

**MAXIMA BLOUSE POTENCIANO, IN SUBSTITUTION OF THE
DECEASED MAX BLOUSE, PETITIONER, VS. HON. HERMINIO C.
MARIANO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL,
AND ANTONIO QUI...**

G.R. No. L-30904. March 06, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

The question in this special civil action of mandamus is whether respondent Judge of the Court of First Instance of Rizal, who examined the judgment debtor under Section 38, Rule 39 of the Rules of Court, may be compelled to order the sale of the debtor's properties to satisfy the judgment rendered by the Court of First Instance of Manila. The antecedents of this incident are as follows:

- The Court of First Instance of Manila in its decision dated October 5, 1961 ordered Antonio Quirino, Fernando Suzara and Alto Surety & Insurance Co., Inc. to pay solidarity to Maxima Blouse Potenciano the sum of P36,000, with eight percent annual interest from March 6, 1951 until the obligation is paid, plus P1,000 as attorney's fees, P5,000 as liquidated damages and the costs (Civil Case No. 24665).
- From the decision, the defendants appealed to the Court of Appeals. For failure to file their brief, the Court of Appeals dismissed the appeal in its resolution of September 28, 1962. Entry of judgment as to that dismissal was made on November 13, 1962.
- The trial court issued writs of execution dated November 24, 1962 and January 22, 1964. The judgment was not fully satisfied. On May 6, 1964, Mrs. Potenciano filed in the Court of First Instance of Rizal, Pasig Branch X. a petition for the examination of Antonio Quirino, one of the solidary judgment debtors who was a resident of San Juan. Rizal. She alleged that as of that date there was still due from the defendants the sum of P22,645.
- Due to Quirino's alleged dilatory tactics, that incident remained pending in the Rizal court up to July 16, 1968 when it issued an order declaring that Quirino's six lots and residential house situated in Rizal and two lots and a house located in Baguio, all mortgaged to the Philippine National Bank, were "available for the satisfaction of the judgment debt." The examination of Quirino also revealed that he owned shares of stock in the General Fertilizer Corporation of which he was the president and general manager. However, the amount of his cash earnings or income was not disclosed.
- Mrs. Potenciano filed a motion for reconsideration dated September 3, 1968. She asked the Rizal court to order the sale of Quirino's properties and the application of the proceeds of the sale to the payment of his obligation which had reached the sum of P23,990. She said that was the prayer in her motion of April 18, 1968 which was captioned "motion for the application of the available properties of defendant Antonio Quirino for the payment of

his judgment debt to the plaintiff." The Rizal court denied the motion in its order of September 12, 1968.

- Mrs. Potenciano then filed in the Rizal court a "motion for execution" dated September 16, 1968 wherein she again asked that Quirino's above-mentioned properties be sold for the payment of the judgment debt. Quirino opposed the motion on the ground that the five year period for executing a judgment by motion had already expired. The Rizal court in its order of November 21, 1968 denied the motion on the ground that it should be filed in the Manila court.

- At the same time, the Rizal court held that Quirino's contention that the enforcement of the judgment by motion had already prescribed was "not in consonance with justice and equity" because the disposition of the incident was delayed due to Quirino's dilatory tactics and because Mrs. Potenciano's motion for the examination of Quirino suspended the running of the period for executing the judgment by motion.

- Mrs. Potenciano's motion for the reconsideration of the Rizal court's order of November 21, 1968 was denied on March 14, 1969. The instant mandamus petition was filed on August 29, 1969. Quirino in his answer to the petition insists that the period for enforcing the judgment by writ of execution had already expired and that it is not the Rizal court's ministerial duty to apply his properties to the satisfaction of the judgment and, therefore, mandamus does not lie in this case.

The provisions of Rule 39 involved in this case are the following:

"SEC. 6. Execution by motion or by independent action. — A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

"SEC. 38. Examination of judgment debtor when execution return unsatisfied. — When an execution issued in accordance with law against property of a judgment debtor, or any one of several debtors in the same judgment, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the Court of First Instance of the province in which the judgment was rendered or of the province from which the execution was returned, requiring such judgment debtor to appear and answer concerning his property and income before such judge of the Court of First Instance: or before a commissioner appointed by him. at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment debtor toward the satisfaction of the judgment. But no judgment debtor shall be so required to appear before a judge of first instance or commissioner outside the province in which such debtor resides or is found."

"SEC. 42. Order for application of property and income to satisfaction of judgment. — The judge order any property of the judgment debtor, or money due him. not exempt from execution, in the hands of either himself or other person, or of a corporation or other legal entity, to be applied to the satisfaction of the judgment, subject to any prior rights over such property and if, upon investigation of his current income and expense, it appears that the earnings of the judgment debtor for his personal services are more than is necessary for the support of his family, the judge may order that he pay the judgment in fixed monthly installments, and upon his failure to pay such installments when due without good excuse may punish him for contempt."

"SEC. 43. Appointment and bond of receiver. — The judge may, by order, appoint the sheriff, or other proper officer or person, receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. If a bonded officer be appointed receiver, he and his sureties shall be liable on his official bond as such receiver, but if another person be appointed he shall give a bond as receiver as in other cases."

"SEC. 44. Sale of ascertainable interest of judgment debtor in real estate. — If it appears that the judgment debtor has an interest in real estate, in the province in which proceedings are had, as mortgagor or mortgagee

or otherwise, and his interest therein can be ascertained without controversy, the receiver may be ordered to sell and convey such real estate or the interest of the debtor therein; and such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed."

Section 38 et sequentia provide for proceedings supplementary to execution, which are designed to aid judgment creditors in the discovery of the debtor's property and its application to the satisfaction of the judgment. "Such proceedings are said to be an extraordinary remedy, largely equitable in their nature, intended to reach dishonest debtors, and generally are only to be resorted to when the ordinary processes of the law are not adequate." (33 C.J.S. 647-8; 30 Am Jur. 2nd 879.)

"Supplementary proceedings are in part a summary method of purging the debtor's conscience and compelling the disclosure of any property he may have which is not exempt from execution. Such proceedings are not a substitute for an execution but are merely intended to supplement it by reaching assets which could not be obtained thereby" (33 C.J.S. 648.)

In this jurisdiction, supplementary proceedings have usually been utilized to ascertain what portion of a judgment debtor's earnings should be applied to the satisfaction of the judgment, as contemplated in Section 42.

We hold under the facts of this case that the Rizal court cannot be compelled by mandamus to sell Quirino's shares of stock and his interest in the mortgaged lots and to apply the proceeds of the sale to the satisfaction of the judgment debt.

Quirino's interest in the mortgaged lots is merely an equity of redemption, an intangible or incorporeal right (*Sun Life Assurance Co. of Canada vs. Gonzales Diez*, 52 Phil. 271; *Santiago vs. Dionisio*, 92 Phil. 495; *Northern Motors, Inc. vs. Coquia*, L-40018, August 29, 1975, 66 SCRA 415),

That interest could be levied upon by means of a writ of execution issued by the Manila court as had been done in the case of property encumbered by a chattel mortgage (*Levy Hermanos, Inc. vs. Ramirez and Casimiro*, 60 Phil. 978, 982; *McCullough & Co. vs. Taylor*, 25 Phil. 110).

"A writ of execution in this jurisdiction reaches both legal and equitable interests, with the result that the equity of redemption of the mortgagor will pass to the purchaser at an execution sale" (*Tizon vs. Valdez and Morales*, 48 Phil. 910, 914-5).

The same is true with respect to Quirino's shares in the General Fertilizer Corporation. The shares can be levied upon by means of a writ of execution issued by the Manila court.

Since the proceedings supplementary to execution cannot be a substitute for an execution, the Rizal court did not err in holding that it is the Manila court, as the court that rendered the judgment, that should take the necessary measures to reach Quirino's properties so that the same may be applied to the satisfaction of its judgment.

We further hold that, as correctly ruled by the Rizal court, the five-year period for enforcing the judgment by execution, counted from November 13, 1962 (*Gutierrez Hermanos vs. De la Riva*, 46 Phil. 827), was interrupted or suspended by petitioner's filing on May 6, 1964 in the Rizal court of the motion for examination of the judgment debtor and by the instant mandamus action.

The proceedings supplementary to execution and this mandamus case amounted to a stay of execution. "In computing the time limited for suing out an execution, the time during which execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor" (33 C.J.S. 208; *Lanchita vs. Magbanua*, 117 Phil. 39, 44 and *Manila Railroad Co. vs. Court of Industrial Relations*, 117 Phil. 192, 197). The Rizal court found that Quirino delayed the execution of the judgment.

WHEREFORE, the petition for mandamus is dismissed. We affirm the lower court's order of November 21, 1968, directing the petitioner to secure a writ of execution from the Manila court in Civil Case No. 24665. No costs.

SO ORDERED.

Barredo, Antonio, Concepcion Jr., and Guerrero, JJ., concur.

Abad Santos, J., took no part.

Guerrero, J., was designated to sit in the Second Division.

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