

**SAURA IMPORT & EXPORT CO., INC., AND RAMON E. SAURA,
PETITIONERS, VS. JUDGE ARSENIO SOLIDUM, PROVINCIAL SHERIFF
OF DAVAO, & CHINA BANKING CORPORATION, RESPONDENTS.**

G.R. No. L-24514. July 31, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for certiorari with preliminary injunction to set aside the orders of respondent Judge dated February 24, 1965 and March 13, 1965, and to annul the attachment and levy on execution on two (2) parcels of land belonging to petitioners and registered in their respective names. As prayed for we issued a writ of preliminary injunction on June 3, 1965.

The facts of the case are as follows:

In August 1953 petitioners purchased the afore-mentioned two parcels of land from the Board of Liquidators for the National Abaca and Other Fibers Corporation under the provisions of Republic Act No. 477.[1] On December 28, 1953 transfer certificates of title Nos. T-5049 and T-5050 in the names of petitioners Saura Import and Export Co., Inc., and Ramon E. Saura, respectively, were issued by the Register of Deeds for Davao.

On December 21, 1953, pursuant to an agreement to finance petitioner Saura Import and Export Company's importation from Hongkong of electrical motors and starters with an invoice value of U.S. \$21,802.00, respondent bank paid the face value of the supplier's exchange draft therefor, plus expenses and related bank charges. As of July 13, 1961, after deducting partial payment made, petitioners were still indebted to respondent bank in the sum of P34,148.79, representing the peso value of the exchange draft, stipulated interest, bank charges and trust receipt commission, which sum petitioners failed to pay.

On October 12, 1961 respondent bank filed a complaint in the Court of First Instance of Manila, docketed as Civil Case No. 48326, for the collection of said sum of P34,148.79; with a prayer for preliminary attachment. On October 23, 1961 the court a quo issued the writ and accordingly the two (2) parcels of land covered by transfer certificates of title Nos. T-5049 and T-5050 were attached by the respondent provincial sheriff of Davao. On January 30, 1962 the defendants (petitioners herein) moved to discharge the attachment, alleging in effect that the complaint against them stated no cause of action and that they had assets worth several times more than the claim of respondent bank which could answer for any judgment which might be obtained under the complaint. Respondent bank opposed the motion, whereupon petitioners manifested that they "would now have no objection to the deferment of the dissolution of the attachment until after the trial on the merits."

In the meantime the parties (petitioners and respondent bank) in Civil Case No. 48326 concluded a compromise agreement which was submitted to the trial court. On July 25, 1962, judgment was rendered by respondent Judge in accordance with the agreement, which reads:

"The parties, assisted by their respective counsel, respectfully submit the following compromise agreement in

the above-entitled case:

1. The defendants hereby admit that they are jointly and severally liable to pay to the plaintiff the total amount of P34,148.79, with 7% interest per annum from and after July 13, 1961, until fully paid, plus an amount equivalent to 20% of the total amount due as and for attorney's fees;
2. In consideration of the defendant's voluntary admission of liability, the plaintiff is agree-able to receive from the defendant in full settlement of its aforesaid claim the amount of P30,000.00 with 7% interest per annum computed from the date of this compromise, until fully paid plus P500.00 as and for attorney's fees by way of compromise-all to be paid jointly and severally by the defendants within two (2) years from the date of this agreement;
3. As security for the payment of the foregoing compromise sums, the attachment levied by the Provincial Sheriff of Davao City on the two (2) parcels of land belonging to the defendants and registered in their names under Transfer Certificates of Title Nos. 5049 and 5050 of the Registry of Deeds of Davao, shall remain in full force and effect;
4. The defendants hereby renounce forever any and all claims which they may have against plaintiff by reason of the procurement and issuance of the writ of attachment in this case;
5. In the event that the defendants shall fail to pay the compromise sums as aforesaid in paragraph 2 hereof, the plaintiff shall be entitled to the immediate issuance of a writ of execution for the satisfaction therefor."

The decision was amended on August 4, 1964, upon motion for reconsideration filed by petitioners, by inserting the following addendum to the compromise agreement:

"The China Banking Corporation will interpose no objection to the release of any of the aforesaid lots, provided the remaining property is sufficient, as per the Development Bank of the Philippines' appraisal, to secure the payment of the entire compromise amount."

In view of the expiration of the two-year period stipulated in paragraph 2 of the compromise agreement without petitioners' having paid their indebtedness, respondent bank moved for execution of the judgment. Accordingly, a writ of execution was issued by respondent Judge on August 21, 1964.

On September 3, 1964 petitioners filed a motion to lift the attachment and any levy made by respondent sheriff on two (2) parcels of land in question, invoking for the first time Section 8, paragraph one, of Republic Act. No. 477, which states:

"SEC. 8. Except in favor of the Government or any of its branches, units, or institutions, land acquired under the provisions of this Act or any permanent improvements thereon shall not be subject to encumbrance or alienation from the date of the award of the land or the improvements thereon and for a term of ten years from and after the date of issuance of the certificate of title nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of such period."

Respondent Judge denied the motion in his Order dated February 24, 1955, as follows:

"x x x, it appears that the prohibition contained in the above quoted provision to the effect that said lands shall not "become liable to the satisfaction of any debt contracted prior to the expiration of such period" or "for a term of ten years from and after the date of issuance of the certificate of title", is not annotated on the said Transfer Certificate of Title Nos. 5049 and 5050. x x x.

x x x x x x x x

"Moreover, the herein defendants are now estopped from raising the illegality of the levy in question by virtue of the fact that said defendants in a compromise agreement entered into by them with the plaintiff on

July 21, 1962, placed as security for the payment of their indebtedness the said two (2) parcels of land, and that when the same parcels were levied upon under the writ of attachment issued by this Court, the defendants never raised the legality of the levy but instead agreed to guarantee their compliance with the same compromise agreement with the very same parcels."

