

**ELIGIO ROQUE AND RODRIGO G. MALONJAO, PETITIONERS, VS.
HON. COURT OF APPEALS, HON. JUDGE CARLOS L. SUNDIAM,
(CFI-MANILA, BRANCH XXVIII) ASSOCIATED BANKING
CORPORATION FIL-EASTER...**

G.R. No. L-42594. October 18, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Treating this Petition as a special civil action for Certiorari, we affirm the Decision of the Court of Appeals denying petitioners' prayer to set aside the trial Court Order, dated April 14, 1975, to surrender the barge in question under pain of contempt, and its subsequent Orders denying their Motion for Reconsideration.

There is no dispute as to the following background facts:

On January 31, 1973, respondent Associated Banking Corporation (the Bank, for short) instituted an action, Civil Case No. 89692, in the Court of First Instance of Manila, Branch XXVIII, respondent Judge, presiding, against private respondent Fil-Eastern Wood Industries, Inc. (Fil-Eastern, for brevity), a domestic corporation, for recovery of a sum of money.

Upon ex-parte application by the Bank for a Writ of Preliminary Attachment, respondent Judge, after the filing and approval of the required bond of P220,000.00, issued, on February 4, 1974, an Order of Attachment commanding the Sheriff to attach the estate, real and personal, of Fil-Eastern.[1]

On February 7, 1974, the Sheriff's "Notice of Levy Pursuant to the Writ of Attachment" was registered in the Office of the Commander of the First Coast Guard, District of Manila,[2] pursuant to Sec. 805 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, requiring the registration of documents affecting titles of vessels with that entity. The said notice read, "levy is hereby made upon all the rights, titles, interest, shares and participation which the defendant Fil-Eastern Wood Industries, Inc. has or might have over a sea vessel or barge named Fil-Eastern V."

It appears that prior to the issuance of said Writ of Attachment, Fil-Eastern had delivered the barge to the Cotabato Visayan Development Corporation sometime in April, 1973, for repair. The job was completed in June 1973, but Fil-Eastern failed to pay the cost of repairs of P261,190.59. Pursuant to the provisions of Article 2112[3] in relation to Article 1731[4] of the Civil Code, the Cotabato Visayan Development Corporation proceeded before Notary Public Clemente R. Gonzales of Manila to the sale of said barge. In the public auction sale conducted by said Notary Public on April 24, 1974, petitioner Eligio Roque acquired the barge as the highest bidder, and was accordingly issued a Certificate of Sale by the Notary Public. On the same date, the Cotabato Visayan Development Corporation issued an Affidavit of Release of mechanic's lien against Fil-Eastern. The Certificate of Sale was received in the office of the Philippine Coast Guard on May 3, 1974.[5] It was not until December 24, 1974, however, that Certificate of Ownership No. 8647, a Certificate of Philippine Register, a

Certificate of Change of Name of Vessel from "Fil-Eastern V" to "Satellite II", as well as a Coastwise License were issued to Roque by the Philippine Coast Guard.[6] These muniments of title were issued only after counsel for Eligio Roque had assured the Philippine Coast Guard, in a letter dated November 13, 1974, that "without touching on the merit of the preference of our client's claim in relation to the levy registered by other claimants, such levy is not in any manner a legal obstacle to the registration of the vessels in our client's name." [7] Acting thereon, the Acting Commandant of the Philippine Coast Guard in a letter dated November 23, 1974, authorized the issuance of a new certificate of registration "annotating thereon any levy validly registered against said vessel(s)". [8] However, neither the Certificate of Ownership nor the Certificate of Philippine Register appended as Annexes "C" and "D", respectively, to petitioners' Urgent Manifestation and Motion filed before the lower Court [9] carry that annotation.

