

**JOSE AVENDAÑO AND MARTA AVENDAÑO, PETITIONERS, VS. THE
HON. FEDERICO C. ALIKPALA, THE SHERIFF OF MANILA, THE
MANILA RAILROAD AND LUZVIMINDA PARUÑGAO SAN PEDRO,
RESPONDENTS.**

G.R. No. L-21189. November 28, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

This case, seeks to test the propriety and validity of an order of Garnishment issued pursuant to a Writ of Execution of a Judgment for Sum of Money.

On complaint of respondent Luzviminda Paruñgao San Pedro with the Municipal Court of Manila (Civ. Case No. 95957) against petitioners Jose Avendaño and Marta Avendaño (husband and wife), the latter were ordered to pay plaintiff therein, the sum of P2,000.00, plus 12% interest from November 30, 1960, P200.00 as attorney's fees and another P200.00 for actual damages and the costs. The decision of the Municipal Court was appealed to the CFI of Manila (Civil Case No. 50273) and assigned to the sala of respondent Judge. For failure of defendants to reproduce their Answer and their third-party complaint, they were declared in default and the evidence of respondent San Pedro was received by the Clerk of Court, as commissioner. The respondent Judge's decision states:

"The promissory notes, however, were all signed alone by defendant Marta Avendaño and there was no showing that the loans evidenced by said documents were obtained with the knowledge and consent of the husband. Accordingly, the other defendant cannot be held liable also to pay the amount due to plaintiff.

"WHEREFORE, judgment is hereby rendered sentencing the defendant Marta Avendaño, to pay the plaintiff the sum of P2,000.00 with interest thereon at the rate of 6% per annum from March 6, 1962, the date of the filing of the complaint until fully paid, plus the amount of P100.00 as and for attorney's fees and the costs of the suit,"

Upon finality of the above judgment, plaintiff San Pedro prayed for the issuance of a Writ of Execution, on the "goods and chattels of Marta Avendaño" which was granted by respondent Judge on October 30, 1962. Pursuant to said Writ, the respondent Sheriff of Manila sued out a Writ of Garnishment on the salaries of petitioner Marta Avendaño, with the respondent Manila Railroad Company where she was employed. In effect, the said Manila Railroad Company, had not delivered her salaries to her since November 15, 1962 up and including April, 1963 (filing of the instant petition). It was only on November 15, 1962 that petitioner Marta Avendaño came to know of the decision of the CFI, when her pay was garnished. Petitioners moved for the setting aside of the Order of Default, and failing to do so, they filed with the Court in the same case, a petition to have the Writ of Garnishment invalidated on various, to wit:

(1) that the goods and chattels which the writ of execution directed to be seized are those of petitioner Marta Avendaño alone, whereas the salary being garnished was "conjugal property" and therefore not covered by the

writ;

(2) that garnishment of salaries, is not sanctioned by law, in fact, there is a prohibition to that effect on the ground of public policy;

(3) that even if the salaries is subject to garnishment, it becomes only effective if it is excess for the needs of petitioner and her family.

The petition and the subsequent motion for reconsideration were both denied by the respondent Judge.

Claiming that respondent Judge, in denying their petition to declare invalid the Writ of Garnishment and motion for reconsideration, acted without, or in excess of jurisdiction and/or with grave abuse of discretion, petitioners commenced with this Court, the present proceedings for Certiorari and Mandamus, with Preliminary Mandatory Injunction, praying that the Writ of Garnishment be declared null and void; and that pending the final resolution of the matter, a writ of preliminary injunction be issued.

On April 24, 1963, this Court gave due course to the petition and issued a Writ of Preliminary Injunction, directing the respondent Sheriff of Manila and the Manila Railroad Company to refrain from enforcing the Writ of Garnishment with respect to the salary of petitioner Marta Avendaño, until further orders from this Court.

The Manila Railroad Company and San Pedro filed separate Answers. The former, after denying all the allegations in the Petition, for alleged lack of knowledge or information sufficient to form a belief as to the truth thereof, prayed that judgment be rendered as justice and equity demanded in the premises. The latter maintained in her answer that the salary of petitioner Marta Avendaño is liable for garnishment, provided the same has already been set aside or segregated from the mass of the public fund; that even if the salary were conjugal, the same could be made liable to answer for the indebtedness of the spouses.

We are of the opinion that the Writ of Garnishment is illegal. It has been shown by un rebutted proofs, that the salary of petitioner Marta Avendaño was not sufficient for her expenses and that of her family. Under the Revised Rules, the following, among others, is declared exempt from execution,

"(1) So much of the earnings of the debtor for his personnel services within the month preceding the levy as are necessary for the support of his family" (Sec. 12, Rule 39).

The salary of Marta Avendaño is P200.00 a month, but her take-home pay after the legal deductions is only P151.50. A summary of her share in the monthly maintenance of the family is in Annex K-1, which indicates that she should at least contribute P220.00. The amount garnished is, therefore, much less than what she ought to contribute, and obviously, it is exempt from execution. Being exempt from execution, it should not also be reached by garnishment. Petitioners have pointed out to the respondent judge the matter of exemption of Marta Avendaño's salary, inspite of which His Honor denied their petition to declare the garnishment illegal. There was, therefore, grave abuse of discretion on the part of the respondent judge in that aspect, and lack or excess of jurisdiction on the part of the Sheriff in suing out the Writ of Garnishment. In the case of *Garcia vs. Castillo*, 43 Phil., 364, it has been held that the issuance of a writ of execution on P50.00 of the total of P65.00 received as monthly salary from the employer, was premature and unlawful, the court saying:

"Only salary 'due' the judgment debtor is subject to attachment and execution, and then only if it is not made to appear by the affidavit of the debtor or otherwise, that such earnings are necessary for the support of his family. * * *"

Moreover, in the case of *Dir. of Commerce and Industry vs. Concepcion*, 43 Phil., 384, this Court ruled:

"A rule, which has never been seriously questioned, is that money in the hands of public officers, although it

may be due government employees, is not liable to the creditors of these employees in the process of garnishment. * * * Another reason is that money sought to be garnished as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.

* * * * *

"To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances, it might be fatal to the public service. * * *"

In view of the conclusions, hitherto reached, the other questions raised need no longer be considered.

Wherefore, the writ of Garnishment in question is hereby declared Null and Void, and the Writ of Preliminary Injunction earlier issued, is made permanent. No special pronouncement, as to costs.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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