

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

G.R. No. L-38701. April 08, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

The Court in construing Section 17 of Rule 39 of the Revised Rules of Court declares that the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment, may not be taken up in the case where such claims are presented, but in a separate and independent action instituted by the claimants. This is evident from the fact that the court issuing the writ of execution is supposed to enforce its authority only over properties of the judgment debtor, and should a third party appear to claim the property levied upon by the sheriff and the claim is denied, the remedy contemplated by the rules is the filing by the said party of a reivindicatory action against the execution creditor or the purchaser of the property after the sale is completed, or a complaint for damages to be charged against the bond filed by the creditor in favor of the sheriff.

I

Two separate petitions, one essentially a counterclaim to the other. In G. R. No. L-38701, the petition is for certiorari and prohibition to annul and set aside the orders of respondent Judge Enrique Agana in Civil Case No. Q-18881 of the Court of First Instance of Quezon City (San Francisco Oil and Paint Co., Inc. and Isidoro Galvanized and Steel Manufacturing Co., Inc. vs. Farbenfabriken Bayer Aktiengesellschaft, Bayer Philippines, Inc., The City Sheriff of Quezon City, and Marino V. Cachero, Deputy Sheriff) dated May 16, 1974, enjoining herein petitioners Farbenfabriken Bayer Aktiengesellschaft (referred to as BAYER GERMANY), Bayer Philippines, Inc. (referred to as BAYERPHIL), The City Sheriff and his deputy in Quezon City, from breaking open the gates of the premises located at No. 17-18 Judge Juan Luna Street, San Francisco del Monte, Quezon City and taking out the properties therein, and that of May 24, 1974, finding Axel Reichmann, a Division Manager of BAYERPHIL, Attorneys Norberto S. Gonzales and Domingo G. Foronda, counsels for BAYER GERMANY and BAYERPHIL guilty of contempt. In turn, G. R. No. L-38801 is a petition to annul and set aside the orders of Judge Vicente Ericta issued in Civil Case No. Q-14029 [Farbenfabriken Bayer Aktiengesellschaft, et al. (BAYER GERMANY and BAYERPHIL) vs. Standard Industrial Co., Inc. and Alejandro Co], designed to authorize the sale on execution of the goods claimed by the third-party claimants notwithstanding the restraining order issued by Judge Agana, who, on the other hand, asserted what he considered to be his rightful authority to issue the same and accordingly declared in contempt Sheriff Cachero and those who induced and assisted him in violating it.

The record shows that on October 13, 1972, petitioners Bayer Philippines, Inc. and Bayer Aktiengesellschaft (BAYERPHIL and BAYER GERMANY or BAYER for short) secured in Civil Case No. Q-14029 a money judgment against Standard Industrial Co., a manufacturer of paints, nails, fencing, netting and other similar

products, and one Alejandro Co, Assistant Manager of said company, but because the said judgment was impugned in the Court of Appeals, it did not become final and executory until 1974. Upon motion of the judgment creditor on March 21, 1974, Judge ERICTA issued the corresponding writ of execution. Acting by virtue of said writ, Sheriff Cachero levied on the properties herein involved consisting of paints, chemicals and two motor vehicles found in the premises at 18 - 20 J. Luna St., San Francisco del Monte, Quezon City, the last known business address of Standard. It turned out, however, that said premises had been acquired sometime in 1970 by a certain Policarpio Monteverde at an auction sale in connection with the foreclosure-of-mortgage proceedings instituted by the China Banking Corporation against Standard. Apparently, Standard ceased operating since then. Monteverde later sold the property to petitioner in G.R. No. L-38801, San Francisco Oil and Paint Company, Inc. (San Francisco, for short), which was incorporated on January 25, 1973 as a corporation engaged in the manufacture of paints. Together with San Francisco, the premises were subsequently occupied by the other petitioner in G. R. No. L-38801, the Isidoro Galvanized and Steel Manufacturing Co., Inc. (Isidoro, for short), a corporation incorporated on July 17, 1969 for the manufacture of nails.

