

ANULINA L. VDA. DE BOGACKI, PETITIONER, VS. HON. SANCHO Y. INSERTO, PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE OF ILOILO, THE PROVINCIAL SHERIFF OF ILOILO, AND MA. EMMA ...

G.R. No. L-39187. January 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari and prohibition with preliminary injunction to annul the order of the respondent Judge dated August 5, 1974, in Civil Case No. 7262 of the Court of First Instance of Iloilo, directing the issuance of a writ of possession in favor of therein plaintiff, now private respondent, Maria Emma Luz Bogacki, as well as the levy on execution dated March 26, 1971, and the sale at public auction dated July 21, 1971, and to restrain the respondents from enforcing said orders or doing acts that would tend to dispossess the herein petitioner of her usufruct. As prayed for, a temporary restraining order was issued by this Court on September 23, 1974.[1]

The private respondent, Maria Emma Luz Bogacki, is the owner of four parcels of land situated in Iloilo City, and more particularly known as Lots 72-B, 591, 73, and 72-A of the Cadastral Survey of Iloilo over which her mother, herein petitioner Anulina Ledesma Vda. de Bogacki has a usufruct, covering one-third (1/3) of one-half (1/2) each of the said parcels of land or equivalent to one-sixth (1/6) of the share pertaining to the deceased Cesar Bogacki, Jr. Due to a misunderstanding, Maria Emma Luz Bogacki left the home of her mother and the latter took possession of all these properties exclusively for herself, without sharing with Maria Emma Luz the rentals she obtained from the said properties. As a consequence, Maria Emma Luz filed an action for partition with the Court of First Instance of Iloilo against her mother Anulina "to define the portions over which the defendant may exercise her usufructuary rights over the four parcels of land, Lots 72-B, 591, 73 and 72-A." After appropriate proceedings, judgment was rendered therein, as follows:

"FOR ALL THE FOREGOING, the Court hereby orders the defendant to limit her right of usufruct to one-sixth (1/6) each of all these portions of the land described in the complaint and which is now subject of litigation, including Lot 72-A which is included in the amended complaint already admitted by this Court.

"It is to be regretted that the several attempts of the Court as well as the attorney for the parties and the willingness on the part of the plaintiff to assign to the defendant a definite portion of some of these lots to correspond to the usufructuary right of the mother, she has adamantly refused to accede to any approach at an amicable settlement thereby making manifest the necessity of defining the same for her compliance. Under the circumstances, the Court is constrained to order the mother, the defendant, to get only one-sixth (1/6) of whatever collection may be obtain from the lots in question and orders her to turn over to the plaintiff 5/6 of all that she had previously collected from the lots not beyond ten years before this date and conservatively appraised at P50.00 a month from 1959 until the filing of this case and an equivalent of said amount from date of judgment, without pronouncement as to other damages or costs."[2]

No appeal was taken from said decision and a writ of execution was issued on March 3, 1971. But, since no tangible assets or properties were available to satisfy the money judgment, the plaintiff therein asked the Court

that a levy be made on the usufructuary rights of the defendant.[3] The defendant opposed the motion upon the ground that her usufructuary right is one created by law as a surviving spouse and hence, exempt from execution for family reasons.[4] The motion was denied on March 25, 1971,[5] and thereafter, the respondent Sheriff set the sale of the usufruct at public auction.[6] The defendant filed an urgent motion to stop said public auction sale,[7] but the motion was denied on June 24, 1971.[8] The usufructuary rights were subsequently sold to the judgment creditor, Maria Emma Luz Bogacki, as the highest bidder thereof, for P6,300.00.[9] On July 26, 1971, the defendant Anulina Ledesma Vda. de Bogacki filed a motion for the reconsideration of the order of June 24, 1971, stating a new grounds therefor, that the usufructuary right is exempt from execution under Sec. 12(a) of Rule 39, Revised Rules of Court; and that the usufruct cannot be levied upon, much less sold at public auction which, in effect, would extinguish it in a manner not according to the modes for extinguishing a usufruct as provided for under Art. 603 of the Civil Code.[10] Her motion was denied on July 31, 1971.[11] On October 24, 1972, the plaintiff filed a motion for the issuance of an alias writ of execution, to which the defendant filed an opposition, but the said motion was withdrawn before the court could act on it, and the plaintiff, instead, filed a motion for the issuance of a writ of possession,[12] which was granted by the respondent Judge on August 5, 1974.[13]

Hence, the instant recourse for the annulment of the order of August 5, 1974, as well as the levy on execution and the sale at public auction of the petitioner's usufructuary rights, and to restrain the respondents from dispossessing her of the said usufruct.