Petitioners moved to reconsider but were turned down. Meanwhile, on April 10, 1965, respondent sheriff of Davao, in compliance with the writ of execution previously issued by respondent Judge, levied upon the parcels of land in question. However, before the sheriff could proceed with the sale petitioners filed this petition for certiorari, with a prayer for preliminary injunction.

With respect to the first ground on which respondent Judge denied the motion to lift the attachment, petitioners contend that the exemption of the two (2) parcels of land from liability for any obligation contracted prior to the expiration of ten years from and after the issuance of the certificates of title is a right which arises from law and is therefore binding on respondent bank even if not registered, citing paragraph 1, section 39 of Act No. 496, which reads:

"SEC. 39. Every person receiving a certificate of title in pursuance of a decree of registration and every purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free from all encumbrances except those noted on said certificate and any of the following encumbrances which may be subsisting, namely:

"First Liens, claim or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear on record in the registry."

We find no merit in petitioners' position. In the first place the prohibition in Section 8 of Republic Act No. 477 is not a "lien, claim or right" arising or existing under a law which cannot be required to appear on record in the registry. In fact the certificate of titles carried the annotation that "the vendee shall not sell and/or encumber the property within a period of ten (10) years from the date of the issuance of the Certificate of Title except by way of mortgage to a government banking institution." However, no annotation was made as to the exemption of the properties from "the satisfaction of any debt contracted prior to the expiration" of the said period of 10 years. In the second place, respondents might be charged with knowledge, at least by presumption, as far as the law was concerned, but there can be no similar presumption concerning the origin of the lands, specifically the fact that they had been acquired from the Board of Liquidators and therefore came within the purview of Republic Act 477. As to that fact the requirement of registration in order to effect third persons was not dispensed with. There is no suggestion in the record that said respondent had knowledge of that fact such as to render the lack of registration immaterial.

As to the second ground stated by the lower court in the order complained of, petitioners contend that they are not estopped from invoking the illegality of the levy by the compromise agreement or by their failure to object seasonably to the attachment. The said agreement, they maintain, in so far as it subjected the parcels of land in question to the obligation specified therein and adjudged in the decision, is null and void, being in contravention of the express prohibition in Section 8 of Republic Act No. 477.

We believe that the principle of estoppel applies in this case. The representation or omission that this principle renders conclusive upon petitioners (Arts. 1431 and 1433, Civil Code; Rule 123, Sec. 68(a), Rules of Court) is on a matter of fact, namely, the origin and manner of acquisition by them of the lands in question. They in effect led respondent Bank to believe that the said lands proceeded from a source other than that contemplated in Republic Act No. 477 and that they were subject to levy and attachment. Judging from the circumstances and considering that petitioners themselves were aware of the exempting provisions of the law they concealed the vital fact from respondent not only when they first moved for the dissolution of the attachment on a different ground and then

withdrew their motion, manifesting that they "would now have no objection to the deferment of the dissolution of the attachment until after the trial on the merits," but also when they entered into the compromise agreement and asked the court to render judgment in accordance therewith. Indeed it was they who offered, by their letter of June 28, 1967 to respondent Bank's counsel, the security of the lands in question to support their proposal for amicable settlement.

Relying on the foregoing conduct of the petitioners, respondent bank concluded the compromise agreement with them, wherein it was stipulated that as security for the payment of the indebtedness the attachment levied by the provincial sheriff on the two parcels of land should remain in full force and effect. Petitioners even renounced any and all claims which they might have against respondent bank by reason of the procurement of the writ. Upon the other hand they were able to obtain the following concessions:

1. Reduction of the actual indebtedness of P34,148.79, with 7% interest per annum from and after July 13, 1962 until fully paid plus an amount equivalent to 20% of the total amount as and for attorney's fees, to P30,000.00 with 7% interest per annum from the date of the compromise agreement until fully paid, plus P500.00 as and for attorney's fees.
2. Extension of two (2) years for the payment of the sums agreed upon.

The doctrine of estoppel applicable to petitioners here is not only that which prohibits a party from assuming inconsistent positions, based on the principle of election, but that which precludes him from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity, and would put a premium on fraud or misrepresentation.

From the procedural viewpoint, petitioners' motion to lift the attachment came too late. It was not only a writ issued in the usual process prescribed in the Rules of Court, but one that was subsequently embodied in the compromise agreement and therefore became part of the judgment of the court approving the same. The time to assail the legal-ity of the attachment was before the judgment became final. To set aside the attachment thereafter would amount to altering or amending the judgment which was already beyond correction, even assuming that it contained an error which needed correcting.

The writ prayed for is denied and the injunction is dissolved, with costs against petitioners.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Ruiz Castro, J., took no part.

[1] An Act to Provide for the Administration and Disposition of properties, Including the Proceeds and Income Thereof Transferred to the Republic of the Philippines under the Philippine Property Act of 1946 and of Republic Act No. 8, and of Public Lands and Improvements Thereon Transferred to the National Abaca and Other Fibers Corporation Under the Provisions of Executive Order No. 29 Dated October 25, 1946 and of Executive Order No. 99 dated October 22, 1947.

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