

SERVANDO R. LARA, PETITIONER, VS. HON. FROILAN BAYONA IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, THE SHERIFF OF MANILA, CONCEPCION YALDUA AND PRUDENCIO D...

G.R. No. L-7920. May 10, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

On or about March 20, 1953, the Court of First Instance of Manila rendered a decision in Civil Case No. 18393 thereof, entitled "Concepcion Yaldua vs. Prudencio de Guzman," reading:

"Las partes han presentado un convenio de transaccion del tenor siguiente:

'COMPROMISE AGREEMENT

'COME NOW the parties in the above-entitled case, assisted by their respective attorneys, and to this Hon. Court most respectfully submit the following compromise agreement:

'1. That the defendant acknowledges to be indebted to the plaintiff in the sum of SIX THOUSAND PESOS (P6,000.00), Philippine Currency, with interest at the rate of 12% per annum effective December 6, 1949;

'2. That the plaintiff admits that before the filing of the present complaint defendant has paid to her a total sum of ONE THOUSAND FOUR HUNDRED SEVENTY FIVE PESOS (P1,475);

'3. That the parties hereto admit that the defendant, as of December 31, 1952, after deducting payments already made, is still indebted to the plaintiff in the sum of SIX THOUSAND SIX HUNDRED EIGHTY FIVE PESOS (P6,685.00);

'4.. That the defendant confesses judgment in the sum of SIX THOUSAND SIX HUNDRED EIGHTY FIVE PESOS (P6,635 .00) , with 12% interest thereon to be reckoned with from January 1, 1953, until fully paid.

'WHEREFORE, the parties hereto pray that judgment be rendered in accordance with the foregoing compromise agreement, without, pronouncement as to costs, and likewise without prejudice to submitting a subsequent compromise agreement before the judgment to be rendered in pursuant hereof becomes final and executory.

Manila, March 17, 1953.

RESPECTFULLY SUBMITTED:

(Sgd.) CONCEPCION A. YALDUA

(Sgd.) PRUDENCIO DE GUZMAN

Plaintiff

Defendant

(Sgd.) FLORENTINO K. GUANLAO

(Sgd.) RAFAEL E. SANTOS

Attorney for the plaintiff R-405 Borja Bldg., Rizal Ave., Manila

Attorney for the defendant, Room 201 Yorktown Bldg., 420 Rizal Avenue, Manila'

"El Juzgado, POR TANTO, aprueba el mencionado convenio, y dicta sentencia condenando al demandado para que pague a la demandante la suma de P6,685.00 con los intereses de 12% al año, empezando el 1.o de enero de 1953, sin costas.

"ASI SE ORDENA.

"Manila, Filipinas. 20 de marzo de 1953.

MAGNO S. GATMAITAN

J u e z."

(Annex A, p. 9, Roll).

This decision having become final, the corresponding writ of execution was issued on July 11, 1953. Owing, seemingly, to request of defendant De Guzman, who had, meanwhile, made partial payments on account of the sum due under the decision, plaintiff Yaldia allowed said writ to lapse. On February 4, 1954, the court issued an alias writ of execution, which was delivered to the sheriff on February 24 of the same year. Pursuant thereto, on April 13, 1954, the Sheriff of Manila levied upon the following personal properties of De Guzman, located in his residence, at No. 693 Makiling St., Sampaloc, Manila:

- "1-Sofa de madera 'Dao' con celujia de bejuco;
- "1-Mesita de madera 'Dao' con cristal;
- "4-Butacas de madera 'Dao' con celujia de bejuco;
- "1-Piano marca 'P.S. Wick' con su banquito redondo;
- "1-Refrigerator marca 'SHELVADOR';
- "1-Estante de madera con cristal;
- "1-Aparador platera de 'Dao' con espejo y cajonitos;
- "1-Radio de combinacion (Cabinet);
- "2-Espejos de pared, desiguales;
- "1-Mesa para conifidor de madera con cristal; y
- "8-Sillas para comedor de madera con asiento de bejuco." Petition, p.2.)