Claiming that the various items of property thus levied upon by the sheriff belong respectively to each of them, San Francisco and Isidoro filed with Sheriff Cachero separate third-party claims. Upon being notified of said claims, BAYER filed with the same sheriff an indemnity bond in his favor in the amount of P240,000.00. Accordingly, the sheriff took steps to proceed with the auction sale. But when he went to the premises at 18-20 J. Luna St., San Francisco del Monte, Quezon City, to conduct the sale, he was refused entrance, for which reason, he filed with the Court of Judge ERICTA a motion dated April 5, 1974, asking that he be authorized to break open the gates and padlocks therein. As a counter-move, San Francisco and Isidoro filed their own motions dated April 8, 1974, praying for the dissolution or discharge of the levy, on the ground already stated that the properties purported to be sold were theirs and not of Standard.

Acting on these two motions, Judge ERICTA held a hearing on May 2, 1974, specifically "for the purpose of (allowing the parties to) present(ing) evidence to establish the ownership of the goods levied upon." At that hearing, only one witness testified, Atty. Domingo G. Foronda, whose testimony was, however, limited to the fact that the title to the premises is still in the name of Monteverde. The rest of the evidence consisted of the following documents submitted by the parties:

By BAYER:

Exhibit "A" - Certification of SEC as to Articles of Incorporation of defendant Standard Industrial;

" "A-1" - Start of Certification;

" "A-2" - Purpose clause of Standard;

" "A-3" - List of incorporators of Standard;

" "A-4" - Certification from SEC that in its records one Co Kay is the Manager of Standard;

" "A-5" - Address of Standard at 18-20 Judge Luna St., San Francisco del Monte, Quezon City;

" "B"

- Certification of SEC re Articles of Incorporation of San Francisco;

" "B-1" - "received original" signed by Atty. Carlos de Castro;

" "B-2" - Address of Atty. de Castro;

" "B-3" - January 29, 1973 - date of incorporation of San Francisco;

" "B-4" - Purpose clause of San Francisco;

" "B-5" - "Corrected by C. M. de Castro";

" "B-6" - "Corrected by C. M. de Castro";

" "B-7"

- Address of San Francisco - 17 - 19 Judge Juan Luna;

" "B-8" - List of incorporators of San Francisco;

" "B-9" - Statement that Alejandro Co has been elected Treasurer of San Francisco;

" "B-10" - Corrected by Carlos M. de Castro";

" "B-11" - Signature and name of Alejandro Co as Treasurer of San Francisco;

“ "C" - General Information Sheet of San Francisco filed with SEC;

" "C-1" - Corporate Secretary of San Francisco - Atty. Carlos de Castro;

" "C-2" - Minutes of Meeting-showing General Manager to be Amoranto Co;

" "C-3"

- Carlos de Castro - Corporate Secretary;

" "D" - SEC certification as to Articles of Incorporation of Isidoro Galvanized;

" "D-1" - "received original; Carlos de Castro";

Exh. "D-2" - incorporation paper of Isidoro followed up by Carlos de Castro;

" "D-3" - Purpose clause of Isidoro;

" "D-4" - List of incorporators of Isidoro;

" "D-5" - Signature of Carlos de Castro;

" "E" - Letter of SEC by Carlos de Castro relative to Isidoro;

" "F"

- Marriage Contract of Sara Co with Dominador Monteverde;

" "G-H" - LTC Ancar Unit - certification showing that Standard was owner of two vehicles part of properties levied;"

" "I" - page 152 of 1968 telephone directory showing address and phone number of Standard;

" "I-2" - p. 981 of 1969 telephone directory showing the same;

" "I-3" - p. 265 of 1971 telephone directory showing the same;

" "I-4" - p. 324 of 1972 telephone directory showing the address and phone number of Standard;

" "I-5" - p. 356 of 1973 telephone directory showing the address and phone number of Standard;

By San Francisco and Isidoro:

Exhibit "1" - TCT No. 164464;

" "1-A" - date, May 15, 1971;"

“ "2" - TCT No. 164465;

" "2-A" - date of entry of Exhibit "2";

“ "3" - registration certificate of vehicles;

“ "4" - registration certificate of vehicles.