The only issue to be resolved, considering the facts, is whether or not there was abuse of discretion in the levy and sale on execution of the petitioner's usufructuary rights and the issuance of the writ of possession.

The petitioner claimed that her usufructuary rights are exempt from execution for the reasons that: (1) a usufruct of a surviving spouse cannot be alienated for family reasons pursuant to Art. 321 of the Civil Code; (2) her usufruct, already confined to a single area equivalent to 1/6 of the total area of the lots on which she has a usufruct and where she had built a residential house, is a homestead within the purview of Sec. 12 (a) of Rule 39, Rules of Court; and (3) her usufructuary rights partake of the nature and character of such personal relations as in the right to receive legal support, government pension and gratuity, as provided for under Sec. 12(1) of Rule 39. The petitioner further claimed that her usufruct cannot be levied on execution, much less sold at public auction, which, in effect, would extinguish it in a manner not according to the modes for extinguishing a usufruct provided for under Art. 603 of the Civil Code.

The petition is without merit. This Court had ruled that the usufruct of a widow may be transferred, assigned or otherwise disposed of by her as she may please, like any other hereditary property,[14] and hence, an interest in real property which can be sold upon execution.[15]

Besides, the grounds relied upon by the petitioner in resisting the levy and sale on execution of her usufructuary rights are devoid of merit. Thus, the petitioner claimed that her usufruct cannot be alienated for family reasons pursuant to Article 321 of the Civil Code. This article of the Civil Code, however, cannot be invoked by the petitioner because the usufructuary rights mentioned in this article are those enjoyed by parents over the property of their unemancipated children under their custody, and not those enjoyed by the petitioner which are those of a widow, constituted on the property of her late husband as her share in the estate of the latter. Said article provides:

"Art. 321. The property which the unemancipated child has acquired or may acquire with his work or industry, or by any lucrative title, belongs to the child in ownership, and in usufruct to the father or mother under whom he is under parental authority and in whose company he lives; but if the child, with the parent's consent, should live independently from them, he shall be considered as emancipated for all purposes relative to said property, and he shall have over it dominion, usufruct and administration."

The usufruct herein granted cannot be alienated or transferred to third persons because it arises from parental authority and is necessary to enable the parents to carry out their obligations to the incompetents under their authority. But, upon emancipation of the child or loss of parental authority, as in the case of the private respondent who has already attained the age of majority, is married, and living independently of the petitioner, the usufruct is extinguished.

The petitioner also claimed that her usufruct, which she had confined to a single area of about 500 square meters, equivalent to 1/6 of the total area of the lots of the private respondent on which she has a usufruct, and where she had constructed a residential house, is a homestead and therefore, exempt from execution according to Sec. 12(a), Rule 39 of the Rules of Court.

But, Section 12(a) of Rule 39 cannot be invoked by the petitioner. Under this section, the debtor's family home constituted in accordance with the Civil Code, or in the absence thereof, the homestead in which he resides, and the land necessarily used in connection therewith, both not exceeding in value P3,000.00, shall exempt from execution. In the instant case, however, the execution was not enforced against the petitioner's "homestead" or residential house, but on her usufructuary rights over the lots belonging to the private respondent. The residential house constructed by the petitioner on the land of the private respondent is but an improvement on the property which the usufructuary may remove upon extinguishment of the usufruct, if it be possible to do so without damage to the property.[16]

