

REPUBLICA DE FILIPINAS, RECURRENTE, CONTRA HONORABLE PATRICIO C. CENIZA, JUEZ DEL JUZGADO DE PRIMERA INSTANCIA DE MISAMIS OCCIDENTAL, Y DIOSDADO L. VICADA, SHERIFF DE LA CIUDAD ...

G.R. No.L-4169. December 17, 1951

Ponente: PABLO, J.

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PABLO, J.:

En 9 de febrero de 1949, el Tribunal de Apelacion sobreseyo la apelacion interpuesta por Pepito Piamonte contra la sentencia dictada en la causa criminal No. 2096 del Juzgado de Primera Instancia de Misamis Occidental, por posesion ilegal de expldsivos, que le condena a pagar una multa de P1,500 y las costas.

En 17 de marzo, la sentencia quedo firme y ejecutoria.

En 25 del mismo mes, se expidio la orden de ejecucion contra los bienes de Pepito Piamonte por P1,560.60, que representan la multa y costas en los juzgados de paz, primera instancia y tribunal de apelacion.

El recurrido Diosdado L. Vicada, Sheriff de la Ciudad de Ozamis, trabo embargo sobre la casa de Pepito Piamonte, sin registrarlo en la Oficina del Registrador de Titulos, por la razon de que solamente embargo la casa y no con el terreno. La casa esta" descrita como sigue:

"A residential building constructed on Lot No. 1440, Case No. 2, which lot is registered in the name of Potenciano Lamparas, situated at Labo, City of Ozamis; said building is under Tax Declaration No. 2795S in the name of Pepito Piamonte, assessed at P2,000, and made of asbestos, wood and galvanized iron as to roofing; has no fence nor ceiling."

En 22 de octubre el Sheriff Vicada vendio la casa en pblica subasta en la cantidad de P1.,636.59, habiendo sido el mejor postor la Reptblica de Filipinas, y otorgd un certificado de venta en marzo 10 de 1950, y lo presento a la Oficina del Registrador de Titulos para su inscripcion.

En 18 de abril, el Procurador General recibio el segundo endoso del Sheriff de Ozamis de fecha 12 de abril, llamando su atencidn hacia el hecho de que el Manila Daily Bulletin cobraba P115.50 por la publicacion del anuncio de venta.

En 26 de Abril, el Procurador General pidio del Sheriff copias de las ordenes de embargo y ejecucion con sus anotaciones en el registro, y en 11 de mayo, el Sheriff se las remitio sin anotaciones de registro.

En 28 de junio, el Fiscal Auxiliar Provincial de Misamis Occidental, por instrucciones del Procurador General, presento una mocion pidiendo la anulacion de la "venta ef ectuada por el Sheriff de la Ciudad, fundada en el articulo 14, Regla 39, en relacion con el articulo 7(a), Regla 59, que dispone que el registro del embargo en la Oficina del Registrador de Titulos es uno de los requisitos para que la venta sea valida.

En g de julio, el Juzgado de Primera Instancia denego esta mocion; en 27 de julio, la Republica de Filipinas

presento mocion de reconsideracion, y en 5 de agosto, el Hon. Juez Ceniza revoco su orden del 3 de julio y declaro nula y sin valor la venta hecha por el Sheriff y ordeno al escribano que expidiese otra orden de ejecucion para que el Sheriff de la Ciudad pueda efectuar nuevo embargo y venta de la casa.

En 30 de agosto, el Sheriff de la Ciudad presenta una mocion de reconsideracion, alegando que, para fines de embargo, una casa se considera como bien mueble inmueble; que en el caso presente, el embargo de la casa no debe registrarse en la Oficina del Registrador de Titulos, porque solamente documentos que afectan terrenos sus mejoras requieren registro, citando el articulo 194 delCodigo Administrativo Revisado, tal como fue" enmendado por la Ley No. 3344.

En 9 de septiembre, la Republica de Filipinas, por medio del Procurador General, presento su contestacion a la mocion de reconsideracion del Sheriff, alegando que cualesquiera restricciones que requiera el articulo 194 delCodigo Administrativo Revisado, tal como fue enmendado por la Ley No. 3344, no son aplicables a propiedades vendidas por el Sheriff.

En 16 de septiembre, el Hon. Juez Ceniza dicto una orden que en parte dice asi:

"It appearing, however, during the consideration of the motion to reconsider this Court's order of July 3, 1950, that the City Sheriff of Ozamis City will be prejudiced by having him pay the publication expenses in the first writ of execution, this Court is constrained to stand on its former order unless the Solicitor General shall cause the publication expenses incident to the first writ of execution to be defrayed by the government.

