

VICTORIA D. MIAILHE, MONIQUE M. SICHERE, ELIANE M. DE LENCQUESAING AND WILLIAM ALAIN MIAILHE, PETITIONERS, VS. RUFINO P. HALILI AND HON. CONRADO VASQUEZ, IN HIS CAPACITY AS JUDG...

G. R. No. L-16587. October 31, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

In this petition for certiorari with preliminary injunction, petitioners pray for annulment of the respondent Judge's orders of November 23, December 2 and December 5, 1959.

In August, 1955, in Case No. 22152 of the Court of First Instance of Manila, above petitioners obtained judgment for the sum of P74,400.00 against above respondent Halili. Pending appeal of such judgment before this Court, petitioners applied for the issuance of a writ of execution. As respondent did not furnish a supersedeas bond, the trial court issued the writ. Consequently, the Manila Sheriff levied on certain properties of said respondent, advertised them for sale at public auction in two newspapers, and sold them in due course.

This Court, on appeal, modified the said judgment by reducing the amount from P74,400.00 to P46,800.00.

Pursuant to such modified decision, petitioners returned to respondent Halili the difference between the sum already collected (through execution pending appeal), and the amount allowed by this Court, after deducting the following items:

(a) Sheriff's fees

P297.00

(b) Cost of publication in two newspapers of the Sheriff's Notice of Sale

1,440.00

(c) Amount retained by petitioners for having secured another judgment against respondent Halili, although respondent Halili appealed from it and the case is pending hearing

2,004.28

P3.741.28

Wherefore, Halili moved for the return of such sums of money. Herein petitioners opposed, on the following grounds:

(a) Under the law, the Sheriffs fees and the cost of the publication in two newspapers of the Sheriff's notice of

sale must be borne by the judgment debtor, the respondent Halili;

(b) Although it is true that respondent Halili appealed from the decision of the trial court which sentenced him to pay petitioners the sum of P2,004.28, compensation had taken place, and unless and until the Court of Appeals reverses the decision of the trial court, petitioners have the right to retain the said sum of P2,004.28.

Resolving the issue, respondent judge in his orders of November 23, 1959 and December 2, 1959, granted Halili's petition. And in his order of December 5, 1959, he denied the motion to reconsider of petitioners.

Hence this petition for certiorari.

Disputing the validity of the orders, petitioners submit the following contentions:

(1) Items of P297.00 and P1,440.00.—The writ of execution issued by the trial court pending appeal of Civil Case No. 22152 commanded the sheriff to collect from respondent the amount of the judgment "together with your lawful fees for service of this execution." Under Sections 14, 16 and 18 of Rule 39 of the Rules of Court the sheriff's fees and cost of publication, which are necessary expenses, should be borne by the judgment debtor, i. e. Halili.

It is important to note that this Court affirmed the decision of the trial court, with a modification only as to the amount of recovery.

(2) Item of P2,004.28—In another Civil Case (Case No. 28062) between the same parties, petitioners secured a judgment against respondent Halili for the sum of P2,004.28. This said judgment is now on appeal. Because petitioners are creditors of this amount of P2,004.28 just as they are debtors of respondent in the amount still due the latter through the modified decision of the Supreme Court in Civil Case No. 22152, compensation should take place as regards this amount.

After considering the above arguments and respondent's reply, thereto we adjudge as follows:

I. The writ of execution issued (pending appeal of Civil Case No. 22152) expressly commanded the Sheriff to collect from respondent Halili the amount of the judgment of the court "together with your (sheriff's) fees for service of this execution."

Respondent Halili in the decision modified by this Court, remained in the very same position he was in the original decision of the trial court: he was still the judgment debtor. Therefore, he should pay the sheriff's fees.

The "no costs" clause in the decision of this Court merely meant that we did not allow respondent Halili, who was the appellant in the appealed case, any costs in this Court against petitioners, who were then the appellees.

The doctrine enunciated in the cases of Hilario vs. Hicks[1] and Po Pauco vs. Tan Junco[2] are not in point to the issue raised in the present case. In the aforesaid cases, the decisions of the trial court were reversed by this Court. In the instant case, the decision of the trial court was affirmed with only a modification as to the amount of recovery. In other words, here, respondent Halili was still adjudged liable for his lease obligations.

As to the expense of publication, Section 14 of Rule 39 of the Rules of Court, provides that after the judgment has been satisfied, any excess in the proceeds of the sale (of the property levied upon) over the judgment and accruing costs, must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court.

Do these "accruing costs" include the expense of publication?

Section 16 of Rule 39, imposes upon the sheriff the duty to publish in a newspaper, the notice of sale of the property levied upon. The publication being a requirement, the expenditures in relation thereto may be deemed as

necessary incident of execution. It is reasonable to hold that they form part of the accruing costs.

The above conclusions are strengthened by Section 18 of the same Rule 39 which allows the judgment debtor to prevent the sale provided he pays the amount required by the execution and "the costs that have been incurred therein." The sheriff's fees and costs of publication having been incurred in connection with the execution, are covered by such "costs" clause. The condition provided in this Section 18 that the judgment debtor pays the costs that have been incurred therein is a clear indication that had there been an execution sale, he (the judgment debtor) would have had to bear these expenses. Otherwise, why should he be required to pay the said expenses should he move to prevent the sale?

In pursuance, therefore, of the explicit order of the lower court in its writ of execution, and in accordance with the provisions of the Rules of Court, petitioners may charge respondent Halili the sheriff's fees and costs of publication of his notice of sale.

II. On the other hand, petitioners contend that they have a right to retain the sum of P2,004.28 on the theory of compensation. We believe that compensation can not take place in this case because petitioners' claim against Halili is still being the subject of court litigation. It is a requirement, for compensation to take place, that the amount involved be certain and liquidated.[3]

Accordingly, that part of the order of December 2, 1959 that directed the return of the amounts of P297.00 and P1,440.00 representing the sheriff's fees and costs of publication, respectively, is revoked; and that part of the said order directing the repayment of the amount of P2,004.28 is affirmed. No costs in this instance.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] 40 Phil. 576.

[2] 49 Phil. 349.

[3] Cia. Gen. de Tabacos vs. French, et al., 39 Phil. 34.

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