

POLARIS MARKETING CORPORATION, PETITIONER, VS. HON. ANDRES B. PLAN, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ISABELA, CAUAYAN BRANCH; DOMINGO MANGANTULAO, DEPUTY, PROVINCIAL ...

G.R. No. L-40666. January 22, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

The Court of First Instance of Rizal (Pasig Branch I) rendered a decision dated October 29, 1971 in Civil Case No. 14319, ordering Eleuterio P. Santos to pay Polaris Marketing Corporation (Polaris for short) within ninety days from the receipt of the decision the sum of P104,172.50 plus interest, attorney's fees and costs. The court directed that if Santos did not satisfy that judgment within the ninety day period, then the ten parcels of registered land, which he had mortgaged to Polaris, should be sold at public auction.

Santos did not satisfy the judgment. So, the mortgaged lands, allegedly valued at P300,000, were sold at public auction to Polaris for the sum of P20,555 only. On February 25, 1974 an alias writ of execution was issued. Respondent deputy provincial sheriff of Isabela enforced that writ by levying on thirty-two (32) parcels of registered land and on the personal properties consisting of a jeep, a trailer, a tractor and three hundred ninety-three cavans of palay, found at Cauayan, Isabela, supposedly belonging to the judgment debtor, Eleuterio P. Santos. The sheriff scheduled the sale of those properties (except the palay) on April 15, 1974.

On March 16, 1974 Natalia A. Santos, the wife of the judgment debtor and a resident of Cauayan, filed a third-party claim with the sheriff. She claimed that the personal properties valued at P125,950.90 were conjugal assets in which she had a one-half interest.

On that same date, March 16, she sued Polaris and the sheriff in the Court of First Instance of Isabela, Cauayan Branch II. In her complaint she prayed that the levy on the conjugal properties be declared void and that their auction sale be enjoined (Civil Case No. BR. II-1208).

Polaris filed a motion to dismiss the complaint and an opposition to the petition for preliminary injunction. Natalia A. Santos opposed the motion. On March 22, 1974 the sheriff sold the palay for P15,000.

The Isabela court in its order of May 8, 1974 enjoined the sheriff and Polaris from levying on the conjugal assets of the spouses Natalia A. Santos and Eleuterio P. Santos. It fixed the injunction bond at P50,000 and directed that after the filing of that bond the properties levied upon by the sheriff should be returned to Natalia A. Santos. The Court deferred action on the motion to dismiss and ordered Polaris to answer the complaint.

After Natalia A. Santos had filed the bond or on June 6, 1974 the lower court ordered the sheriff to return to her the properties which had been levied upon or the cash in lieu of the palay that had been sold.

Polaris filed in the Court of Appeals a petition for certiorari and prohibition wherein it assailed the Isabela court's

orders of May 8 and June 6, 1974. The petition was given due course.

Inasmuch as the petition raised jurisdictional questions, the Court of Appeals dismissed it without prejudice to filing it in this Court (*Polaris Marketing Corporation vs. Hon. Andres B. Plan*, CA-G.R. No. SP-03193-R, February 6, 1975). It was refiled in this Court on May 19, 1975.

The situation here is that the Court of First Instance of Rizal rendered a money judgment against the husband in a foreclosure proceeding. The mortgaged lands were sold at public auction. To satisfy the deficiency judgment, the sheriff levied upon the conjugal assets found in Isabela. The wife contested the levy against the conjugal assets by suing the judgment creditor and the sheriff in the Court of First Instance of Isabela. She contended that the levy was void and that it should be enjoined.

The wife, in assailing the alias writ of execution, which was enforced against the conjugal assets to satisfy a money judgment against her husband, did so in a separate action and did not move to set aside the execution in the case where the judgment was rendered.

The issue is whether the Isabela court, in deferring action on the motion to dismiss the wife's complaint and in enjoining the levy on the conjugal assets, acted without jurisdiction or with grave abuse of discretion.

We hold that the Court of First Instance of Isabela did not exceed its jurisdiction and did not act with grave abuse of discretion (a) in cancelling the levy on the conjugal properties after the wife had posted a bond in the sum of fifty thousand pesos and (b) in deferring the determination of the motion to dismiss until after the termination of the trial and in ordering Polaris to answer the complaint. (See sec. 3, Rule 16, Rules of Court).

The Isabela court has jurisdiction to entertain the complaint of the wife, Natalia A. Santos. She was not a party in the foreclosure case against the husband, Civil Case No. 14319 of the Court of First Instance of Rizal. So it would seem that she was not bound by the proceedings therein. It is a legal axiom "that no man shall be affected by proceedings to which he is a stranger" (*Ed. A. Keller & Co. vs. Ellerman & Bucknall Steamship Co.*, 38 Phil. 514, 520). She could not have intervened in that case and asserted therein her contention that the conjugal assets should not answer for her husband's obligations to Polaris. The trial in that case had already been terminated. Intervention is allowed only "before or during a trial" (Sec. 2, Rule 12, Rules of Court; *Trazo vs. Manila Pencil Co., Inc.*, 110 Phil. 1016).

That is the reason why a third person claiming to be the owner of the property attached or levied upon is required to file a separate or independent action to determine whether the property should answer for the claim of the attaching or judgment creditor instead of being allowed to raise that issue in the case where the writ of attachment or execution was issued (Sec. 17, Rule 39 and sec. 14, Rule 57, Rules of Court; *Bayer Philippines, Inc. vs. Agana*, L-38701, April 8, 1975, 63 SCRA 355).

The mandatory injunction issued by the Isabela court cannot be considered as an interference with the writ of execution issued by a court of coordinate and co-equal jurisdiction. The alias writ of execution was issued by the Rizal court for the purpose of levying upon the properties of the judgment debtor, Eleuterio Santos, and not the properties of other persons (See *Manila Herald Publishing Company, Inc. vs. Ramos*, 88 Phil. 94; *Abiera vs. Court of Appeals*, L-26294, May 31, 1972, 45 SCRA 314; *Bayer Philippines, Inc. vs. Agana*, supra).

Since the sheriff levied upon the properties which, according to Natalia A. Santos, the judgment debtor's wife, should not be liable for the husband's obligations, she is entitled to be heard on that point in a separate action. That was the procedure followed in *Quintos de Ansaldo vs. Sheriff of Manila*, 64 Phil. 115.

The foregoing considerations have been adduced to show that the Isabela court did not act arbitrarily, capriciously

and whimsically or in excess of its jurisdiction in not sanctioning the levy on the conjugal assets and in not dismissing outright the separate case wherein the question of whether such assets should answer for the husband's obligations would be resolved.

Polaris is not precluded from asking later on for a review of the said orders in the light of the evidence to be submitted during the trial. It could still appeal from the said orders after the case is finally decided. Certiorari and prohibition do not lie in this case. No jurisdictional errors were committed by the Isabela court. (Nocon vs. Geronimo, 101 Phil. 735).

Wherefore, the petition for certiorari and prohibition is dismissed with costs against the petitioner. So ordered.

Fernando (Chairman), Barredo, Antonio, and Concepcion Jr., JJ., concur.

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