

## ANITA U. LORENZANA, PETITIONER, VS. POLLY CAYETANO AND COURT OF APPEALS, RESPONDENTS.

*G.R. No. L-37051. August 31, 1977*

Ponente: GUERRERO, J.

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### GUERRERO, J.:

Appeal by certiorari from the judgment of the Court of Appeals in CA-G.R. No. 31082-R entitled "Polly Cayetano, Plaintiff-Appellant vs. Anita U. Lorenzana, et al., defendants-Appellees" and from the resolution of the Court deny-ing petitioner's motion for reconsideration.

We find in this case a perfect example that proves the validity of that classic legal dictum that a man's house is his castle where the wind may enter, the rain may enter but neither the King nor the King's men may enter without the consent of the owner.

The records show that in 1958, petitioner filed in the Municipal Court of Manila ejectment cases for nonpayment of rentals against her tenants occupying different stalls in that quonset but situated in the San Lazaro Estate (corner of C.M. Recto St. and Quezon Blvd., Manila, adjacent to the old Bilibid Compound) with a floor area of 360 square meters, leased by her (which she afterwards purchased) from the Manila Railroad Company and later from the Bureau of Lands, together with the use of the land north and south of the quonset hut with an area of 340 square meters. The private respondent, on the other hand, occupied the area north of the quonset hut, which area was also leased by her from the Manila Railroad Company and subsequently from the Bureau of Lands, and on which her house stood. Hence, the areas occupied by the two principal protagonists are adjacent to each other.

The ejectment cases having been decided by the Muni-cipal Court in favor of the petitioner, the same were ap-pealed to the Court of First instance of Manila, Branch I. The Court affirmed the decision of the municipal court and ordered the defendants-tenants to vacate the premises leased. Upon refusal of the tenants to vacate the premises, the court granted a partial execution of the judgment and on July 20, 1959, a writ of demolition was issued, specifically commanding the Sheriff of Manila "to demolish the premises subject of the above-named cases" (Record on Appeal, p. 4).

Thereupon on July 27, 1959, petitioner together with her counsel, Atty. Nereo Paculdo and Deputy Sheriff Jose L. Cruz proceeded and entered the premises of the respondent and in spite of her protests that she was not a party to the ejectment cases in which the demolition order was, secured and that her premises was not subject of said ejectment cases, they destroyed the latter's fence including flower pots, trellises, and electric installations and carted away the materials thereof and built another fence 5 meters into the premises of the respondent, boring holes into the cemented garden or "patio" of her house.

On August 3, 1959, respondent presented to the court a motion to declare petitioner, her counsel and the deputy sheriff guilty of contempt; that they be punished and held liable in damages to the petitioner. The presiding judge held the motion in abeyance until the decision of the court in the ejectment cases shall have been rendered.

Acting upon the petitioner's ex-parte motion and ur-gent motion for demolition in the two appealed ejectment cases, Civil Case No. 29664 and Civil Case No. 29665, the court on September 28, 1959 ordered that "a writ of demolition be issued ordering the Sheriff of Manila or any of his deputies to demolish any or all improvements erected and existing on the parcel of land subject of the above-entitled cases which consists of an area of about 700 square meters." (Record on Appeal, p. 55). The writ of demoli-tion was issued by the Sheriff on September 30, 1959.

Upon procurement of this order of demolition, petitioner, together with her counsel and the deputy sheriff proceeded once more to respondent's premises on October 1, 1959 and moved the fence where it was illegally placed by them on July 27, 1959. On the same day, October 1, 1959, respondent filed an urgent motion for the suspension of the execution of the writ of demolition, which motion was denied by the court the next day, October 2, 1959.

The records further establish that on November 27, 1959, petitioner, her lawyer, Atty. Paculdo, and Sheriff Cruz went back and moved the fence 1 meter more into the premises of the respondent; that on February 19, 1960, the respondent filed an ex-parte motion to withdraw the petition for contempt on the ground that "conferring with Judge Bayona after this petition was heard, the petitioner was informed that not being a party to the above-numbered cases, she is like an intruder to act on her petition." (Record on Appeal, p. 80).

On October 1, 1959, the respondent Polly Cayetano filed in the Court of First Instance of Manila, Civil Case No. 42001 against the petitioner Anita U. Lorenzana, Atty. Nereo J. Paculdo and Deputy Sheriff Jose L. Cruz for damages with mandatory injunction.