In addition, to show how and when they acquired the properties in question, San Francisco and Isidoro attached as annexes to their memorandum, the following documents:

Annex "1" - Copy of the Certificate of Sale of the Office of the Sheriff of Quezon City dated June 18, 1970 in favor of Policarpio D. Monteverde;

" "2" - Copy of the "Deed of Sale with Assumption of Mortgage" acknowledged on March 13, 1973 before Notary Public of Manila Antonio Ante as Doc. No. 376, Page No. 77, Book No. VIII, Series of 1973;

Annex "3" - Sep. 3, 1973, Inv. No. 55730 - MT Cans 9-1/4 x 13-3/4 w/ 1-7/8 plain, 5 gallons amounting to P2,449.25;

" "4" - Oct. 24, 1973, Inv. No. 064 - Zinc Oxide Paint Grade amounting to P18,000.00;

" "5" - Dec. 12, 1973, Inv. No. 2826 - Zinc Oxide, 99.7% purity "Diamond Brand" packed 25 kgs. per bag. Total 80 bags amounting to P17,000.00;

" "6"

- Dec. 12, 1973, Inv. No. 380 - Lithopone Red Seal amounting to P31,132;

" "7" - Mar. 11, 1974, Inv. No. 453 - Lithopone x 25 kgs. amounting to P71,600;

" "8" - Mar. 13, 1974, Inv. No. 1827 - "Diamond Brand" Light precipitated Calcium Carbonate 25 kgs/bag total 400 bags amounting to P11,500.00;

" "9" - Mar. 21, 1974, Inv. No. 126062 - Ord. CH Drum amounting to P6,026.50; Ord. CH Drum amounting to P6,165.00; Ord. CH Drum amounting to P7,261.25;

" "10" - Mar. 20 1974, Inv. No. 1356 - Brass Tube 3/8 x 20 - amounting to P4,400;

" "11" - Mar. 21, 1974, Inv. No. 1357 - Brass Tube 1-3/4 x 20 amounting to P18,000;

Upon these premises, Judge Ericta issued on May 9, 1974, an order denying "the motions of the third-party claimants asking for the dissolution of said levy" and granting the authority sought by the Sheriff to break open gates and padlocks. Thereafter, what else took place is recounted in BAYER's Comments dated July 11, 1974, as follows:

"But before the sheriff could implement the sale of the properties under levy, herein petitioners filed in the late afternoon of May 16, 1974, a complaint for damages against herein private respondents and the sheriff of Quezon City, again asserting their claim of ownership over the goods levied upon, despite the denial of the third-party claims by respondent Judge Ericta after due hearing. In the same afternoon that the complaint was filed (which was not even a raffle day), it was assigned to Branch XXVIII of the Court of First Instance of Rizal in Quezon City presided by Judge Enrique Agana, Sr. and that same late afternoon, an order to maintain the status quo, which was actually a restraining order, was issued by Judge Agana (now the subject of the petition for certiorari in G. R. No. L-38701).

"On May 20, 1974, herein private respondents BAYERPHIL and BAYER GERMANY filed with respondent Judge Ericta, a motion to reiterate the order to break open dated May 9, 1974, informing the court of the status quo order of Judge Agana, and attaching as annexes the order of Judge Agana and a copy of the full text of the decision of the Supreme Court in *De Leon v. Salvador*, 36 SCRA 567. This motion was granted by respondent Judge Ericta (Annex 'M' of petition in L-38701). With Judge Ericta's new order of May 20, 1974 to proceed with the implementation of the order of May 9, 1974, the sheriff proceeded to bring out some but not all of the goods put under levy, and upon motion, the goods taken were deposited at the warehouse of respondent BAYERPHIL. Came the petition for contempt before Judge Agana who found petitioners in G. R. No. L-38701 guilty of indirect contempt allegedly for violating the status quo order of May 16, 1974 in connection with Civil Case No. Q-18881.