Section 12 (1) of Rule 39 is not also applicable because the property levied and sold on execution is not the right to receive legal support or money or property obtained as such support, or any pension or gratuity from the government. The right to support, unlike the usufruct of a widow, is a personal right essential to the life of the recipient, so that it cannot be subject to attachment or execution.[17] On the other hand, the usufruct of the widow, which was not reincorporated in the new Civil Code, may be transferred or otherwise disposed of by her, as she may please, like any other hereditary property.[18]

Moreover, it appears that the levy on execution was made on March 26, 1971,[19] and the petitioner's usufructuary rights were sold at a public auction sale on July 21, 1971.[20] The petitioner, however, took no action thereon such that the orders issued have already become final and executory when she filed the instant petition. It is now too late to review the proceedings made therein.

It results that there was no abuse of discretion committed in the levy and sale on execution of the petitioner's usufructuary rights to satisfy a judgment against her.

There was, likewise, no abuse of discretion in the issuance of the writ of possession because the said writ is but complementary to the writ of execution, and the period for the redemption of the thing sold at public auction had expired without its being redeemed.

WHEREFORE, the instant petition should be, as it is hereby dismissed. The temporary restraining order heretofore issued is lifted and set aside. Costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Abad Santos, Ericta, and Escolin, JJ., concur. Aquino, J., see attached concurring and dissenting opinion.

[1] Rollo, p. 36.

[2] Id., pp. 8, 31.

- [3] Id., p. 2 (par. 4 of Petition).
- [4] Id., p. 12.
- [5] Id., p. 2 (par. 6 of Petition).
- [6] Id., p. 20.
- [7] Id., p. 15.
- [8] Id., p. 21.
- [9] Id., p. 22.
- [10] Id., p. 24.
- [11] Id., p. 27.
- [12] Id., p. 4 (par. 11 of Petition).
- [13] Id., p. 28.
- [14] *Guantia vs. Tatoy*, 88 Phil. 329.
- [15] *Reyes vs. Grey*, 21 Phil. 73.
- [16] Art. 579, Civil Code of the Philippines; Art. 487, Civil Code of Spain.
- [17] Art. 302, Civil Code.
- [18] *Guantia vs. Tatoy*, *supra*.
- [19] *Rollo*, p. 14, 19.
- [20] Id., p. 22.

CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur. Maria Emma Luz Bogacki is the registered owner of four lots with a total area of 3,005 square meters located in Iloilo City. Her mother, Anulina L. Vda. de Bogacki, has a usufructuary right over a proindiviso one-sixth portion of the said lots. (See art. 834, old Civil Code).

The mother took possession of the four lots and collected all the rentals thereof. Her daughter sued her for partition and for the recovery of her five-sixths share of the rentals. The trial court in its decision of November 13, 1960 ordered the mother "to get only one-sixth (1/6)" of the rentals and "to turn over to the plaintiff (the daughter) 5/6 of all that she had previously collected from the lots not beyond ten years before" the date of the decision, which rentals were appraised at fifty pesos (P50) a month, and to pay further "an equivalent of said amount from date of the judgment".

That judgment, not having been appealed, became final and executory. It was enforced against the mother's usufructuary right which was levied upon by the sheriff and sold at public auction on July 21, 1971 to the daughter for the sum of P6,300 (pp. 22-23, *Rollo*), broken down as follows:

Usufructuary right over 1/6 of Lot 72-A - P1,000.00

Do Lot 72-B - 1,500.00

Do Lot 73 - 3,000.00

Do Lot 591 - 500.00

The mother filed a motion to set aside the execution sale on the ground that her usufruct and the house, wherein she resided, are exempt from execution. The trial court denied the motion in its order of July 31, 1971. It noted that only the mother's usufructuary right was sold at the execution sale. The mother did not appeal from that order.

In view of the merger of the rights of the naked owner and the usufructuary in the person of the daughter, who is the registered owner of the four lots, the usufruct was extinguished. The trial court in its order of August 5, 1974 directed the issuance of a writ of possession in favor of the daughter.