On August 29, 1974, the Bank filed a "Motion for the Issuance of Another Writ of Attachment" stating that at the time of the issuance of the Writ on February 4, 1974, the barge in question could not be located within the jurisdiction of the trial Court, having been anchored somewhere in the Visayas, and that actual levy on the barge could not be made as "the original Order of attachment is allegedly in the possession of the Branch Deputy Sheriff appointed by the Honorable Court, who has not reported to the office since August 26, 1974, and, therefore, could not implement the writ". [10] On the same date, August 29, 1974, the trial Court (Judge Rafael S. Sison, presiding) denied the issuance of another Writ (apparently because it was deemed unnecessary), but instead ordered the Deputy Sheriff of Branch XXVIII to coordinate with the City Sheriff of Manila in the implementation of the Writ previously issued. [11] On August 30, 1974, Deputy Sheriff Garvida actually seized and levied upon the vessel.

On October 7, 1974, respondent Bank and respondent Fil-Eastern submitted a Compromise Agreement whereby Fil-Eastern bound itself to pay to the Bank the principal amount of P200,000.00, with 14% interest, plus other amounts stated therein. On October 9, 1974, respondent Judge approved the Agreement and rendered judgment accordingly. On November 6, 1974, the Bank moved for the issuance of a Writ of Execution for failure of Fil-Eastern to make payments within the period stipulated in the Compromise Agreement.

Meanwhile, without prior authority from Deputy Sheriff Garvida, the barge in question was "spirited away" to Bacolod City by a certain Captain Marcelino Agito, who claimed to have been given the right to use the same by Fil-Eastern. [12]

On January 6, 1975, respondent Judge issued an Order requiring Capt. Marcelino Agito in coordination with Deputy Sheriff Benjamin E. Garvida to bring back to Manila the barge in question. [13]

On March 7, 1975, respondent Judge issued a Writ of Execution and ordered the sale of the barge at public auction, as follows:

"ORDER

"The Decision rendered by this Court under date of October 9, 1974 having already become final and executory, let a Writ of Execution be issued to be enforced by Sheriff Adriel V. Garcia by conducting an auction sale on the vessel placed under attachment. The satisfaction of the judgment in this case shall be given preference and the payment of the third party claim of Alfredo H. Maligaya for and in behalf of Leonardo M. Cañoso shall be satisfied from whatever remaining proceeds of the auction sale on the aforesaid vessel, if there be any.

"SO ORDERED." [14]

On April 7, 1975, Capt. Marcelino Agito and Deputy Sheriff Benjamin Garvida filed a Manifestation stating that

petitioner Rodrigo Malonjao, acting for and in behalf of his co-petitioner Eligio Roque, refused to surrender the barge on the ground that Eligio Roque is now the new owner, having acquired the same by purchase at public auction, and praying that petitioners, and all persons claiming under them, be directed to surrender the barge to the custody of the Court through its duly authorized representative.

On April 14, 1975, respondent Judge issued the following Order:

"Upon motion filed by Capt. Marcelino Agito and Deputy Sheriff Benjamin Garvida, and considering the absence of a formal claim with this Court filed by Eulogio Roque, personally or through counsel, relative to the barge 'SATELLITE II, EX-FIL-EASTERN V', subject, of the writ of Attachment issued by this Court on February 7, 1974, and in order to prevent further delay in the implementation of the Order of this Court dated March 7, 1975, Rodrigo Malonjao and Eulogio Roque and all persons claiming right under them over the aforesaid vessel, including those acting under their direction or supervision, are hereby ordered under pain of being cited in contempt of Court to forthwith surrender possession of the above said vessel to Sheriff Adriel V. Garcia so that the latter may be able to implement fully and expeditiously the aforesaid Order of this Court dated March 7, 1975. x x x x "[15]

On April 24, 1975, petitioners filed before the trial Court an Urgent Manifestation and Motion seeking to set aside the Order of April 14, 1975, claiming that Roque is now the new owner of the barge having acquired the same at a public auction sale arising from a mechanic's lien. The Motion was denied by respondent Judge on the ground that the records belied petitioners' claim that the auction sale occurred very much ahead of the notice of levy. Petitioners' first and second Motion for Reconsideration were similarly denied. On July 16, 1975, respondent Deputy Sheriff Adriel V. Garcia submitted a report informing the Court that the barge in question had been turned over to him and was anchored along Pasig River, under guard.