"After the filing of the petition in G. R. No. L-38701, by reason of which this Honorable Court issued a temporary restraining order, herein private respondents BAYERPHIL and BAYER GERMANY filed a motion with Judge Ericta to allow the sheriff to conduct the sale at the premises of BAYERPHIL. The motion was favorably acted upon by the order of respondent Judge Ericta in an order dated June 10, 1974 (Annex 'B' of the

petition in L-38801). This order is now the subject of this present petition for certiorari."

But on June 19, 1974, this Court issued a temporary restraining order against the implementation of this last, order of Judge Ericta.

By resolution of August 7, 1974, the Court considered the Comments filed by respondents in G. R. No. L-38701 as their answers to the petition and set the case for hearing on the merits on September 2, 1974. At the hearing, by agreement of the parties, G. R. No. L-38801 was treated similarly, and the two cases were heard together and declared submitted for decision after the oral argument and the subsequent submission of memoranda by the parties.

II

In the light of these facts and proceedings, BAYER submits that Judge Agana acted without jurisdiction in entertaining Civil Case No. Q-18881, in issuing the writ of preliminary injunction enjoining the execution sale ordered by Judge Ericta, in holding contempt proceedings against the petitioners in G. R. No. L-38701 for violation thereof and in subsequently convicting and sentencing them in his order of May 24, 1974. The main ground of such submission is that pursuant to the precedents cited by them, Judge Agana's orders constitute undue and illegal interference with the exercise by Judge Ericta of his coordinate and co-equal authority as Judge of the Court of First Instance on matters properly before him. On the other hand, it is the position of San Francisco and Isidoro that Judge Ericta exceeded his jurisdiction in assuming that his order of May 9, 1974, denying San Francisco's and Isidoro's motion to quash the levy on the properties in question, which, by the way, was not appealed by said movants, constituted a valid final adjudication of the ownership of the properties involved, considering that in their view of the applicable jurisprudence, the claim of ownership of a third-party claimant in an execution proceeding may be determined only in a separate action and not by mere motion in the case wherein such execution has been ordered.

III

The questions raised are not new. It has long been settled in this jurisdiction that the claim of ownership of a third-party over properties levied for execution of a judgment presents no issue for determination by the court issuing the writ of execution. The moment a third-party claim is filed, the sheriff is not bound to keep the property levied upon, unless the creditor insists that it should be continued, which may be done if such creditor files a bond sufficient to indemnify the sheriff for whatever damages he may be held liable for should the third-party succeed in vindicating his title in a proper action brought separately for the purpose. The sheriff is not required to examine the title deeds to pass upon the validity of the title, since this is a question to be determined by the proper court.[1] Incidentally, it is also the rule that the sheriff may, in his discretion, dispense with requiring an indemnity bond, such as when he believes from personal knowledge of the facts that the third-party claim is baseless or untrue, but in such event, he will answer for any damages with his own personal funds, should his belief be subsequently found to be erroneous.[2]

In any event, the point to be borne in mind is that the power of a court in the execution of its judgments extends only over properties unquestionably belonging to the judgment debtor. Once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial function as regards any matter related to the controversy litigated comes to an end. The execution of its judgment is purely a ministerial phase of adjudication. Indeed, the nature of its duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the loser is generally ministerial. Thus, when a property levied upon by the sheriff pursuant to a writ of execution is claimed by third person in a sworn statement of ownership thereof, as prescribed

by the rules, an entirely different matter calling for a new adjudication arises. And dealing as it does with the all important question of title, it is reasonable to require the filing of proper pleadings and the holding of a trial on the matter in view of the requirements of due process.

