

MARIA REYES DE TOLENTINO, ASSISTED BY HER HUSBAND LUCIO TOLENTINO, PETITIONERS, VS. HON. GODOFREDO ESCALONA, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANC...

G.R. No. L-26556. January 24, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original petition for certiorari to annul several orders of Hon. Godofredo Escalona, as Judge of the Court of First Instance of Leyte, Branch I, and a writ of execution issued in pursuance thereof, as well as the sheriff's notice of sale issued and the sale made in accordance with said orders and writ.

Herein petitioners, Maria Reyes de Tolentino and her husband, Lucio Tolentino, were plaintiffs in Civil Case No. 2799 of said court, against the spouses Gaspar Llamas and Encarnacion Enriquez de Llamas. In their complaint therein, the Tolentinos sought the reformation of a deed purporting to be a pacto de retro sale of a land of Mrs. Tolentino, with an area of 720 square me-ters, to the Llamases, upon the ground that the true agreement between the parties was merely to constitute an equitable mort-gage to guarantee the payment of the sum of P2,000.00 lent by the Llamases to the Tolentinos. Atty. Sinforoso B. Anota repre-sented the Tolentinos in said court, which, on August 2, 1962, rendered a decision substantially as prayed for by the Tolentinos.

The Llamases appealed to the Court of Appeals, where Atty. Jovenal R. Fernandez an Atty. Anota appeared on behalf of the Tolentinos. On March 12, 1964, the Court of Appeals rendered its decision, the dispositive part of which reads:

"IN VIEW WHEREOF, judgment modified; the deed Exh. A is declared to be pacto de retro; but pursuant to Art. 1606 of the New Civil Code, plaintiff is given 30 days from finality of this judg-ment to pay unto defendant the sum of P2,000.00 as redemption of the property; should she fail to do so, she shall be held to have lost all privilege of redemption; as a consequence of this decision, all other claim of the parties against each other are dismissed; no more pronouncement as to costs."

Sometime before June 3, 1964, Mrs. Tolentino redeemed the lot in question, within the period fixed in this decision, which had meanwhile become final. Soon thereafter, or on October 5, 1964, Anota filed, in said Civil Case No. 2799 of the Court of First Instance of Leyte, a petition for the payment of his attor-ney's fees, in the sum of P6,480.00, representing 30% of the market value of said lot, or, in the alternative, for the Tolentinos to deed to him one-third (1/3) thereof, that is to say, a portion of said lot of about 220 square meters. The Tolentinos objected thereto, on October 22, 1964, and prayed that the amount of the attorney's fees be fixed by the court. Acting upon said petition of Atty. