are:

"SECTION 1. - x x x

"(a) When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

"(b) When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund which is the subject of the action, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to guard and preserve it;

"(c) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

"(d) After judgment, to preserve the property during the pendency of an appeal or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment debtor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

"(e) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."

And it is undisputed that in the case at bar, the properties being placed under receivership, are not the subject of the action.

Likewise, it is quite plain that Section 2 of Rule 61 [4] is not also applicable to this case. This section refers to a receivership, not as an aid to execution of a final judgment in an ordinary action, but as a consequence of the dissolution of a corporation or of its forfeiture of its corporate rights; and with respect to cases of insolvency or imminent danger of insolvency of corporations, the receivership contemplated in this section must be in relation exclusively to such insolvency or imminent danger thereof placed before the court in an appropriate principal action, and again, not merely as an auxiliary remedy to the execution of a final judgment in an ordinary action.

In any event, it is unnecessary or superfluous to bring in Sections 1 and 2 of Rule 61, which, to say the least, are of doubtful applicability, when Section 39 of Rule 39 appears to be clearly and fittingly applicable. If at all, the

other provisions of Rule 61 may be resorted to only insofar as they prescribe the procedure and the bond requirements in a receivership as well as other matters related to the carrying out of such receivership. There being no detailed rules under Rule 39 governing these matters, under the authority of Section 6, Rule 124 (now Rule 135), the pertinent provisions of Rule 61 may be adopted. Said section provides:

“SEC. 6. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or mode of proceeding may be adopted which appears most conformable to the spirit of said rules.”[5]

WHEREFORE, with the above clarification that Section 39 of Rule 39 of the Rules of 1940, now Section 43 of Rule 39 of the current Rules, is the provision applicable to the receivership herein in question, the same being in aid of the execution of a final judgment in an ordinary action for money, the disputed orders of the court a quo dated October 4, 1960 and October 15, 1960 are hereby affirmed, with costs against defendants-appellant, Alto Surety & Insurance, Inc.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Teehankee, JJ., concur. Concepcion, C.J., voted in favor of this opinion before going on official leave.

[1] 53 Phil. 463.

[2] This is now Section 43 of Rule 39 of the Revised Rules of 1964.

[3] Now Rule 59.

[4] Rule 59 now; all references to Rule 61 in this decision are to the Rules of 1940.

[5] Rule 135 now.

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