The defendants therein filed a motion to dismiss, which was opposed by the plaintiff, and the Court, Branch XVII, denied on December 19, 1959 the motion to dismiss and the petition for issuance of the writ of preliminary injunction. The defendants filed their answers.

Under date of March 9, 1962, the Court issued the De-cision dismissing the complaint of the plaintiff as well as the counterclaim of the defendants Anita U. Lorenzana and Atty. Nereo J. Paculdo for lack of sufficient evidence. A motion for reconsideration was filed by the plaintiff but denied by the Court. Not satisfied with the Decision of the Court, Polly Cayetano appealed to the Court of Appeals. The Court of Appeals reversed the decision appealed from, and ordered "defendant-appellee Lorenzana to restore to appellant the possession of the property invaded and occupied by her as shown in Exh. L-1 to L-4; to put back appellant's fence and other valuable improvements in their place before the writ of demolition was served; ordering defendants, Lorenzana and Cruz, to pay jointly and severally to the plaintiff-appellant the sum of P5,500.00 as actual and moral damages, and pay the costs, except defendant, Paculdo."

The above Decision is now sought to be reviewed in the instant petition for certiorari upon the following assignment of errors: I. That the Court of Appeals erred in holding that the writ of demolition issued by Branch I of the Court of First Instance of Manila presided over by Judge Bayona could not be legally effected against respon-dent Polly Cayetano; II. That the Court of Appeals erred in holding that the private respondent's failure to pursue her remedy before a higher court did not amount to a waiver of her rights; III. The Court of Appeals erred in holding in effect that a writ of execution and an order of demolition can be collaterally attacked in an action specifically brought for recovery of damages; and IV. The Court of Appeals erred in holding that the issuance of the writ of demolition by Judge Bayona was in violation of Section 14, Rule 39.

This case hinges on the legal effects of the writs of demolition issued in the ejectment cases wherein the respondent was not a party thereto. The writs were is-sued by virtue of the judgment rendered by the Court of First Instance of Manila (Branch I), the dispositive por-tion of which states, as follows: "WHEREFORE,

judgment is rendered condemning the defendants xxx to vacate the premises; ordering herein defendants xxx to pay rent to plaintiff xxx plus attorney's fees and costs."

The petitioner contends that the respondent having voluntarily appeared before the court and invoked its jurisdiction seeking affirmative relief by filing on August 3, 1959, a petition to declare Lorenzana, Atty. Paculdo and Sheriff Cruz in contempt and holding them liable in damages, and by filing on October 1, 1959, an urgent petition for the suspension of the execution of the writ of demolition, she could no longer contest the efficacy of the writ. There is no merit to this contention and We find no error in the ruling of the Court of Appeal's that the writ of demolition could not be legally effected against the respondent.

It must be noted that respondent was not a party to any of the 12 ejectment cases wherein the writs of demolition had been issued; she did not make her appearance in and during the pendency of these ejectment cases. Respondent only went to court to protect her property from demolition after the judgment in the ejectment cases had become final and executory. Hence, with respect to the judgment in said ejectment cases, respondent remains a third person to such judgment, which does not bind her;<sup>[1]</sup> nor can its writ of execution be enforced against her since she was not afforded her day in court in said ejectment cases.<sup>[2]</sup>

The vital legal point here is that respondent did not derive her right or interest from the defendants-tenants nor from the plaintiff-landlord (the herein petitioner) but from the Bureau of Lands from which she had leased the property. She is neither a party nor successor in interest to any of the litigants in the ejectment cases.

We also find no merit in the contention of the petitioner that respondent having been duly heard by the Court, she was not deprived of her day in court and was accorded the due process of law.

It cannot be said that the constitutional requirements of due process were sufficiently complied with because the respondent had been duly heard. Indeed, respondent was heard but simply hearing her did not fulfill the basic conditions of procedural due process in courts. When respondent appeared before the court to protect and preserve her property, the Court had not lawfully acquired jurisdiction over the property of the respondent because the premises of the respondent was not included in the ejectment cases and the judgment in said cases could not affect her property, much less demolish the same. In the leading case of *El Banco-Español-Filipino v. Palanca*<sup>[3]</sup> cited in *Macabingkil v. Yatco, et al.*,<sup>[4]</sup> We laid down the court's constitutional requirements of due process, thus ?

"As applied to judicial proceedings... it may be laid down with certainty that the requirements of due process is satisfied if the following conditions are present, namely: (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing."