On August 28, 1975, petitioners sought relief from the Court of Appeals by filing a "Petition for Certiorari and Prohibition with Preliminary Injunction and Preliminary Mandatory Injunction" assailing and seeking to vacate the Orders issued in Civil Case No. 89692 by respondent Judge as well as the Writs, notices and other processes emanating therefrom. The Court of Appeals,* in denying the Petition in its Decision promulgated on November 24, 1975, ruled that Certiorari did not lie as petitioner was not without sufficient and adequate remedy to obtain relief from the damaging effects of the Orders complained of.

Petitioner filed the present Petition on March 1, 1976 before this Court, claiming that they are purchasers in good faith and for valuable consideration, having actually paid the total amount of P354,689.00 to the Cotabato Visayan Development Corporation for three barges, one of which is the barge in question. They have also raised the following legal issues:

- "1. The decision of the res-pondent Court of Appeals sustaining the challenged orders, writs and other processes issued by the respondent Judge is contrary to the provisions of Art. 1731 in relation to Art. 2112 of the New Civil Code and to the ruling laid down in Bank of P.I. vs. Walter A. Smith & Co., 55 Phil. 533 and Bachrach Motor Co. vs. Mendoza, 43 Phil. 410.
2. If the levy and/or attachment by the sheriff of the barge in question are illegal, will herein petitioner be required to avail of Section 14, Rule 57 and/or Section 17, Rule 39 of the Revised Rules of Court?

On July 19, 1976, we issued a Restraining Order enjoining respondents from proceeding with the projected sale at public auction of the barge, subject of this litigation. We also declared the case submitted for decision. On January 18, 1977, the Bank filed a Motion for Authority to Sell the barge under attachment. This was opposed, however, by petitioners and we resolved to defer resolution until decision on the merits is rendered.

On May 31, 1979, the Bank filed a Motion for Early Resolution, but the same was agendaed only on September

24, 1979. We take note of the Bank's contention that ever since the Sheriff took custody of the vessel on July 16, 1975, the same has been lying idle, moored at the Muelle de la Industria, Pasig River, exposed to the elements, and has deteriorated rapidly, hence the need for early resolution.

It should be reiterated that this is a special civil action for Certiorari, the main requisites for the issuance of which Writ are: 1) that the Writ be directed against a tribunal, board or officer exercising judicial functions; 2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and 3) that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[16] While the first requisite has been met, the second and the third have not.

We agree with the findings of the Court of Appeals that petitioners were not without any plain, speedy and adequate remedy in the ordinary course of law. For one, upon the issuance of the Order, dated August 29, 1974, commanding the implementation of the Writ of Attachment, petitioners could have availed themselves of the remedy provided for in Section 14, Rule 57 of the Rules of Court, which reads:

"If the property taken be claimed by any person other than the party against whom attachment had been issued or his agent, and 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 such affidavit upon the officer while the latter has possession of the property, and a copy thereof upon the attaching creditor, the officer shall not be bound to keep the property under attachment, unless the attaching creditor or his agent, on demand of the said officer, secures him against such claim by a bond in a sum not greater than the value of the property attached. x x x "

For another, when respondent Sheriff seized the vessel in question to be sold at public auction in accordance with the Order of execution of March 7, 1975, petitioner could have availed of the remedy under Section 17, Rule 39 of the Rules of Court which provides:

"If the property levied on be claimed by any other person than the judgment debtor 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 or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. x x x "

Petitioner Eligio Roque argues, however, that he could not avail of the foregoing Rules inasmuch as the vessel was not in the actual custody of the Sheriff nor of the Court, since the supposed levy by the Sheriff on February 7, 1974 was a mere paper levy which, in legal contemplation, is no levy at all. It is a fact that respondent Sheriff could not effect seizure immediately, first, because the barge could nowhere be found in this vicinity, and subsequently when found, because petitioners would not deliver possession to the Sheriff. It was not until the trial Court granted the Sheriff's Motion praying for an Order directing petitioners or their agents to surrender the barge to the custody of the Court, that the Sheriff was able to take physical custody. As a general rule, however, a levy of an attachment upon personal property may be either actual or constructive.[17] In this case, levy had been constructively made by the registration of the same with the Philippine Coast Guard on February 7, 1974. Constructive possession should be held sufficient where actual possession is not feasible,[18] particularly, when it was followed up by the actual seizure of the property as soon as that could possibly be effected.