We did declare in *Herald Publishing Co. v. Ramos*,^[3] that intervention as a means of protecting the third-party claimant's right in an attachment proceeding, is not exclusive but cumulative and suppletory to the right to bring a new, independent suit. But in *Herald Publishing*, We adverted to the intervention provided by Rule 13 of the Rules of Court (now Sec. 2 of Rule 12, of the Revised Rules of Court) which required the filing of appropriate pleadings, such as the motion for intervention, complaint or answer in intervention if permitted, on the basis of which a hearing shall be conducted. Accordingly, Our ruling in that case must be construed to refer only to a third-party claim relative to a preliminary attachment, since obviously, it is not proper to speak of an intervention in a case already terminated by final judgment.^[4]

As We see it, somehow, Judge Erica must have had these considerations in mind, when in his questioned order of May 9, 1974, he expressly considered San Francisco's and Isidoro's motions to quash the levy in question as a motion to intervene. It must be observed, however, that intervention as contemplated in the rules is not confined merely to the filing of the motion to intervene and the allowance or disallowance by the court of said intervention. The granting of such motion merely opens the door for the filing of the corresponding complaint or answer in intervention, in which the issues must be joined before a trial is held wherein the respective evidence of the parties is submitted. From what We can gather from the records of the instant cases, the parties did not file any such pleadings. Hence, the proceeding held by Judge Erica on May 2, 1974 was far from being a proceeding in intervention, considering that there were no proper pleadings therein and what is more, there was already a final judgment on the main controversy.

In other words, construing Section 17 of Rule 39 of the Revised Rules of Court, the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment should not be decided in the action where the third-party claims have been presented, but in the separate action instituted by the claimants.

This is evident from the very nature of the proceedings. In *Herald Publishing*, supra, We intimated that the levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under authority of the court only when the property levied upon unquestionably belongs to the defendant. If he attach properties other than those of the defendant, he acts beyond the limits of his authority. Otherwise stated, the court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor, and should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action.

As We explained in the *Quebral* case,^[5] since the third-party claimant is not one of the parties to the action, she could not, strictly speaking, appeal from the order denying her claim, but should file a separate reivindicatory action against the execution creditor or the purchaser of her property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff.

We reiterated this in *Potenciano v. Dineros, et al.*^[6] when We ruled that "such reivindicatory action is resurged to the third-party claimant by Section 15 or Rule 39 despite disapproval of his claim by the court itself (*Planas v. Madrigal*, 94 Phil. 754, *Lara v. Bayona*, G.R. No. L-7920, decided May 10, 1955)." This rule is dictated by reasons of convenience, as "intervention is more likely to inject confusion into the issues between the parties in the case x x x with which the third-party claimant has nothing to do and thereby retard instead of facilitate the prompt dispatch of the controversy which is the underlying objective of the rules of pleading and practice."^[7] Besides, intervention may not be permitted after trial has been concluded and a final judgment rendered in the

case.

What has been said disposes of BAYER's contention to the effect that the issue of whether or not the properties in question were illegally levied by the sheriff has already been settled by Judge Ericta's order of May 9, 1974, denying San Francisco's and Isidoro's motions to lift said levy, finding that said corporations are mere "conduits or instruments" of Standard "to deceive its creditors," which admittedly was not appealed by the parties aggrieved thereby. Indeed, what Judge Ericta should have done was to refrain from hearing said motions, and to direct the movants to file the appropriate separate action against the sheriff.

As regards the claim of BAYER that the writ of preliminary injunction issued by Judge Agana is an interference with the co-ordinate and co-equal authority of Judge Ericta over the properties in question, again We must say such question has already been settled in *Abiera v. Court of Appeals*,^[8] thus:

"The lone issue presented for resolution is whether or not Branch VI of the Court of First Instance of Negros Occidental acted with authority in enjoining the Provincial Sheriff from proceeding with the execution sale of properties levied upon by him pursuant to a final judgment rendered by Branch II but claimed by the petitioners herein, the De la Cruz spouses, in the action filed by them in the court which issued the injunction.

"The decision of the Court of Appeals now sought to be reviewed relies upon the case of *Hacbang, et al. vs. Clementino Diez*, 8 SCRA 103 (May 30, 1963), where this Court acted and applied the doctrine earlier laid down in *Cabigao vs. Del Rosario and Lim*, 44 Phil, 192, and subsequently reiterated in several other cases, that 'no court has power to interfere by injunction, with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction...'

