

VENANCIO CASTANEDA, AND NICETAS HENSON, PETITIONERS, VS. PASTOR D. AGO, LOURDES YU AGO AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-28546. July 30, 1975*

Ponente: CASTRO, J.

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The parties in this case, except Lourdes Yu Ago, have been commuting to this Court for more than a decade.

In 1955 the petitioners Venancio Castaneda and Nicetas Henson filed a replevin suit against Pastor Ago in the Court of First Instance of Manila to recover certain machineries (civil case 27251). In 1957 judgment was rendered in favor of the plaintiffs, ordering Ago to return the machineries or pay definite sums of money. Ago appealed, and on June 30, 1961 this Court, in *Ago vs. Castaneda*, L-14066, affirmed the judgment. After remand, the trial court issued on August 25, 1961 a writ of execution for the sum of P172,923.87. Ago moved for a stay of execution but his motion was denied, and levy was made on Ago's house and lots located in Quezon City. The sheriff then advertised them for auction sale on October 25, 1961. Ago moved to stop the auction sale, failing in which he filed a petition for certiorari with the Court of Appeals. The appellate court dismissed the petition and Ago appealed. On January 31, 1966 this Court, in *Ago vs. Court of Appeals, et al.*, L-19718, affirmed the dismissal. Ago thrice attempted to obtain a writ of preliminary injunction to restrain the sheriff from enforcing the writ of execution "to save his family house and lot;" his motions were denied, and the sheriff sold the house and lots on March 9, 1963 to the highest bidders, the petitioners Castaneda and Henson. Ago failed to redeem, and on April 17, 1964 the sheriff executed the final deed of sale in favor of the vendees Castaneda and Henson. Upon their petition, the Court of First Instance of Manila issued a writ of possession to the properties.

However, on May 2, 1964 Pastor Ago, now joined by his wife, Lourdes Yu Ago, as his co-plaintiff, filed a complaint in the Court of First Instance of Quezon City (civil case Q-7986) to annul the sheriff's sale on the ground that the obligation of Pastor Ago upon which judgment was rendered against him in the replevin suit was his personal obligation, and that Lourdes Yu Ago's one-half share in their conjugal residential house and lots which were levied upon and sold by the sheriff could not legally be reached for the satisfaction of the judgment. They alleged in their complaint that wife Lourdes was not a party in the replevin suit, that the judgment was rendered and the writ of execution was issued only against husband Pastor, and that wife Lourdes was not a party to her husband's venture in the logging business which failed and resulted in the replevin suit and which did not benefit the conjugal partnership.

The Court of First Instance of Quezon City issued an *ex parte* writ of preliminary injunction restraining the petitioners, the Register of Deeds and the sheriff of Quezon City, from registering the latter's final deed of sale, from cancelling the respondents' certificates of title and issuing new ones to the petitioners and from carrying out any writ of possession. A situation thus arose where what the Manila court had ordered to be done, the Quezon City court countermanded. On November 1, 1965, however, the latter court lifted the preliminary injunction it had

previously issued, and the Register of Deeds of Quezon City cancelled the respondents' certificates of title and issued new ones in favor of the petitioners. But enforcement of the writ of possession was again thwarted as the Quezon City court again issued a temporary restraining order which it later lifted but then re-restored. On May 3, 1967 the court finally, and for the third time, lifted the restraining order.

While the battle on the matter of the lifting and restoring of the restraining order was being fought in the Quezon City court, the Agos filed a petition for certiorari and prohibition with this Court under date of May 26, 1966, docketed as L-26116, praying for a writ of preliminary injunction to enjoin the sheriff from enforcing the writ of possession. This Court found no merit in the petition and dismissed it in a minute resolution on June 3, 1966; reconsideration was denied on July 18, 1966. The respondents then filed on August 2, 1966 a similar petition for certiorari and prohibition with the Court of Appeals (CA-G.R. 37830-R), praying for the same preliminary injunction. The Court of Appeals also dismissed the petition. The respondents then appealed to this Court (L-27140). We dismissed the petition in a minute resolution on February 8, 1967.

The Ago spouses repaired once more to the Court of Appeals where they filed another petition for certiorari and prohibition with preliminary injunction (CA-G.R. 39438-R). The said court gave due course to the petition and granted preliminary injunction. After hearing, it rendered decision, the dispositive portion of which reads:

"WHEREFORE, writ of preliminary injunction from enforcement of the writ of possession on and ejectment from the one-half share in the properties involved belonging to Lourdes Yu Ago dated June 15, 1967 is made permanent pending decision on the merits in Civil Case No. Q-7986 and ordering respondent Court to proceed with the trial of Civil Case No. Q-7986 on the merits without unnecessary delay. No pronouncement as to costs."

