

CECILIA A. SIA, MARIANITA A. HOFILEÑA, MARIA D. BUTAC, KATHRINA GRACE A. SIA, KIM PATRICK A. SIA, AND EDUARDO HOFILEÑA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, REGIONAL TRIA...

Ponente: SADANG, J.

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SADANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, with prayer for issuance of temporary restraining order and preliminary injunction, seeking to set aside the October 27, 2011[1] Order of respondent Judge Ruben Reynaldo G. Roxas of the Regional Trial Court of Manila, Branch 52, and the February 7, 2012[2] Order denying the Motion for Reconsideration.

Records show that petitioner Cecilia Sia (Cecilia) was one of the accused in People of the Philippines v. Jaime Tan, Alberto Cordero Sy and Cecille Sia a.k.a. Cecilia Ang Sia, for estafa, filed before the RTC Manila, Branch 52 and docketed as Criminal Case No. 02-198502, while private respondent Rosita Tan (Rosita) was the private complainant. On January 14, 2010, respondent judge promulgated his Decision acquitting all the accused but finding accused Jaime Tan and Cecilia civilly liable. The fallo reads:[3]

WHEREFORE, all the accused are acquitted on ground of reasonable doubt.

Accused Jaime Tan and Cecille Sia a.k.a. Cecilia Ang Sia are directed to pay jointly and severally, complainant Rosita Tan the sum of Php450,000.00 with legal rate of interest at 12% per annum from the date of extrajudicial demand until the amount is fully paid.

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With costs against the accused J. Tan and Cecilia Ang Sia.

SO ORDERED.

On motion of Rosita, respondent judge ordered the issuance of a writ of execution. Acting on the writ, Monique A. Castillo, Branch Sheriff, levied on the rights, interest and participation of Cecilia in a 531 square meter lot situated in Sta. Mesa Heights, Quezon City, covered by Transfer Certificate of Title No. 311120 (T-158737).[4] The public auction of the levied property was set on August 17, 2011.

On August 9, 2011, Cecilia, together with third-party movants Marianita Hofileña, Maria D. Butac, Kathrina Grace A. Sia, and Kim Patrick A. Sia, filed an Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution[5] (Urgent Motion, for brevity). They contended that: as shown in TCT No. 311120 (T-158737) the lot is co-owned by Maria D. Butac, Cecilia, married to Raymundo Sia (Raymundo), and Marianita Hofileña, married to Eduardo Hofileña; the co-owners contributed funds for the construction of a duplex house on the lot; since its acquisition on February 7, 1984, the subject property has been constituted as the family homes of Cecilia and her family, including her mother, Maria Butac, who lives with her, and Marianita and

her family; upon the death of Raymundo in 2004, his share was transmitted to Cecilia and their children Kim Patrick and Kathrina Grace; as the lot is their family home it must be excluded from execution sale or levy; inasmuch as the lot is owned in common, the co-owners who are not judgment debtors cannot be bound by any judgment stemming from an action in personam, such as the civil aspect of the criminal case.

During the hearing of Cecilia's Urgent Motion on August 15, 2011, the auction sale was deferred until further notice.

Rosita filed a Comment/Opposition (To Exclude Family Home From Execution)[6] arguing that: the third-party movants have no standing to question the writ of execution because it is limited to the rights, interests and participation of Cecilia; under the law, only one family home may be established on the same lot but it appears that more than one residential unit was built on the subject lot; even if the property were to be considered a family home, its actual value exceeds P300,000.00, the maximum amount fixed by the Family Code for exemption from execution.

On October 27, 2011, respondent judge issued the Order[7] denying the Urgent Motion, thus:

WHEREFORE, premised on the foregoing considerations, the Urgent Motion to Suspend Auction Sale and to Exclude Family Home from Levy and Execution is DENIED for lack of merit. Consequently, the suspension of the auction sale is hereby lifted. Sheriff Monique A. Castillo is directed to proceed and schedule anew the auction sale of the property covered by TCT No. 311120 (T-158737) but limited only to the undivided one-third share therein corresponding to the rights, interest and participation of accused Sia.

SO ORDERED.

Petitioners filed a Motion for Reconsideration[8] and Supplemental Motion for Reconsideration[9] but they were denied by respondent judge in his second assailed order dated February 7, 2012; hence, this petition.

In compliance with the Court of Appeals' Resolution[10] dated March 22, 2012, the petitioners filed an Amended Petition impleading the People of the Philippines in accordance with Section 1, Rule 7 of the Rules of Court and including Eduardo Hofileña as one of the petitioners.

On June 26, 2012, petitioners filed a Manifestation informing of the Order, dated May 24, 2012, of respondent judge directing the sheriff to proceed with the auction sale scheduled on April 12, 2012.

On April 10, 2013, petitioners filed their Memorandum.[11] Private respondent did not file comment to the petition; hence, she was deemed to have waived her right to do so.[12]

RULING

The petition is devoid of merit.

In the recent case of *Spouses De Mesa v. Spouses Acero, et al.*, [13] the rules on the constitution of family homes were stated thus: first, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution; second, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time they were constituted and lasts as long as any of its beneficiaries actually resides therein; and third, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

A family home is the sanctuary of a marital union which the law declares and protects as a sacred institution and

likewise a shelter for the fruits of that union.[14] The law vests upon it a mantle of exclusivity for the family. Thus, the Family Code requires that it be constituted jointly by the husband and wife or the unmarried head of a family, and no one else.