"The doctrine as thus formulated is well settled, and has been adhered to consistently whenever justified by the facts in order to avoid conflict of power between different courts of coordinate jurisdiction and to bring about a harmonious and smooth functioning of their proceedings. For the doctrine to apply, however, the injunction issued by one court must interfere with the judgment or decree issued by another court of equal or coordinate jurisdiction, and the relief sought by such injunction must be one which could be granted by the Court which rendered the judgment or issued the decree.

"In the case at bar, there is no question that the action filed by the De la Cruz spouses wherein they claim ownership of the properties levied upon by the provincial sheriff is sanctioned by Section 17 of Rule 39, which provides:

'If 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 against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

"The officer is not liable for damages for the taking or keeping of the property, to any third party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

'x x x' (Italics supplied)

"It may be inferred from the foregoing that the right of a person who claims to be the owner of property levied upon on execution to file a third-party claim with the sheriff is not exclusive, and that he may file an action to vindicate his claim even if the judgment creditor files an indemnity bond in favor of the sheriff to answer for any damages that may be suffered by the third-party claimant. By 'action', as stated in this Rule, what is meant is a

separate and independent action, such as was resorted to the third-party claimants in this case. So it has been held in *Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil, 94, where this Court, through Justice Pedro Tuason, resolved a question similar to the one now before us. There an order of attachment was issued by the court in a civil suit for libel filed by Antonio Quirino against the editor, the managing editor and a reporter of the *Daily Record*. By virtue of the writ the sheriff levied upon certain properties found in the premises of the publication. The Herald Publishing Company, alleging ownership of the properties thus attached, filed a third-party claim with the sheriff and subsequently an action to enjoin the attachment. This action fell to another branch of the Court of First Instance, which issued the preliminary injunction against the sheriff.

"This Court said, in relation to the point which is of relevance here:

'The objection that at once suggests itself to entertaining in Case No. 12263 the motion to discharge the preliminary attachment levied in Case No. 115391 is that by so doing one judge would interfere with another judge's actuations. The objection is superficial and will not bear analysis.

It has been seen that a separate action by the third party who claims to be the owner of the property attached is appropriate. If this is so, it must be admitted that the judge trying such action may render judgment ordering the sheriff or whoever has in possession the attached property to deliver it to the plaintiff-claimant or desist from seizing it. It follows further that the court may make an interlocutory order, upon the filing of such bond as may be necessary, to release the property pending final adjudication of the title. Jurisdiction over an action includes jurisdiction over an interlocutory matter incidental to the cause and deemed necessary to preserve the subject matter of the suit or protect the parties' interests. This is self-evident.

The fault with the respondents' argument is that it assumes that the Sheriff is holding the property in question by order of the court handling the case for libel. In reality this is true only to a limited extent. That court did not direct the Sheriff to attach the particular property in dispute. The order was for the Sheriff to attach Borres,' Padilla's and Pastor's property. He was not supposed to touch any property other than that of these defendants', and if he did, he acted beyond the limits of his authority and upon his personal responsibility.

It is true of course that property in custody of the law can not be interfered with without the permission of the proper court, and property legally attached is property in custodia legis. But for the reason just stated, this rule is confined to cases where the property belongs to the defendant or one in which the defendant has proprietary interest. When the Sheriff acting beyond the bounds of his office seizes a stranger's property, the rule does not apply and interference with his custody is not interference with another court's order of attachment.

It may be argued that the third-party claim may be unfounded; but so may it be meritorious, for that matter. Speculations are however beside the point. The title is the very issue in the case for the recovery of property or the dissolution of the attachment, and pending final decision, the court may enter any interlocutory order calculated to preserve the property in litigation and protect the parties' rights and interest. x x x'

"The rationale of the decision in the Herald Publishing Company case is peculiarly applicable to the one before Us, and removes it from the general doctrine enunciated in the decisions cited by the respondents and quoted earlier herein.

1. Under Section 17 of Rule 39 a third person who claims property levied upon on execution may vindicate such claim by action. Obviously a judgment rendered in his favor, that is, declaring him to be the owner of the property, would not constitute interference with the powers or processes of the court which rendered the judgment to enforce which the execution was levied. If that be so — and it is so because the property, being that of a stranger, is not subject to levy — then an interlocutory order such as injunction, upon a claim and prima facie showing of ownership by the claimant, cannot be considered as such interference either.