Failing to obtain reconsideration, the petitioners Castaneda and Henson filed the present petition for review of the aforesaid decision.

1. We do not see how the doctrine that a court may not interfere with the orders of a co-equal court can apply in the case at bar. The Court of First Instance of Manila, which issued the writ of possession, ultimately was not interfered with by its co-equal court, the Court of First Instance of Quezon City as the latter lifted the restraining order it had previously issued against the enforcement of the Manila court's writ of possession; it is the Court of Appeals that enjoined, in part, the enforcement of the writ.
2. Invoking *Comilang vs. Buendia, et al.*,^[1] where the wife was a party in one case and the husband was a party in another case and a levy on their conjugal properties was upheld, the petitioners would have Lourdes Yu Ago similarly bound by the replevin judgment against her husband for which their conjugal properties would be answerable. The case invoked is not at par with the present case. In *Comilang* the actions were admittedly instituted for the protection of the common interest of the spouses; in the present case, the Agos deny that their conjugal partnership benefited from the husband's business venture.
3. Relying upon *Omnas vs. Rivera*, 67 Phil. 419, the Court of Appeals held that a writ of possession may not issue until the claim of a third person to half-interest in the property is adversely determined, the said appellate court assuming that Lourdes Yu Ago was a "stranger" or a "third-party" to her husband. The assumption is of course obviously wrong, for, besides living with her husband Pastor, she does not claim ignorance of his business that failed, of the relevant cases in which he got embroiled, and of the auction sale made by the sheriff of their conjugal properties. Even then, the ruling in *Omnas* is not that a writ of possession may not issue until the claim of a third person is adversely determined, but that the writ of possession being a complement of the writ of execution, a judge with jurisdiction to issue the latter also has jurisdiction to issue the former, unless in the interval between the judicial sale and the issuance of the writ of possession, the rights of third parties to the

property sold have supervened. The ruling in *Omna* is clearly inapplicable in the present case, for, here, there has been no change in the ownership of the properties or of any interest therein from the time the writ of execution was issued up to the time the writ of possession was issued, and even up to the present.

4. We agree with the trial court (then presided by Judge Lourdes P. San Diego) that it is much too late in the day for the respondents Agos to raise the question that part of the property is unleviable because it belongs to Lourdes Yu Ago, considering that (1) a wife is normally privy to her husband's activities; (2) the levy was made and the properties advertised for auction sale in 1961; (3) she lives in the very properties in question; (4) her husband had moved to stop the auction sale; (5) the properties were sold at auction in 1963; (6) her husband had thrice attempted to obtain a preliminary injunction to restrain the sheriff from enforcing the writ of execution; (7) the sheriff executed the deed of final sale on April 17, 1964 when Pastor failed to redeem; (8) Pastor had impliedly admitted that the conjugal properties could be levied upon by his pleas "to save his family house and lot" in his efforts to prevent execution; and (9) it was only on May 2, 1964 when he and his wife filed the complaint for annulment of the sheriff's sale upon the issue that the wife's share in the properties cannot be levied upon on the ground that she was not a party to the logging business and not a party to the replevin suit. The spouses Ago had every opportunity to raise the issue in the various proceedings hereinbefore discussed but did not; laches now effectively bars them from raising it.

"Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it." [2]

5. The decision of the appellate court under review suffers from two fatal infirmities.

(a) It enjoined the enforcement of the writ of possession to and ejectment from the one-half share in the properties involved belonging to Lourdes Yu Ago. This half-share is not in esse, but is merely an inchoate interest, a mere expectancy, constituting neither legal nor equitable estate, and will ripen into title when only upon liquidation and settlement there appears to be assets of the community. [3] The decision sets at naught the well-settled rule that injunction does not issue to protect a right not in esse and which may never arise. [4]

(b) The decision did not foresee the absurdity, or even the impossibility, of its enforcement. The Ago spouses admittedly live together in the same house, [5] which is conjugal property. By the Manila court's writ of possession Pastor could be ousted from the house, but the decision under review would prevent the ejectment of Lourdes. Now, which part of the house would be vacated by Pastor and which part would Lourdes continue to stay in? The absurdity does not stop here; the decision would actually separate husband and wife, prevent them from living together, and in effect divide their conjugal properties during coverture and before the dissolution of the conjugal union.