"If after twenty days from the date the Solicitor General's Office shall receive a copy of this order no assurance is made to this Court that the Government will defray the expenses above mentioned, the last order of this Court dated August 5, 1950, will be vacated and the previous order dated July 8, 1950, shall be restored."

En un recurso de certiorari, la Republica de Filipinas, por medio del Procurador General, acude a este Tribunal alegando que dicha orden es contraria a la ley y que el Juzgado abuso de su discrecion al dictarla, y pide que la misma sea declarada nula.

La base sobre que descansa la orden del Juzgado es arbitraria. Si el Procurador General paga la cuenta del Manila Daily Bulletin por la publicacion del anuncio de la subasta, la venta de la casa es valida; pero si no, es nula; la validez de la venta lo hace depender del pago de la cuenta; no debe ser asi. El factor determinante de la validez de la venta es el registro del embargo de la casa. El Juzgado debio de haber resuelto la cuestion planteada ante el de acuerdo con el reglamento, y no de acuerdo con los intereses del sheriff.

El articulo 7(b) de la Regla 59 dispone que "La propiedad inmueble, o las cosechas que se produzcan de la misma en la provincia, o el terreno o las mismas que pertenezcan al demandado y que este no esten en poder o se hallen inscritos en los archivos del registrador de titulos, a nombre de cualquiera otra persona, se embargaran mediante la presentacion al registrador de titulos de una copia de la orden, juntamente con una descripcion de la propiedad embargada, y de una notificacion de embargo al efecto de que dicha propiedad inmueble, y cualquier terreno que el demandado tuviere en la misma que estan en poder de otra persona, nombrando a esta, o que aparezcan a nombre, de la misma, quedan embargados preventivamente, y dejando en poder del ocupante de la propiedad, si lo hubiere, y en caso contrario, el de cualquier otra persona, o su agente, si se hallare en la provincia, o en la residencia de cualquiera de ellos, si estuvieren en la provincia, una copia de dicha orden, descripcion y notificacion. Si la propiedad hubiese sido registrada de conformidad con las disposiciones de la Ley del Registro de la Propiedad, la notificacion contendra una indicacion del numero del certificado de titulo y del tomo y pagina del libro de registro. donde estuviere inscrito el certificado. El registrador debera poner en indice los embargos preventivos presentados bajo este procedimiento en los nombres del demandante y del demandado y de la persona que tuviese en su poder la propiedad o en cuyo nombre apareciese en los registros;"

En otras palabras, el sheriff, al trabar el embargo de la casa, debio de haber pedido la inscripcion de la orden de embargo en *la Oficina del Registrador de Ttulos, ddndole una copia de la orden, con notificacion al demandado y al duefio del inmueble en que estd levantada la casa, y el Registrador de Titulos, por deber ministerial, debio de inscribir el embargo trabado a petition de la Republica de Filipinas contra la casa de Pepito Piamonte, edificada en el Lote No. 1440 de la propiedad de Potenciano Lamparas, inscribiendo, aderaa's, este embargo en el Indice de embargos.

Es insostenible la teorla del sheriff de que la casa en el caso presente se considera como mueble, pues la misma no puede removerse del terreno sin deterioro.

Son bienes inmuebles "Las tierras, edificios, caminos y construcciones de todo genero adheridas al suelo." (Art. 334,Codigo Civil).

Son muebles "en general todos los que se pueden transportar de un punto a otro sin raenoscabo de la cosa inmueble a que estuvieren unidos." (Art. 335, Codigo Civil).

La casa no es susceptible de entrega personal para que el sheriff la pueda tomar y conservar.. . en una bodega.

El articulo 7(b) del Reglaraento vigente contiene las disposiciones del artfculo 450 en relacion con el articulo 429 del Codigo de Procedimiento Civil, los cuales ya fueron aplicados en el asunto de Llenares contra Valdeavella y Zoreta, (46 Jut. Fil., 376). En dicho asunto este Tribunal declaro que nes indispensable que se efectue un embargo apropiado para que sea valida la venta en virtud de ejecucion. Una venta, a xnenos que vaya precedida de un embargo, es nula y el comprador no adquiere ningun titulo", y para que el embargo sea valido, es necesario que el aviso de embargo para la ejecucion se registre en la Oficina del Registrador de Ttulos.

