

ANTONIO NARVAEZ, PETITIONER, VS. DIONISIO DE LEON, JUDGE OF FIRST INSTANCE OF MANILA, LADISLAO PASICOLAN, SHERIFF OF MANILA, AND CENTRAL SURETY INSURANCE COMPANY, AS PLAINTIFF I...*G.R. No. L-1630. July 23, 1949*

Ponente: FERIA, J.

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Ramon P. Bernal was indebted to the Central Surety Co. in the sum of P3,000 and together with the petitioner Antonio Narvaez signed, as co-makers, a promissory note for said amount in favor of the creditor. Besides, the debtor Bernal executed a chattel mortgage on certain personal properties belonging to him that had an inventory value of about P7,000 to secure the payment of his said debt. On April 8, 1947, the respondent Central Surety Insurance Co. instituted an action against R. Bernal and the petitioner for the recovery of the aforementioned sum of P3,000, and obtained a writ of attachment on the same properties mortgaged to the plaintiff to secure the payment of said amount, according to the verified allegation in the petition filed in the present case and not denied under oath by the respondents.

Sometime before the rendition of the judgment, the plaintiff and the defendant Bernal, without the knowledge of the petitioner Narvaez, entered into an extrajudicial agreement whereby Bernal assigned and transferred to the plaintiff Central Surety and Insurance Co. the same personal properties that were mortgaged to the plaintiff and subsequently attached upon the latter's petition to secure the payment of the debt, authorizing the plaintiff "to keep and preserve it or sell it with my consent, the proceeds of which shall be applied to whatever judgment may be rendered against me in the civil case of which I am the defendant" (Annex A, respondent's answer.)

After the rendition of the judgment in favor of the plaintiff and against the defendants had become final and before any action had been taken by the plaintiff on the personal properties of Bernal that were first attached and afterwards delivered to the plaintiff for the purpose above mentioned, a writ of execution was, upon plaintiff's motion, issued against the properties of petitioner Narvaez. The petitioner filed a motion to set it aside on the ground that, by the plaintiff's acceptance of Bernal's chattels or personal properties, delivered by the latter to the plaintiff to be sold and the proceeds of the sale applied to the payment of the judgment, the petitioner was only liable for the balance of the judgment that would remain unsatisfied. The petitioner's motion was denied, and hence this petition for certiorari.

Petitioner's contention in the present case is that the judgment creditor having already secured possession of the property of the other solidary debtor Bernal by attachment and voluntary surrender, to be kept and sold by the said judgment creditor to satisfy the judgment, the respondent judge abused his discretion in ordering the execution of the petitioner's property, citing article 1148 of the Civil Code in support of his contention. And the respondents, on the other hand, maintain that they have the right to proceed against the petitioner without previously disposing of the properties of Ramon P. Bernal, because the petitioner is a joint and solidary debtor according to the final

decision of the respondent judge, in accordance with article 1144 of the Civil Code, which provides that the creditor may proceed against any of the solidary debtor or against all of them simultaneously.

It is true that said article 1144 provides that the creditor may sue either any of the solidary debtors or all of them simultaneously, but whether only one or all of the solidary debtors are sued jointly "any solidary debtor may interpose against the claim of the creditor all defenses arising from the nature of the obligation," as well as those "personal to the other solidary debtors * * * with respect to the share of the debt for which the former may be liable." As the surrender of the personal properties of the defendant Bernal to the plaintiff in order that the latter may preserve and sell them and apply the proceeds thereof to the satisfaction of the judgment, was made after trial and a short time before the rendition of the judgment, the petitioner could not have set it up as a defense in his pleading or before the trial of the case, but he may plead it against the execution of the whole judgment against him. Because, although a solidary debtor is bound to perform not only his share in the solidary obligation but also that of his solidary co-debtor since a solidary is also a joint obligation, if any one of the other solidary debtors had already paid or transferred his property to the creditor to secure the payment of his share, the defendant solidary debtor has the right to have that payment or the property given as security by the other debtors sold and the proceeds applied to the satisfaction of the latter's shares in the obligation for which the defendant may be liable, pursuant to the above quoted article 1148 of the Civil Code.

In the present case, before the levy of the execution on the petitioner's property, the petitioner can not tell whether or not he is to be made to pay the whole amount of the judgment, without previously selling the property of the defendant Bernal in the hands of the plaintiff and applying the proceeds thereof to the payment of Bernal's share (one-half) in the solidary obligation, or only petitioner's share plus Bernal's unsatisfied share. Therefore, it is premature to contend that the court has acted contrary to the provision of article 1144 of the Civil Code in ordering merely the execution of the judgment on the petitioner's property, since the latter, as solidary co-debtor, is liable to pay at least his own share in the solidary obligation, as well as that of his co-debtor's Bernal which would remain unpaid.

If the respondent judge or court would not allow the petitioner to set up in due time such defense he shall commit an error but not exceed the court's jurisdiction and much less abuse a discretion which the court does not have, in view of the express provision of the law on the matter, and therefore certiorari would not lie.

Should the court insist, after the execution of the petitioner's property, on applying the proceeds of the sale thereof to the payment of the whole judgment without ordering the sale and applying the proceeds of the sale of Bernal's property in the hands of the judgment creditor to the satisfaction of the latter's share, the petitioner may appeal from the court's order denying his petition to that effect, because it would be a final order that affects a substantial right of the petitioner rendered after the judgment has become final. In the same way as appeal is allowed from an order allowing or disallowing costs, affirming or disapproving a sale in foreclosure proceeding, or an order of the court on a report submitted by a commissioner appointed to determine a question of fact in order to carry a judgment or order into effect.

"In many States the statutes allow an appeal for a final order, or from an order or final order affecting a substantial right made after judgment, order or decree, or made on a summary application in an action after judgment" (3 C. J., sec. 269). "Under express statutory provisions in many jurisdictions, varying somewhat in language, an appeal will lie from an order 'any special order made after final judgment,' or from 'an order' or a 'final order', or an order or final order 'affecting a substantial right', 'in an action after judgment' etc." (3 C. J., sec. 352). And section 2, Rule 4 of Rules of Court provides that appeal lies against a final judgment or order.

In view of all the foregoing, the petition for certiorari is denied with costs against the petitioner. So ordered.

Moran, C.J., Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

CONCURRING

PARAS, J.:

The petitioner, Antonio Narvaez, and Ramon P. Bernal were solidary co-makers of a note for P3,000 in favor of the respondent Central Surety Insurance Company. As a security for said note, Ramon P. Bernal executed a chattel mortgage in favor of the company on certain personal properties belonging to Ramon P. Bernal, valued, according to the inventory attached to the mortgage, at about P7,000. For failure to pay the obligation on time, the company instituted on April 8, 1947, a personal action in the Court of First Instance of Manila (Civil Case No. 2255) against Ramon P. Bernal and the petitioner, Antonio Narvaez, for the recovery of the sum of P3,000. Upon the commencement of said action, the company obtained from the court a writ of attachment against Ramon P. Bernal with a view to devying upon the Same personal properties already covered by the chattel mortgage. From the pleadings it does not definitely appear that said properties were actually levied upon in pursuance of said attachment. Indeed, on May 6, 1947, Ramon P. Bernal assigned to the company the properties, for the company "to keep, and preserve it or sell it with my consent, the proceeds of which shall be applied to whatever judgment may be rendered against me in the civil case of which I am the defendant, and the Central Surety & Insurance Company is the plaintiff." (Annex A of answer.) Judgment in civil case No. 2255 in favor of the company was rendered by the Court of First Instance of Manila on May 31, 1947. After this judgment had become final and executory, the company obtained a writ of execution, directed against the petitioner Antonio Narvaez. Efforts to quash this writ of execution against the petitioner having failed, the latter has come to this Court for the purpose of preventing its inforcement against the petitioner.

It is contended for the petitioner that the lifting of the attachment obtained by the company against the properties of Ramon P. Bernal, without notice to the Court of First Instance of Manila, was illegal, and that before the petitioner could be bound to pay anything to the company, there must be a showing that the company has sold the properties mortgaged by Bernal and later sought to be attached by the company, and that the proceeds of the sale were not sufficient to pay off the obligation of P3,000.

There is no merit in the contention. It is true that the properties in question were covered by a mortgage in favor of the company, and that the latter really intended to attach the same upon the commencement of civil case No. 2255. But there is no indication in the record that the company ever proceeded to foreclose the chattel mortgage or that actual levy was made on said properties. On the contrary, it appears that the properties were turned over by Ramon P. Bernal to the company for the latter to preserve it or sell it with the consent of Bernal. Under these conditions, the company was not bound to sell said properties; as a matter of fact, it is not pretended that they were sold by the company. The latter has every right to waive any advantage accruing under the mortgage, the attachment, and the voluntary surrender of said properties by Ramon P. Bernal. It appearing that the petitioner is a solidary debtor, it is elementary that the company may proceed against him independently of his co-maker Ramon P. Bernal. As long as the solidary obligation, now the subject matter of a final and executory judgment, is not paid, the company may go against the petitioner alone. The latter of course has his legal remedies against the co-maker Ramon P. Bernal.

The petitioner has called attention to a letter of Bernal dated August 5, 1947, informing the petitioner that the company had taken all the personal chattels valued at more than P7,000 which Bernal considered the loan of P3,000 fully settled. If there was such a letter, the same cannot overcome the force and effect of Annex A of the answer of respondent company, which specifically authorized the company merely to keep and preserve said

properties or sell them with the consent of Ramon P. Bernal.

Wherefore, I vote for the dismissal of this petition for certiorari, with costs against the petitioner.

PERFECTO, J.:

We concur in the above concurring opinion.

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