The next day, said officer issued a notice to the effect that these properties would be sold at public auction on April 22, 1954, at 10:00 a.m. about thirty (30) minutes before the time scheduled for the auction sale, petitioner herein, Servando R. Lara, filed, with the Sheriff of Manila, a verified third party claim alleging that said properties were subject to a chattel mortgage constituted, in his favor, by De Guzman, by virtue of a deed, copy of which was attached to said third party claim, dated December 12, 1952, and registered with the office of the register of deeds for the City of Manila. Said deed of chattel mortgage states that the same was executed to guarantee the payment of a debt of P5,000. on or before June 12, 1953, with interest thereon at the rate of 12% per annum, to be computed and paid, upon maturity, simultaneously with the capital. On or about April 26, 1954 Yaldia filed an "urgent motion to quash third party claim and/or to determine the value of the levied properties for purposes of filing a bond." Despite the opposition of Lara thereto, the court issued, on May 13, 1954, the

following:

"O R D E R

"After a rareful consideration of the urgent motion filed on April 27, 1954, and for the reasons stated therein, this court believes and so holds that the same is well taken;

"AS PRAYED FOR, the third party claim filed by one, Servando R. Lara is hereby quashed, and the Sheriff of the City of Manila is hereby ordered to proceed with the sale of the personal properties of the defendant for the satisfaction of the deficiency of the judgment datee March 20, 1954, rendered against the defendant in the above-entitled case.

"SO ORDERED." (Annex F, p.21, Roll).

Two motions for reconsideration of this order having been denied, the last by Hon. Froilan Bayona, Judge, the third party claimant., Servando R. Lara, instituted the present case, against said Judge, and the Sheriff of Manila, Concepcion Yaldua ana Prudencio de Guzman. In the petition, it is prayed:

"x x x that a writ of preliminary injunction be forthwith issued against the sheriff of Manila to suspend the sale on July 7, 1954 upon filing the necessary bond, and that, after due hearing, a decision be rendered declaring the aforesaid orders and actuations of Judge Julio Villanor and the respondent Judge Froilan Bayona, null and void; that the preliminary injunction be made permanent and perpetual; and that a writ of prohibition be issued against said respondent judge, prohibiting him from issuing another similar order of execution against the same properties previously levied upon and finally to order the Sheriff to discharge said properties from levy and to deliver the possession thereof to the petitioner." (Petition, p. 7, loll.)

Soon after the filing of the aforementioned petition, we issued the writ of preliminary injunction therein prayed for, upon ,the filing of the corresponding bond.

Petitioner contends that the lower court has no jurisdiction to quash his third party claim, for: the same was filed, not in court, but with the Sheriff of Manila; petitioner is not a party in the case; and the validity of the third party claim and the rights of the third party claimant should be determined in a separate and independent action.

Upon the other hand, aside from maintaining that respondent Judge had full authority to issue the order complained of, respondents point out a number of circumstances tending to suggest that the chattel mortgage and the debt it purports to guarantee are fictitious in nature. It is not necessary, however, that the point last adverted to be determined or evesrconsidered. For the purpose of this decision, we will assume that said debt and chattel mortgage are legitimate, at least, as between the mortgagor and the mortgagee.

It appears that, although dated December 12, 1952, the deed of chattel mortgage in favoe of petitioner Lara was not filed with the office of the register of deeds until April 22, 1954, at 9:00 a.m., or one (1) hour before the time set for the sale at public auction of the properties: in question, and over nine (9) days after the levy made by the sheriff, in compliance with the alias writ of execution aforementioned. Section 4 of Act No. 1508, provides:

"A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or if he resides without the Philippine Islands, in the province in which the property is situated: x x x." (Underscoring supplied.)

Inasmush as, at the time of the levy, on April 13, 1954, the mortgagee was not in possession of the property in dispute and the deed of mortgage was not registered in the manner provided by law, it is obvious that petitioner's chattel mortgage is not valid as against either the judgment creditor or the court. Anyhow, even if said deed had

been registered prior to the levy by the sheriff, a sale of said properties in pursuance of the aforementioned writ of execution could not affect the rights -if any- of the alleged mortgagee, for "such sale conveys to the purchaser all the rights which the debtor had in such property on the day the execution or attachment was levied." (Rule 39, section 22, Rules of Court). In other words, the buyer acquires the property subject to such liens or encumbrances as existed thereon at the time of the execution or attachment.

Moreover, the sheriff is an officer of the court. He acted as such when he received petitioner's third party claim. To put it differently, insofar as necessary for the exercise of the "inherent" power of the court "to control, in furtherance of justice, the conduct of its ministerial officers" (Rule 124, section 5[d] . Rules of Court) and "to do all things reasonably necessary for the administration of justice," (Moran, Comments on the Rules of Court, Revised Edition [1952] Vol. III, p. 642) said third party claim may be considered as filed with the court itself.

Again, in the case of Planas vs. Madrigal (L-6570, decided April 12, 1954), we said:

"The question to be determined is whether the respondent Judge acted with grave abuse of discretion when he ordered the quashing and discarding of the first and second third party claims interposed by petitioners on January 28, 1953, and February 9, 1953, and in ordering petitioner Juan Planas to vacate the land of the plaintiff not being a party to the case of forcible entry and detainer instituted by Madrigal and Co. Inc., against Concepcion L. Planas and Illuminado L. Planas.