6. Despite the pendency in the trial court of the complaint for the annulment of the sheriff's sale (civil case Q-7986), elementary justice demands that the petitioners, long denied the fruits of their victory in the replevin suit, must now enjoy them, for, the respondents Agos, abetted by their lawyer Jose M. Luison, have misused legal remedies and prostituted the judicial process to thwart the satisfaction of the judgment, to the extended prejudice of the petitioners. The respondents, with the assistance of counsel, maneuvered for fourteen (14) years to doggedly resist execution of the judgment thru manifold tactics in and from one court to another (5 times in the Supreme Court).

We condemn the attitude of the respondents and their counsel who,

"far from viewing courts as sanctuaries for those who seek justice, have tried to use them to subvert the very ends of justice." [6]

Forgetting his sacred mission as a sworn public servant and his exalted position as an officer of the court, Atty. Luison has allowed himself to become an instigator of controversy and a predator of conflict instead of a mediator for concord and a conciliator for compromise, a virtuoso of technicality in the conduct of litigation instead of a true exponent of the primacy of truth and moral justice.

"A counsel's assertiveness in espousing with candour and honesty his client's cause must be encouraged and is to be commended; what we do not and cannot countenance is a lawyer's insistence- despite the patent futility of his client's position, as in the case at bar.

"It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable." [7]

7. In view of the private respondents' propensity to use the courts for purposes other than to seek justice, and in order to obviate further delay in the disposition of the case below which might again come up to the appellate courts but only to fail in the end, we have motu proprio examined the record of civil case Q-7986 (the mother case of the present case). We find that

- the complaint was filed on May 2, 1964 (more than 11 years ago) but trial on the merits has not even started;
- after the defendants Castanedas had filed their answer with a counterclaim, the plaintiffs Agos filed a supplemental complaint where they impleaded new parties-defendants;
- after the admission of the supplemental complaint, the Agos filed a motion to admit an amended supplemental complaint, which impleads an additional new party-defendant (no action has yet been taken on this motion);
- the defendants have not filed an answer to the admitted supplemental complaint; and
- the last order of the Court of First Instance, dated April 20, 1974, grants an extension to the suspension of time to file answer. (Expediente, p. 815)

We also find that the alleged causes of action in the complaint, supplemental complaint and amended supplemental complaint are all untenable, for the reasons hereunder stated.

The Complaint

Upon the first cause of action, it is alleged that the sheriff levied upon conjugal properties of the spouses Ago despite the fact that the judgment to be satisfied was personal only to Pastor Ago, and the business venture that he entered into, which resulted in the replevin suit, did not redound to the benefit of the conjugal partnership. The issue here, which is whether or not the wife's inchoate share in the conjugal property is leviable, is the same issue that we have already resolved, as barred by laches, in striking down the decision of the Court of Appeals granting preliminary injunction, the dispositive portion of which was hereinbefore quoted. This ruling applies as well to the first cause of action of the complaint.

Upon the second cause of action, the Agos allege that on January 5, 1959 the Castanedas and the sheriff, pursuant to an alias writ of seizure, seized and took possession of certain machineries, depriving the Agos of the use thereof, to their damage in the sum of P256,000 up to May 5, 1964. This second cause of action fails to state a valid cause of action for it fails to allege that the order of seizure is invalid or illegal.

It averred as a third cause of action that the sheriff's sale of the conjugal properties was irregular, illegal and

unlawful because the sheriff did not require the Castaneda spouses to pay or liquidate the sum of P141,750 (the amount for which they bought the properties at the auction sale) despite the fact that there was annotated at the back of the certificates of title a mortgage of P75,000 in favor of the Philippine National Bank; moreover, the sheriff sold the properties for P141,750 despite the pendency of L-19718 where Pastor Ago contested the amount of P99,877.08 out of the judgment value of P172,923.37 in civil case 27251; and because of said acts, the Agos suffered P174,877.08 in damages.

Anent this third cause of action, the sheriff was under no obligation to require payment of the purchase price in the auction sale because "when the purchaser is the judgment creditor, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment." (Sec. 23, Rule 39, Rules of Court)

The annotated mortgage in favor of the PNB is the concern of the vendees Castanedas but did not affect the sheriff's sale; the cancellation of the annotation is of no moment to the Agos.

Case L-19718 where Pastor Ago contested the sum of P99,877.08 out of the amount of the judgment was dismissed by this Court on January 31, 1966.

This third cause of action, therefore, actually states no valid cause of action and is moreover barred by prior judgment.