Respondent pursued various steps to protect her property from the invasion and encroachment of the petitioner, abetted by her counsel and the deputy Sheriff. She filed a motion for contempt; she protested to the Sheriff of Manila; she appealed to the Director of the Bureau of Lands; she filed an urgent motion to suspend the writ of demolition. Although the motions for contempt and for suspension were heard by the court, such actions taken after the judgment had become final and executory did not make the respondent a party litigant in the ejectment cases. The respondent remained a stranger to the case and she cannot be bound by the judgment rendered therein, nor by the writs of execution and demolition issued in pursuance to said judgment. Intervening as a prejudiced owner of improvements being wrongly demolished merely to oppose such order of demolition, upon learning that the said order was directed against premises not her own, is not the same as being a party to the suit to the extent of being bound by the judgment in the case where such order of demolition was issued.<sup>[5]</sup> Furthermore, it must be noted that said petitions were filed after the promulgation of the decision in the ejectment cases and while in the

process of execution. It is not proper to speak of an intervention in a case already terminated by final judgment.[6]

Respondent, not being bound thereby, may avail herself of the proper action afforded by Section 17, Rule 39 of the Revised Rules of Court which provides the proceedings where property levied upon is claimed by a third person, stating as follows:

"x x x The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action. x x x" (Underscoring supplied)

Respondent acted within and exercised her right when she filed the proper action to vindicate her claim afforded to her by Sec. 17, Rule 39 of the Revised Rules of Court, against the intruders or trespassers before the Court of First Instance of Manila, Branch XVII, in Civil Case No. 42001 for damages with mandatory injunction. If she did not insist on her motion for contempt which the court held in abeyance and was later withdrawn by her, if she did not appeal from the order of the court denying her motion to suspend the writ of demolition, such failure did not amount to a waiver of her right to pursue the proper action or remedy provided to her by the Rules of Court. It is of no moment that the respondent did not file a motion to quash the writ of execution or file a petition for relief under Rule 38 of the Revised Rules of Court or file a petition for certiorari and prohibition with a higher court after her petition to suspend the writ of demolition had been denied as suggested by petitioner. The law has specifically given her the remedies to vindicate her claim to the property. When the property of one person is unlawfully taken by another, the former has a right of action against the latter for the recovery of the property or for damages for the taking or retention, and he is entitled to his choice of these two remedies.[7]

We find no legal compulsion for respondent to pursue the remedies suggested by the petitioner, for the rights of a third-party claimant should not be decided in the action where the third-party claim has been presented, but in a separate action to be instituted by the third person.[8]

In *Queblar v. Garduño*,[9] this Court held that:

"Strictly speaking, the appeal interposed by the third-party claimant-appellant is improper, because she was not one of the parties in the action who were exclusively Venancio Queblar as plaintiff and Leonardo Garduño as defendant. Considering the provisions of said section 451 of the Code of Civil Procedure, as amended by Act No. 4108, the appealed order was not appealable. The appeal that should have been interposed by her, if the term "appeal" may properly be employed, is a separate reivindicatory action against the execution creditor or the purchaser of her property after the sale at public auction, or a complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff."

In *Potenciano v. Dineros*,[10] We ruled that:

"We see no merit in the claim that the denial or dismissal of Potenciano's claim in the court below constitutes a bar to the present action. Potenciano, it is true, did not appeal, from the disapproval of his claim. But it should be borne in mind that appeal is not proper in such cases. (*Queblar v. Garduño*, supra). As was said in that case, the appeal that should be interposed "if the term 'appeal' may properly be employed, is a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff." Such reivindicatory action is resorted to by the third-party claimant by Section 15 (now 17) of Rule 39 despite disapproval of his claim by the court itself. (*Planes v. Madrigal & Co.*, supra; *Lara v. Bayona*, L-7920, May 10, 1955), and it is the action availed of by Potenciano in this case."

The petitioner contends that a writ of execution and an order of demolition cannot be collaterally attacked in an

action specifically brought for recovery of damages, and that said action for damages and mandatory injunction (Civil Case No. 42001) filed by the respondent with Branch XVII was nothing less than an action to review the validity of the order of demolition issued by Branch I in the ejectment cases which have long become final.

We are not in accord with this contention. The civil case filed by the respondent for damages and the restoration of the property destroyed and her premises taken unlawfully under the writ of demolition was not brought to reverse, impugn or set aside the judgment in the ejectment cases but to declare that the writ of demolition should not have been applied to that portion of the land and the building occupied by her, as correctly stated by the Court of Appeals. To put it succinctly, the judgment and the demolition orders were valid and binding to the tenants but not to the respondent and her property. Fundamentally, it is the wrongful execution of the judgment and the writ that is the basis of the claim for damages.