"The duty of the sheriff in connection with the execution and satisfaction of a judgment of the court is governed by Rule 39 of the Rules of Court. With regard to the proceedings to be followed where the property levied in execution is claimed by a third person, section 15 provides that if such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy, the officer shall not be bound to keep the property unless the judgment creditor, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. If the third party claim is sufficient, the sheriff, upon receiving it, is not bound to proceed with the levy of the property, unless he is given by the judgment creditor an indemnity bond against the claim (*Manga-ang v. The Provincial Sheriff*, L-4869, May 26, 1952). Of course, the sheriff may proceed with the levy even without the indemnity bond, but in such case he will answer for any damages with his own personal funds. (*Waite v. Peterson, et al.*, 8 Phil. 449; *Alzua, et al. V. Johnson* 21 Phil. 308; *Consulta No. 441 de los abogados do Smith, Bell & Co.*, 46 Phil. 565.) And the rule also provides that nothing therein contained, shall prevent a third person from vindicating his claim to the property by any proper action (Section 15, Rule 39).

"In the present case, the provincial sheriff departed from the regular procedure prescribed by the rules. He chose to proceed with the levy even without the indemnity bond in view of the urgent motion to quash filed by the judgment creditor in the main case. It should be remembered that the court, after proper hearings, wherein the parties were allowed to submit documentary evidence, found the third party claims to be without merit and ordered that they be discarded and quashed. Indeed, the court found that Juan Planas, the third party claimant, is the son of defendants Concepcion L. Planas and Illuminado L. Planas, and a stockholder of a firm of which Concepcion L. Planas was the principal stockholder. It also found : that since the filing of the ejectment case against the spouses Planas up to December 29, 1952, the four houses claimed by Juan Planas were registered in the name of his mother, Concepcion L. Planas, in the assessment rolls of Pasay City, and that it was only on said date that said assessments were transferred to Juan Planas. On the other hand, the answer submitted by spouses Planas in the ejectment case contains a clear averment that the four houses now in dispute were constructed and were the property of said spouses. Likewise, the latter of Atty. Arcadio Ejercito, counsel of Concepcion L. Planas, sent to the provincial sheriff in connection with the demolition of the four buildings in question, contains an avowment which indicates that said buildings belonged to said defendants. This circumstantial evidence must have engendered in the mind of the court the conviction that the claim of ownership put up by Juan Planas at so late an hour is but an eleventh hour attempt to thwart and frustrate the

execution of the judgment rendered in the ejectment case.

"We hold that the action taken by the respondent Judge on this matter is justified. At any rate, the right of Juan Planas to the property is not completely lost, for the rule reserves to him the right to vindicate his claim in a proper action (Section 15, Rule 39). (Underscoring supplied.)

At any rate, Rule 39, section 15 of the Rules of Court reads:

"If property levied on be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor of his agent, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on, and, in case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution, The officer is not liable for damages, for the taking or keeping of such property, to any such third person unless such claim is made and unless the action for damages be brought within one hundred twenty days from the date of the filing of the bond. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action. When, however, the plaintiff, or the person in whose favor the writ of execution runs, is the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or attaching officer is sued for damages as a result of the attachment, he shall be Represented by the Solicitor-General and if held liable therefore, the actual damages adjudged by the court shall be paid by the Insular Treasurer out of such funds as may be appropriated for the purpose."

Pursuant to this provision, nothing contained therein shall prevent petitioner "from vindicating his claim to the property by any proper action," Neither does the order complained of deprive petitioner herein of the opportunity to enforce his alleged rights by appropriate proceedings. In short, he has another "Plain, speedy, and adequate remedy in the ordinary course of law," and, hence is not entitled either to a writ of certiorari or to a writ of prohibition, (Rule 67, sections 1 and 2, Rules of Court).

Petitioner alleges that having taken place on April 13, 1954, or more than 60 days from the issuance of the alias writ of execution, on February 4, 1954, the levy in question is null and void. Although the lifetime of a writ of execution is 60 days, this period should be computed, pursuant to Rule 39, section 11, of the Rules of Court, not from the issuance of said writ, but from its receipt by the sheriff. Said receipt, in the case at bar, took place on February. 24, 1954. It is obvious, therefore, that said period of 60 days had not expired when the levy was made on April 13, 1954.

Wherefore, the petition is hereby denied, and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioner.

IT IS SO ORDERED.

Pablo, Bengzon, Montemayor, Reyes, Bautista Angelo, and Labrador, JJ., concur.

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