The fourth cause of action pertains to moral damages allegedly suffered by the Agos on account of the acts complained of in the preceding causes of action. As the fourth cause of action derives its life from the preceding causes of action, which, as shown, are baseless, the said fourth cause of action must necessarily fail.

The Counterclaim

As a counterclaim against the Agos, the Castanedas aver that the action was unfounded and as a consequence of its filing they were compelled to retain the services of counsel for not less than P7,500; that because the Agos obtained a preliminary injunction enjoining the transfer of titles and possession of the properties to the Castanedas, they were unlawfully deprived of the use of the properties from April 17, 1964, the value of such deprived use being 20% annually of their actual value; and that the filing of the unfounded action besmirched their feelings, the pecuniary worth of which is for the court to assess.

The Supplemental Complaint

Upon the first cause of action, it is alleged that after the filing of the complaint, the defendants, taking advantage of the dissolution of the preliminary injunction, in conspiracy and with gross bad faith and evident intent to cause damage to the plaintiffs, caused the registration of the sheriff's final deed of sale; that, to cause more damage, the defendants sold to their lawyer and his wife two of the parcels of land in question; that the purchasers acquired the properties in bad faith; that the defendants mortgaged the two other parcels to the Rizal Commercial Banking Corporation while the defendants' lawyer and his wife also mortgaged the parcels bought by them to the Rizal Commercial Bank; and that the bank also acted in bad faith.

The second cause of action consists of an allegation of additional damages caused by the defendants' bad faith in entering into the aforesaid agreements and transactions.

The Amended Supplemental Complaint

The amendment made pertains to the first cause of action of the supplemental complaint, which is, the inclusion of a paragraph averring that, still to cause damage and prejudice to the plaintiffs, Atty. & Mrs. Juan Quijano, in bad faith sold the two parcels of land they had previously bought to Eloy Ocampo who acquired them also in bad

faith, while Venancio Castaneda and Nicetas Henson in bad faith sold the two other parcels to Juan Quijano (60%) and Eloy Ocampo (40%) who acquired them in bad faith and with knowledge that the properties are the subject of a pending litigation.

Discussion on The Causes of Action
of The Supplemental Complaint And
The Amended Supplemental Complaint

Assuming hypothetically as true the allegations in the first cause of action of the supplemental complaint and the amended supplemental complaint, the validity of the cause of action would depend upon the validity of the first cause of action of the original complaint, for, the Agos would suffer no transgression upon their rights of ownership and possession of the properties by reason of the agreements subsequently entered into by the Castanedas and their lawyer if the sheriff's levy and sale are valid. The reverse is also true: if the sheriff's levy and sale are invalid on the ground that the conjugal properties could not be levied upon, then the transactions would perhaps prejudice the Agos, but, we have already indicated that the issue in the first cause of action of the original complaint is barred by laches, and it must therefore follow that the first cause of action of the supplemental complaint and the amended supplemental complaint is also barred.

For the same reason, the same holding applies to the remaining cause of action in the supplemental complaint and the amended supplemental complaint.

ACCORDINGLY, the decision of the Court of Appeals under review is set aside. Civil case Q-7986 of the Court of First Instance of Rizal is ordered dismissed, without prejudice to the re-filing of the petitioners' counterclaim in a new and independent action. Treble costs are assessed against the spouses Pastor Ago and Lourdes Yu Ago, which shall be paid by their lawyer, Atty. Jose M. Luison. Let a copy of this decision be made a part of the personal file of Atty. Luison in the custody of the Clerk of Court.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

[1] L-24757, Oct. 25, 1967, 21 SCRA 486.

[2] Tijam vs. Sibonghanoy, L-21450, April 15, 1968, 23 SCRA 29.

[3] Nable Jose vs. Nable Jose, 41 Phil. 768; Madrigal vs. Rafferty, 38 Phil. 414.

[4] Bacolod-Murcia Milling Co. vs. Capitol Subdivision, L-25887, July 26, 1966, 17 SCRA 736; Angela Estate, Inc. vs. CFI Negros Occidental, L-27084, July 31, 1968, 24 SCRA 509; Locsin vs. Climaco, L-27319, January 31, 1969, 26 SCRA 833; 43 C.J.S. 35.

[5] Annex D to Petition, rollo p. 46.

[6] Cobb-Perez vs. Lantin, L-22320, May 22, 1968, 23 SCRA 637, 646.

[7] Id, July 29, 1968, 24 SCRA 291, 297-298.

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