2. To adopt the statement in the Herald Publishing Company decision and apply it here, Branch II of the Court of

First Instance of Negros Occidental, in Case No. 7435, did not direct the sheriff to levy upon the particular properties in dispute. The order was for him to levy upon properties of the judgment debtor, without specifying them.

3. The issue presented by herein private respondents in Civil Case No. 293 before respondent Judge was one of ownership, which could not have been presented to and resolved by the other court in Civil Case No. 7435. In other words, that court could not grant the relief sought by the injunction, and consequently neither its judgment nor the enforcement thereof was interfered with. Execution could still proceed with respect to the judgment debtor's properties.

4. The case of *Cabigao vs. Del Rosario and Lim*, supra, is not in point. In that case a writ of execution was issued by one court (second branch, Manila) to enforce its judgment for a sum of money. After the defendant's property was levied upon he filed a petition in another court (first branch), praying that a writ of preliminary injunction be issued to restrain the sheriff from carrying out the execution on the ground that there was another action pending between the same parties in the Supreme Court and in which action the defendant had been given a judgment by the Court of First Instance for a much larger amount than that for which the execution was issued. Under these facts, it is quite clear that the preliminary injunction issued by Branch I was improper, and constituted undue interference with a decree of Branch II, where the same relief could have been sought.

5. The case of *Hacbang vs. Hon. Clemente Diez, et al.* is not in point either. There judgment was rendered by the Court of First Instance of Leyte against the Leyte Autobus Co., Inc. in Civil Case No. 2045. A writ of execution was issued, and a passenger bus was levied upon by the provincial sheriff. The respondent, Leyte Autobus Co., Inc., claiming that it was the owner of the bus and that it was not the defendant in Civil Case No. 2045, although it bore the same name, filed a third-party claim. The Leyte court denied the claim and directed that the sale of the bus be carried out, on the ground that the said respondent was the very same company that was the defendant against whom the judgment had been rendered. Subsequently the respondent filed another action in the Court of First Instance of Cebu, reproducing substantially the allegations in its third-party claim and prayed that a writ of preliminary injunction be issued to restrain the sale of the passenger bus which had been levied upon. The injunction was issued as prayed for and the sheriff came to Us on certiorari and prohibition.

"This Court, through Justice Roberto Concepcion, now Chief Justice, granted the petition and annulled the said writ, applying the doctrine laid down in *Cabigao vs. Del Rosario*, supra, and citing in its decision still another case, namely, *National Power Corporation vs. Hon. Jesus de Veyra*, 3 SCRA 646 (Dec, 22, 1961).

"It is clear that in the *Hacbang* case the injunction issued by the Cebu court constituted an interference with the processes of the Leyte court, since the latter had already denied the third-party claim filed before it by the respondent company, held that the latter was the very defendant against whom judgment has been rendered, and directed the sale of the specific property claimed by it.

6. The *National Power Corporation* case presented a more or less similar situation. As stated in the decision penned by Chief Justice Bengzon, 'the question raised is whether or not property which has been levied upon in a garnishment proceeding by one court (in Manila) may be subject to the jurisdiction of another court (in Baguio) in an independent suit impugning the legality of said garnishment — the property garnished allegedly being exempt from execution.' This Court held: 'The reason advanced by the respondent court of Baguio City that it should grant relief when 'there is apparently an illegal service of the writ' ... may not be upheld, there being a better procedure to follow, i.e., a resort to the Manila Court, wherein the remedy may be obtained, it being the court under whose authority the illegal levy had been made. Needless to say, an effective ordering of legal relationships in civil society is possible only when each court is granted exclusive jurisdiction over the property brought to it. To allow

coordinate courts to interfere with each other's judgments or decrees by injunction would obviously lead to confusion and might seriously hinder the proper administration of justice.'

"As may be noted, the statement of the doctrine relied upon by the respondents in the present case must be taken in context, that is, in the particular factual setting wherein it is applied. The facts of this case do not lend themselves to its application."