En el asunto de Chua Pua Hermanos contra el Registrador de Ttulos de Batangas, Chua Pua obtuvo sentencia contra Jose H. Katigbak por la cantidad de F13,912.37, con sus intereses y costas. En virtud de dicha sentencia, se libro orden de ejecucion, se embargo la casa y el terreno del demandado; en la venta en publica subasta la propiedad fui comprada por Chua Pua, como unico postor, en la cantidad de P15,000; el Sheriff expidio su certificado de venta en debida forma a favor de Chua Pua Hermanos, que en 11 de septiembre de 1926 fue presentado al Registrador de Ttulos de la provincia para su inscripcion. Despue's de trabado el embargo del terreno y la casa por la accion civil presentada por Chua Pua Hermanos, otro acreedor, Samuel-Mirray, administrador del intestado de James Mitchel, presento accion civil contra Jose H. Katigbak y, despue's de la vista correspondiente, se dicto sentencia a favor de Murray; se libro la orden de ejecucion, en 15 de julio de 1926 se trab<5 embargo sobre el mismo terreno y casa de todo el derecho, tftulo e interes que el deudor judicial Katigbak tenla o pudiera tener sobre los misraos bienes que ya hablan sido embargados por Ghua Pua Hermanos. El embargo .-fueV registrado en la Qficina del Registrador de Ttulos. Vendidos los bienes en publica subasta por el Sheriff en 21 de agosto de 1926, este en l.o de septiembre del mismo ano expidio el certificado de venta a favor de Murray, el cual certificado fug debidamente inscrito en la Qficina del Registrador de Ttulos. Chua Pua Hermanos invoco derecho preferente; es indudable que lo tenla, pero se impugnd tal derecho "por el fundamento de que el embargo no se efectu<5 legalmente", esto es, que no se registro dicho embargo en la Oficina del Registrador de Tittflos. Este Tribunal dijo: "Bajo el articulo 429 del Codigo de Procedimiento Civil, es esencial para que tenga efecto un embargo, el dejar tal copia en poder del Registrador de Titulos, en la que aparezca una descripcion de la propiedad y una certificacion de haberse notificado de la sentencia al deudor. Cuando no se da este paso el embargo es necesariamente ineficaz. Es pues, evidente que, por lo que de autos consta, el derecho preferente por razon del embargo en favor de Chua Pua Hermanos es imaginario."

En cuanto a la contencion del Sheriff fundada en el articulo 194 del Codigo Administrativo Revisado, este Tribunal dijo ya en el asunto de Chua Pua Heraanos que "las condiciones prescritas en el articulo 194 del Codigo

Administrativo, segun esta reformado por la Ley Ho. 2337, no son aplicables a la escritura de un sheriff, que traspasa un terreno vendido por el sheriff en virtud de ejecucion."

Se concede el remedio pedido: se revoca la orden del Juez recurrido del 16 de septiembre de 1950; se declara nula y de ningun valor la venta de la casa de Pepito Piamonte; el Juzgado debe ordenar la ejecucion de su orden del 5 de agosto de 1950, y el Sheriff pagara las costas.

Paras, Pres., Bengon y Padilla, MM., estan conformes.

Reyes y Jugo, MM., conformes en el resultado.

DISSENTING

FERIA, J.,

This is a petition for certiorari filed by the Republic of the Philippines against the respondent Judge of the Court of First Instance of Misamis Occidental on the ground that the order of the respondent judge rendered on September 16, 1950, in Misamis Occidental "is contrary to law and is a grave abuse of discretion." Said order reads as follows:

"After considering thoroughly the arguments stated in the motion of the City Sheriff of Ozamiz City dated July 27, 1950, the Court is inclined to believe that the City Sheriff's opposition dated July 6, 1950, is likely to be correct and as a matter of fact this Court had only issued its order of August 5, 1950, taking into consideration that the government just wanted to play safe in asking for the reconsideration of the previous order of this Court.

"It appearing, however, during the consideration of the motion to reconsider this Court's order of July 8, 1950, that the City Sheriff of Ozamiz City will be prejudiced by having him pay the publication expenses in the first writ of execution, this Court is constrained to stand on its former order unless the Solicitor General shall cause the publication expenses incident to the first writ of execution to be defrayed by the government .

"If after twenty days from the date the Solicitor General's Office shall receive a copy of this order no assurance is made to this Court that the government will defray the expense above mentioned, the last order of this Court dated August 5, 1950, will be vacated and the previous order dated July 8, 1950, shall be restored."

The question submitted to the respondent judge for decision was a motion for reconsideration filed by the respondent Sheriff of Ozamiz City of the order of the respondent judge of August 5, 1950, which set aside or annulled the sale at public auction by the sheriff of a building belonging to a defendant constructed on another's land, on the ground that copy of the order of execution had not been previously filed with the register of deeds. Said order reconsidered and vacated a previous order of July 8 of the same year which approved said sale. The respondent judge, before acting on said motion for reconsideration, issued the above quoted order warning the Solicitor General that "if after twenty days from the date the Solicitor General's Office shall receive a copy of this order, no assurance is made to this court that the government will defray the expenses above mentioned, the last order of this court dated August 5, 1950, will be vacated, and the previous order dated July 9, 1950, shall be restored."