That order and the sale at public auction of the mother's usufructuary right are assailed in the instant petition for certiorari and prohibition filed in this Court on August 30, 1974 by the mother, Anulina L. Vda. de Bogacki. On September 23, 1974, this Court issued a resolution restraining the lower court from enforcing the writ of possession.

It should be noted that, according to the daughter, her mother, in order to enjoy her usufructuary right, had actually taken possession of a portion of the four lots, which portion has an area of 500 square meters, or about 1/6 of the total area, and which is allegedly the most valuable part of the lots because it abuts a principal street of the city where the market value of the lots is not less than seventy pesos a square meter in 1974. The daughter alleged that her mother constructed on the said 500-square meter portion a house of mixed materials, where she (the mother) and her common-law husband and their children reside, and that, aside from the residential house, her mother had constructed two or three small houses and a store which she had leased to third persons. The mother has appropriated the rentals derived from the said properties (p. 41, Rollo).

The question is whether the trial court acted in excess of jurisdiction in ordering the issuance of the writ of possession and in enforcing the judgment against petitioner's usufructuary right.

The petitioner acted belatedly in assailing the execution against her usufructuary right. As above-stated, the execution sale took place on July 21, 1971. It was only three years later, or after the trial court issued its order of August 5, 1974, directing the issuance of the writ of possession, that the petitioner questioned in this Court the execution sale involving her usufructuary right.

The petitioner contends that no execution can be enforced against her usufructuary right because that incorporeal property had been transformed into a house and a residential lot with an area of five hundred square meters or one-sixth of the area of the lots owned by the private respondent. That contention is based on the provision that no execution can be enforced against the judgment debtor's "homestead in which he resides, and land necessarily used in connection therewith, both not exceeding in value three thousand pesos" (Sec. 12[a], Rule 39, Rules of Court).

Petitioner's contention is devoid of merit. As already pointed out above, the execution was not enforced against her "homestead" or residential house. The levy and execution sale were effected against petitioner's usufructuary right, an intangible thing. That fact is unmistakably indicated in the notice and certificate of execution sale.

Can that usufructuary right be levied upon and sold at public auction to satisfy the judgment against the usufructuary? This question is answered in the affirmative in the 1911 case of *Reyes vs. Grey*, 21 Phil. 73, where it was held that the usufructuary right belonging to the husband with respect to the property left by his deceased wife is subject to execution (cited in 2 Moran's Rules of Court, 1970 Ed., p. 307).

That ruling is unquestionably applicable to this case which involves the widow's usufructuary right over one-sixth of the four lots left by her deceased husband. That right is an alienable interest in real property. (Capon vs. Umali, 87 Phil. 91; Guantia vs. Tatoy, 88 Phil. 329).

With respect to the order for the issuance of a writ of possession, the same was based on section 35, Rule 39 of the Rules of Court. The petitioner or the usufructuary failed to make any redemption within one year after the sale of her usufructuary right to the judgment creditor who happened to be the naked owner of the four lots, a one-sixth portion of which was held in usufruct. Thus, the usufruct was extinguished by the merger of the usufruct and the naked ownership in the person of petitioner's daughter, now the private respondent (Art. 603[3], Civil Code).

The writ of possession is a complement of the writ of execution. In this case, the acquisition by the daughter of the absolute ownership over the four lots includes the right to obtain possession thereof without the need of filing a separate action against the possessor (Omna vs. Rivera, 67 Phil. 419; Perez and Alcantara vs. Evite and Manigbas, 111 Phil. 564; and Olego vs. Rebuena, L-39350, October 29, 1975, 67 SCRA 446, 456).

However, the trial court should hold first a hearing before ordering the demolition of petitioner's improvements (See sec. 14, Rule 39, Rules of Court) and ascertain whether she is entitled to the rights of a builder in good faith under article 448 of the Civil Code. In this sense, I dissent from the dispositive portion of the majority opinion.

In view of the foregoing considerations, I vote (1) to uphold the execution sale and the order for the issuance of the writ of possession and (2) for the dismissal of the petition but the trial court should first ascertain whether the petitioner is a builder in good faith before ordering the demolition of the improvements which she had constructed on the 500-square meter area occupied by her.

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