

**LEON VELEZ, PETITIONER, VS. HON. RAMON O. NOLASCO, ETC.,
GRACIA VDA. DE NACUA ON HER OWN BEHALF AND AS GUARDIAN
AD LITEM OF THE MINOR JULIUS CESAR NACUA IN CIVIL CASE NO.
R-1970...**

G.R. No. L-9854. September 30, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is a petition for certiorari to secure the annulment of two orders of the respondent judge, dated August 9, 1955 and September 14, 1955, the first sustaining the motion to quash the writ of attachment issued in Civil Case No. R-1961 of the Court of First Instance of Cebu, and the second denying the motion for reconsideration of said order.

Leon Velez, the herein petitioner, is the plaintiff in Civil Case No. R-1961 of the Court of First Instance of Cebu filed, on July 8, 1952, against Felix Nacua, one of the herein respondents, for the collection of an indebtedness of P10,000.00

Respondents Gracia Vda. de Nacua and her ward Julius Cesar Nacua are the plaintiffs in Civil Case No. R-1970 filed, on July 18, 1952, in the aforesaid court also against the aforementioned Felix Nacua for the recovery of damages in the sum of P76,400.00

In both cases, upon petition of the respective plaintiffs, the respondent judge issued a writ of preliminary attachment on the properties of the defendant, herein respondent Felix Nacua. The writ of attachment issued in Civil Case No. R-1970 and the notice of attachment filed by the Provincial Sheriff in accordance with Sec. 7 of Rule 59 of the Rules of Court, were recorded in the office of the register of deeds, on July 21, 1952, at 10:30 a.m., while the writ of preliminary attachment and notice of attachment in Civil Case No. R-1961 were recorded on the same date, July 21, 1952, at 3:02 p.m.

On May 9, 1955, petitioner herein, as plaintiff in Civil Case No. R-1961, filed a motion for judgment on the pleadings on the ground that defendant Felix Nacua, in his answer, admitted his indebtedness although he pleaded the special defense of moratorium. While this motion was pending, respondent herein Gracia Vda. de Nacua—who was not a party in said Civil Case No. R-1961—filed a motion to quash the attachment issued therein on the sole ground that it was null and void and improperly issued, contending that her writ and notice of attachment obtained in case No. R-1970 were recorded first and, therefore, the writ of attachment secured by the herein petitioner in said case No. R-1961 was null and void. Petitioner opposed this motion alleging (1) that Gracia Vda. de Nacua and her ward Julius Cesar Nacua, not being parties in that case, have no personality to ask for the quashing of the attachment issued therein; (2) that the writ of attachment in question was issued first and was served earlier on the defendant than that of the movant Gracia Vda. de Nacua and therefore it is more valid and binding. Despite the opposition, on August 9, 1955, the lower court quashed the writ of attachment issued in said Civil Case No. R-1961. Thereupon petitioner herein filed a motion for reconsideration of the order, alleging that it is contrary to

law, but the court denied it; hence the present petition for certiorari on the ground that the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.

The facts of the case clearly indicate that there were two writs of attachment issued, one in Civil Case No. R-1961 and another in Civil Case No. R-1970; that both writs were recorded in the office of the register of deeds and by virtue of said registration both writs of attachment produced their legal effect, and whether the writ of attachment issued in Civil Case No. R-1961 will be preferred over that issued in Civil Case No. R-1970 or vice-versa, is a question that cannot certainly be threshed out thru a mere motion to quash. Admittedly, respondent Gracia Vda. de Nacua was not a party in said Civil Case No. R-1961; she was neither an intervenor nor a defendant therein; consequently she had no right to file a petition to annul or quash the writ of preliminary attachment issued in said case. We have already ruled in the case of Jose M. Tiaoqui et al. vs. Judge Fernando Jugo and the National City Bank of New York, 69 Phil., 437, that no person other than the defendant has right to ask for the dissolution or quashal of a writ of attachment issued in a given case. Moreover, the efficacy or effectiveness of the writs of attachment issued in both cases will depend on the judgment that each party may obtain therein.

The record shows that both the herein petitioner and the herein respondent Gracia Vda. de Nacua have not as yet obtained any judgment against Felix Nacua, so that any action to annul any of the attachments involved in the aforesaid cases, or to raise preferential right obtained thru it, is completely premature. Furthermore, we believe the right of the respondent Gracia Vda. de Nacua, if any, to annul the preliminary attachment issued in case No. R-1961 on the sole ground that the properties attached therein were already previously attached in Civil Case No. R-1970, cannot be brought in court thru a mere petition to quash in case No. R-1961 wherein she was not a party. She should bring it in an ordinary action.

We note that the lower court issued the disputed order on the ground that it could even *motu proprio* quash the writ of attachment in question, but it overlooked the fact that said writ was properly issued; there was no fraud or irregularity committed to obtain it, and it was properly recorded and had created a vested right in favor of herein petitioner that cannot certainly be abrogated or annulled by the respondent court in a mere motion to quash.

Evidently, under the facts of the case, the respondent judge acted in excess of his jurisdiction and, therefore, the disputed orders should be set aside as null and void.

Petition granted. With costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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