In his concurring opinion in this *Abiera* case, Justice Barredo laid emphasis on the point here in dispute, thus:

"In my view, which is not necessarily shared by all my colleagues, by adopting and reiterating in this case the doctrine laid down in *Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil. 94, the Court is once more making it clear that in implementing a writ of attachment or execution issued by a Court of First Instance, the Sheriff must see to it that only properties unquestionably belonging to the attachment defendant or judgment debtor against whom the writ is issued are levied upon and that should there be any controversy as to the ownership of said properties, such controversy may be submitted for resolution not necessarily to the court issuing the writ involved but to any other Court of First Instance. I believe it is necessary to make this point very clear because at first blush, one would feel that inasmuch as the property the ownership of which is being disputed is the subject of an order of a particular court for the seizing thereof to the end that it may be used to satisfy a judgment already rendered or to be rendered by it, it would seem that the more logical rule should be to confine the jurisdiction of such a controversy in the same court, as a necessary consequence of its authority and power to make effective its judgment, since otherwise it would be the easiest thing for a defendant or a judgment debtor to nullify the recognition by the court of the validity of the grounds of attachment of the plaintiff or the cause of action of the judgment creditor by simply asking or allowing some friendly third party to file a claim of ownership over his properties and thereby oust the jurisdiction of the court over the writ issued in his favor. In other words, there seems to be logic in the proposition that in order to preserve the subject matter of the suit, the court issuing the writ should be the one to decide any claim of any third party over the property being subject by it to its ownership. Upon the other hand, there is the consideration that the taking up of such claim would have nothing to do with the merits of the cause of action in the litigation before the court and could unnecessarily delay its complete termination. I for one am convinced that as between these two considerations, the latter is more weighty, particularly, because as indicated by Mr. Justice Tuason in the *Manila Herald Publishing* case, it is clearly inferable from the provisions of the Rules of Court on third party claims, both under Rule 39 (section 17) and Rule 57 (section 14), that the 'proper action' referred to in both sections, by which the third party may vindicate his claim to the property, is more appropriately an independent action instead of a mere intervention."

Incidentally, before closing, it may not be inappropriate to make the observation that while some of the circumstances relied upon by Judge Ericta in his order of May 9, 1974 may have bearing on the issue of ownership of the properties in question, they do not appear to Us to be sufficiently supported by the record. More specifically, We cannot see enough basis for the finding that all the incorporators of all three corporations, Standard, San Francisco and Isidoro are members of the same family. Neither do We see enough indication that the properties levied upon were properties belonging originally to Standard.

IN VIEW OF ALL THE FOREGOING, the petition in G. R. No. L-38701 is dismissed, and in G. R. No. L-38801, the petition is granted, and the orders of Judge Ericta of May 9, 1974 and June 10, 1974 in Civil Case No. Q-14029 and all proceedings and orders subsequent and pursuant thereto are hereby annulled and set aside. Respondent Sheriff Mariano Cachero is ordered to lift the levy on the properties enumerated in the Notice of Sheriff's Sale dated March 28, 1974, as well as on all properties subject of San Francisco's and Isidoro's motions of April 15, 1974. The restraining order issued in G.R. No. L-38801 on June 19, 1974 is hereby made permanent, while that issued in G. R. No. L-38701 on May 29, 1974 is hereby lifted. Costs against the petitioners in G. R. No. L-38701 and the respondents in G. R. No. L-38801.

Makalintal, C.J., Fernando, Barredo, and Aquino, JJ., concur.

[1] Standard Oil Co. of New York v. Babasa, 34 Phil., 354.

[2] Alzua, et al. v. Johnson, 21 Phil., 308.

[3] 88 Phil., 94, 100.

[4] Trazo v. Manila Pencil Co., Inc., 1 SCRA 403.

[5] Quebral v. Garduño, 67 Phil., 316.

[6] 97 Phil., 196; Agricultural Credit Administration v. Lasam, 28 SCRA 1098.

[7] Herald Publishing, supra, p. 101.

[8] 45 SCRA, 314.

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