The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime.[15] It is without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment[16].

In *Kelley, Jr. v. Planters Products Inc.*,[17] the requisites for the exemption of a family home from execution were laid down, viz: there must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family;[18] it must be the house where they and their family actually reside and the lot on which it is situated;[19] the family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family;[20] and the actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000 in urban areas and P200,000 in rural areas.[21]

Petitioners contend that respondent judge committed grave abuse of discretion amounting to excess or lack of jurisdiction in ruling that the subject property is not a family home. They argue that there is no need to constitute the family home judicially and extrajudicially because with the effectivity of the Family Code on August 3, 1988, all existing family residences are considered family homes. They also contend that respondent judge ignored their evidence which shows that the value of the subject property is less than P300,000.00. Finally, they contend that the exceptions to the execution of a family home as provided in Article 155[22] of the Family Code do not apply in this case.

It is true that family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code but were existing thereafter are considered as family homes by operation of law. However, Cecilia's family residence cannot be considered a family home for purposes of exemption from execution for the simple reason that, as petitioners themselves allege and vigorously contend, the subject property is co-owned by Cecilia and the other petitioners. It is settled that a family home cannot be constituted over a co-owned property for purposes of exemption from execution. As held in the recent case of *Cabang, et al. v. Spouses Basay*: [23]

There can be no question that a family home is generally exempt from execution²⁴ provided it was duly constituted as such. It is likewise a given that the family home must be constituted on property owned by the persons constituting it. Indeed as pointed out in *Kelley, Jr. v. Planters Products, Inc.*[25] "[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family." In other words:

The family home must be established on the properties of: (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. It cannot be established on property held in co-ownership with third persons. However, it can be established partly on community property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter.

If constituted by an unmarried head of a family, where there is no communal or conjugal property existing, it can be constituted only on his or her own property.[26] (Underscoring supplied)

Considering that the subject property cannot be constituted as a family home, it would be pointless to resolve the

contention of petitioners that respondent judge failed to appreciate their evidence showing that the value thereof is less than P300,000.00. Neither is there a need to rule on their argument that the execution sought to be made on the subject property does not fall under any of the exceptions provided in Article 155 of the Family Code.

Petitioners contend that if the execution is implemented the other co-owners would be deprived of their property without due process and this would also violate the rule that third parties cannot be bound by a judgment in an action in personam such as this case. The contention lacks factual basis. Suffice it to state that it is very clear from the assailed October 27, 2011 Order of respondent judge that the execution and auction sale is directed only against the "undivided one-third share therein corresponding to the rights, interest and participation of accused Sia (Cecilia)." There is absolutely nothing in the assailed order to the effect that the shares of Cecilia's co-owners would also be sold on execution. In short, the execution and sale would be limited to the shares of the judgment debtor. And, contrary to the contention of petitioners, the sale on execution does not require the consent of the co-owners; otherwise, third parties would be allowed to thwart court orders and defeat the ends of justice.

In view of the foregoing, petitioners are not entitled to injunctive relief. They failed to show that they have a clear and positive right that calls for the application of injunctive relief. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action.[27]

Grave abuse of discretion amounting to lack or excess of jurisdiction is committed when judicial power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[28] No such grave abuse was committed by respondent judge in rendering the assailed Orders.

WHEREFORE, the petition is DENIED. The Orders dated October 27, 2011 and February 7, 2012 of respondent judge are AFFIRMED. The prayer for issuance of TRO and preliminary injunction is DENIED for lack of merit.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Rollo, pp. 65-70, Annex G.

[2] Id. at 29-30, Annex A.

[3] Id. at 65.

[4] Id. at 41-44, Annex B-9 to B-12.

[5] Id. at 32-39, Annex B to B-7.

[6] Id. at 52-53, Annex D.

[7] Id. at 69.

[8] Id. at 72-85, Annex H.

[9] Id. at 88-94, Annex I.

[10] Id. at 98-99.

[11] Id. at 152-167.

[12] Resolution, dated March 7, 2013; Rollo, p. 148.

[13] G.R. No. 185064, January 16, 2012.

[14] Albino Josef v. Otelio Santos, G.R. No. 165060, November 27, 2008 citing A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I (1990 ed.), p. 508, citing Code Commission of 1947, pp. 18-19, 20.

[15] Id.

[16] Spouses De Mesa v. Spouses Acero, *supra*.

[17] G.R. No. 172263, July 9, 2008, 557 SCRA 499.

[18] Art. 152, Family Code.

[19] Id.

[20] Art. 156, Family Code.

[21] Art. 157, Id.

[22] Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

- 1) For nonpayment of taxes;
- 2) For debts incurred prior to the constitution of the family home;
- 3) For debts secured by mortgages on the premises before or after such constitution; and
- 4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[23] Simeon Cabang v. Mr. and Mrs. Guillermo Basay, G.R. No. 180587, March 20, 2009.

[24] Id., Rule 39, Sec. 13 (a), Rules of Court.

[25] Id., *supra* note 17.

[26] Id., citing Pineda E.L., The Family Code of the Philippines, Annotated, (1999 ed.), p. 288.

[27] Jimmy T. Go v. The Clerk Of Court and Ex-Officio Provincial Sheriff of Negros Occidental, G.R. No. 154623, March 13, 2009.

[28] Lincoln L. Yao v. Hon. Norma C. Perello, et al. G.R. No. 153828, October 24, 2003.

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