Petitioners further argue that the levy was illegal because the Writ was implemented more than sixty days after its issuance so that they need not have complied with Section 14, Rule 57, *supra*. The Rules do not provide any lifetime for a Writ of Attachment unlike a Writ of Execution. But even granting that a Writ of Attachment is valid for only sixty days, yet, since there was constructive levy within that period the fact that actual seizure was effected only thereafter cannot affect the validity of that levy.

Neither can it be said that respondent Judge committed grave abuse of discretion in issuing the challenged Order of April 14, 1975, supra, whereby it commanded the immediate implementation of the Order of execution of March 7, 1975 and ordered petitioners to surrender possession of the barge to the Sheriff under pain of contempt. A trial Court is enjoined by law to bring about a prompt dispatch of the controversy pending before it. As it was, it took the trial Court more than a year to cause the enforcement of its Writs and processes. Moreover, its Decision of October 9, 1974 had become final and executory, and execution then became purely a ministerial phase of adjudication. It had no jurisdiction to pass upon petitioners' claim of ownership not only because trial in that case had already been terminated but also considering that petitioners were not parties in the case below nor had they filed any third-party claim for the enforcement of their rights.

Verily, petitioners' remedy was to ventilate their claims of ownership in a separate and independent reivindicatory action, as even then suggested by the Court of Appeals. That was the arena where the question of preferential rights, if any, impliedly raised in the first assigned error, could have been fully threshed out.

x x a third person claiming to be the owner of the property attached or levied upon is required to file a separate or independent action to determine whether the property should answer for the claim of the attaching or judgment creditor instead of being allowed to raise that issue in the case where the writ of attachment or execution was issued (Sec. 17, Rule 39 and sec. 14, Rule 57, Rules of Court; *Bayer Philippines, Inc. vs. Agana*, L-38701, April 8, 1975, 63 SCRA 355).[19]

In the interest of justice, petitioners can still file an independent civil action to establish their ownership over the barge, if they have not yet done so.

WHEREFORE, in the absence of jurisdictional errors, this Petition is dismissed, and the Restraining Order, heretofore issued, hereby lifted effective immediately.

No costs.

SO ORDERED.

Teehankee, Acting C.J., (Chairman), Makasiar, Guerrero, and De Castro, JJ., concur.
Fernandez, J., took no part.

[1] p. 115, Rollo.

[2] p. 116, *ibid*.

[3] Art. 2112. The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public to the sale of the thing pledged. This sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.

[4] Art. 1731. He who has executed work upon a movable has a right to retain it by way of pledge until he is paid.

[5] p. 158, Rollo.

[6] pp. 144-147, *ibid*.

[7] pp. 159-161, *ibid*.

[8] pp. 162-163, *ibid.*

[9] pp. 144; 145, *ibid.*

[10] p. 117, *Rollo.*

[11] p. 119, *ibid.*

[12] p. 129, *ibid.*

[13] p. 131, *ibid.*

[14] p. 134, *Rollo.*

[15] p. 135, *Rollo.*

* Special Ninth Division, composed of Justice Ramon C. Fernandez, Godofredo P. Ramos, and Venicio Escolin, ponente.

[16] Section 1, Rule 65, Rules of Court.

[17] *Jones vs. Howard*, 99 Ga 451, 27 SG 765; *Rogers vs. Maine*, C. R. Co. 113 Me 436, 94A 758.

[18] *vide*, *Crisman vs. Dorsey* 12 Colo, 567 21P 920 4 L.R.A. 664.

[19] *Polaris Marketing Corporation vs. Hon. A. Plan, et al*, 69 SCRA 93 (1976).

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