

**BAYER PHILIPPINES INC., BAYER AKTIENGESELLSCHAFT
(FORMERLY FARBENFABRIKEN BAYER AKTIENGESELLSCHAFT),
THE EX-OFFICIO SHERIFF OF QUEZON CITY, DEPUTY SHERIFF
MARINO V. CACHERO OF Q...**

G.R. No. L-38701. June 30, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

The motion for reconsideration of Bayer Philippines, Inc., et al. fails to consider that the validity of the Order of respondent Judge dated May 9, 1974 in Civil Case No. Q-14029, which declared that the third-party claimants were "mere conduits" of the judgment debtor, and, consequently, authorized the Sheriff to break open the gate to the premises at No. 18 Judge Juan Luna Street, San Francisco del Monte, Quezon City, to bring the properties therein and to sell them at public auction, and adjudicated in effect the ownership of the properties levied by the Sheriff in favor of the judgment debtor, was necessarily placed in issue by the pleadings in the cases at bar. The thrust of the allegations of petitioners in L-38801 and private respondents in L-38701 was precisely to impugn the authority of said respondent Judge in the proceedings for the execution of the judgment (Civil Case No. Q-14029) to decide the question of ownership over the properties claimed by the third-party claimants, as it is their view that the said question should be resolved in the separate and independent civil action instituted for such purpose by the claimants, pursuant to Section 17 of Rule 39 of the Rules. There is no question that this Order of May 9, 1974 in Civil Case No. Q-14029 is the basis of the Order of respondent Judge dated June 10, 1974 (Annex "B") and of the Sheriff's Notice of Sale dated June 11, 1974 (Annex "C"), which are also sought to be annulled.

Contrary to the claim of movants, the other Orders adverted to which were annulled in the judgment of this Court referred to those issued by respondent Judge in Civil Case No. Q-14029 to implement his Order of May 9, 1974. As to the contention of movants that this Court should decide whether or not Bayer Philippines, Inc., et al., as defendants in Civil Case No. Q-18881, were properly served with summons, it is sufficient to state that this question is still pending resolution before the court a quo. Until that question is resolved by said court, it would be premature to rule on that question in these cases.

Neither does the lifting of the Sheriffs levy render the resolution of the question of ownership and damages over the properties in Civil Case No. Q-18881 moot and academic. It must be recalled that the properties in question were taken by the Sheriff from the premises of the third-party claimants, despite the trial court's restraining order of May 16, 1974 in Civil Case No. Q-18881. This action of the Sheriff was predicated upon Judge Ericta's Order of May 20, 1974 in Civil Case No. Q-14029, directing the Quezon City Sheriff to proceed with the implementation of his Order of May 9, 1974. In view of Our ruling that Judge Ericta cannot decide the question of ownership in Civil Case No. Q-14029, there is, therefore, no legal basis for said order. In any event, the court a quo, in Civil Case No. Q-18881, could still proceed with the trial therein and decide the question of ownership and damages. During the pendency of said case, Bayer Philippines, Inc., et al. are not precluded from securing from said court appropriate orders for the protection of their interests.

WHEREFORE, in view of the foregoing, the motion for reconsideration should be, as it is hereby, denied for lack of merit.

Fernando, Chairman, Barredo, Aquino, and Concepcion Jr., JJ., concur.

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