If the judgment and the writs of execution and demolition were alleged in the complaint for damages, this was not necessarily a collateral attack on said processes of another branch of the Court but averments to prove the wrongful, illegal and unauthorized exercise of the writs; it is merely a statement of the legal basis which the sheriff exceeded, abetted by the petitioner.

The contention of the petitioner that a branch of a Court of First Instance cannot interfere with or nullify decisions, orders or proceedings of another branch of the same court and therefore the writs of execution and demolition cannot be impugned is not exactly on all fours with and hence not applicable to the case at bar. The settled rule has been clearly laid down in *Abiera v. Court of Appeals*[11] wherein the Court, after a review of the doctrines in *Cabigao v. Del Rosario & Lim*, 44 Phil. 192; *Manila Herald Publishing Co., Inc. v. Ramos*, 88 Phil. 94; *Hacbang, et al. v. Hon. Clementino Diez*, 8 SCRA 103 (May 30, 1963) and *National Power Corporation v. Hon. Jesus de Veyra*, 3 SCRA 646 (Dec. 22, 1961), held that ?

"No court has power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction.

For this doctrine to apply, the injunction issued by one court must interfere with the judgment or decree issued by another court of equal or coordinate jurisdiction and the relief sought by such injunction must be one which could be granted by the court which rendered the judgment or issued the decree.

Under Section 17 of Rule 39 a third person who claims property levied upon on execution may vindicate such claim by action. A judgment rendered in his favor - declaring him to be the owner of the property -- would not constitute interference with the powers or processes of the court which rendered the judgment to enforce which the execution was levied. If that be so -- and it is so because the property, being that of a stranger, is not subject to levy -- then an interlocutory order, such as injunction, upon a claim and prima facie showing of ownership by the claimant, cannot be considered as such interference either.

The right of a person who claims to be the owner of property levied upon on execution to file a third-party claim with the sheriff is not exclusive, and he may file an action to vindicate his claim even if the judgment creditor files an indemnity bond in favor of the sheriff to answer for any damages that may be suffered by the third-party claimant. By "action," as stated in the Rule, what is meant is a separate and independent action."

With respect to the fourth assignment of error, petitioner's contention appears to be quite tenable in that under Sec. 14, Rule 39 of the Revised Rules of Court which the Court of Appeals applied, the notice required before demolition of the improvements on the property subject of the execution, is notice to the judgment debtor, and not to a stranger or third party to the case like the private respondent herein. Nonetheless, the claim that the Court of Appeals misconstrued the aforementioned Rule is as immaterial and inconsequential as the application of this legal provision is superfluous and unnecessary for the affirmance of the Court's decision.

The Manifestation filed by petitioner in the records dated June 1, 1977 with Annexes A, B, C and D, is Noted.

IN VIEW OF ALL THE FOREGOING, the petition herein is dismissed, and the appealed judgment is affirmed, with costs against petitioner.

**SO ORDERED.**

Makasiar, Martin, and Fernandez, JJ., concur.

Teehankee, J., (Chairman), concurs on the specific grounds stated in J. Muñoz Palma's concurring opinion.

Muñoz Palma, J., concurs with a brief opinion.

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[1] Cf. *Santiago v. Calumpag & Estor*, L-14615, October 31, 1964, 12 SCRA 292.

[2] Cf. *DBP v. Bautista*, L-21363, November 29, 1968, 26 SCRA 357.

[3] 37 Phil. 934 (1918)

[4] No. L-23174, September 18, 1967, 21 SCRA 151

[5] Cf. *Santiago v. Dionisio*, 92 Phil. 495 (1953)

[6] Cf. *Manila Herald Publishing Co. v. Ramos, et al.*, 888 Phil 94 (1951)

[7] See *Waite v. Peterson*, 8 Phil. 449 (1907); *Quesada v. Artacho*, 9 Phil. 104 (1907); *Uy Piaoco v. Osmeña*, 9 Phil. 299 (1907); *Osorio & Del Rosario v. Cortes and Manalo*, 24 Phil. 653-654 (1912).

[8] *Contreras, et al. v. Molina et al.*, 64 Phil. 1 (1937), *Santos, et al. v. Mojica, et al.*, L-19618, February 28, 1964.

[9] 67 Phil. 319-320 (1939).

[10] 97 Phil. 200 (1955).

[11] No. L-26294, May 31, 1972, 45 SCRA 314-315.

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