The present petition for certiorari dated in Manila on October 4, 1950, was filed prematurely with this Court because the respondent judge had not acted yet on said motion for reconsideration on October 5, 1951, when this petition for certiorari was filed by the Solicitor General, inasmuch as the period twenty days had not yet expired from the time a copy of said order of the Court of First Instance of Occidental Misamis dated September 16, 1950,

must have been received in Manila by the Solicitor General. Although had not this petition been filed it was to be excused that the respondent judge would have acted in accordance with the warning in said order, he might have changed his mind and decided otherwise. But the order under consideration such as it is now does not decide or act on anything; if no subsequent order were issued by the same court it can not be executed or does not have any effect. Only after the respondent judge has acted after the expiration of twenty days from the receipt of a copy of said order the Solicitor General, either denying the sheriff's motion for reconsideration, or granting it by vacating the order of August 5, and restoring the previous order of July 9, 1950, may the parties appeal from such new order, or filed a petition for certiorari against such order if certiorari lies because appeal lies only against a final judgment, order or decree, and certiorari "when a court or judge has acted without or in excess of jurisdiction or with grave abuse of discretion."

Besides, the present petition for certiorari is based on two contradictory grounds, to wit: "it is contrary to law and is a grave abuse of discretion." If the order complained of is contrary to law it can not be an abuse of discretion; and if it is an abuse of discretion it can not be contrary to law. distinction between error in judgment or acting contrary to law, and acting with grave abuse of discretion is clearly stated by this Court in the decision of the case of *Asuncion vs. De Yriarte*, 28 Phil. 67, 71, and in several other recent decisions of this Court. In said case of *Asuncion vs. De Yriarte* this Supreme Court said; "This is the same kind of determination which a court makes when it decides a case upon the merits. When a case is presented to a court upon the merits, the court can decide only one way and be right. As a matter of law, there is only one course to pursue. In a case where the court or other official has discretion in the resolution of a question, then, within certain limitations, he may decide the question either way and still be right. Discretion," it may be said generally, is a faculty conferred upon a court or other official by which he may decide a question either way and still be right."

Furthermore, even assuming for argument's sake that the above quoted order were all the respondent judge's action on the sheriff of Occidental Misamis' motion for reconsideration, said order would it most be contrary to law because the law requires the court to decide said motion for reconsideration, but the respondent judge could not have for reconsideration, but the respondent judge could not have acted with grave abuse of discretion, because the court had no discretion either to issue such an order or to decide or pass upon the merit of said motion.

Inasmuch as appeal lies in the present case from any order which the lower court may render or pass upon the question submitted to said court for decision or resolution, certiorari does not lie according to the express provision of Sec. 1, Rule 67 of the Rules of Court.

But in order to inform the parties of our opinion and thus avoid the appeal of this case should the court act on the merits we should say that the lower court would not act contrary to law if it grants the sheriff's motion for reconsideration considering that the levy of the building leased on and sold constructed on the land not owned by the owner of the building, need not be registered in the office of the registrar of deeds, for the following summarized reasons to be developed or extended in due time if necessary.

First, because Sec. 7 of Rule 59 providing how real property may be attached, reads that "Real property, or growing crops thereon," that is, crops grown on said real property may be attached by filing with the registrar of deeds a copy of the order together with a description of the property attached and notice that it is attached. As building is not land on which crops may be grown, the real property mentioned in said Rule 59 does not refer to building, which may be attached or levied on only as an improvement of the land it is owned also by the owner of the land. Secondly, because under section 194 of the Revised Administrative Code the register book shall contain, among others, the nature of each piece of land and its own improvements only, and not any other kind of real state or properties." It is evident that only buildings and other improvements constructed or put by the

owner of the land may be considered land's own improvements, and those built or put by persons who are not the owner of the land may be considered land's owned improvements, and those who build or persons who are not the owner of the land a contrario sensu are not. Thirdly, because in the cases of *Tomines vs. San Juan*, 45 O.G. 2935, and *Evangelista vs. Abad*, 36 O.G. 2915, the Court of Appeals held that a building built on a rented land is a personal property; and this ruling is of persuasive authority unless and until reversed by the Supreme Court. And finally, because the case of *De Jesus vs. Guan Bee Co. Inc.*, 72 Phil. 464, laid down substantially the same ruling to the effect that a house or building constructed on land belonging to another is considered a personal property, and may be the object of chattel mortgage, if there is no contract of lease of the land or after the contract of lease of the land has already expired, for in such case the building could be removed from the lot where it is constructed at any time at the instance of the lessor or owner of the land.

In view of all the foregoing, the petition for certiorari filed in this case should be dismissed.

So ordered.

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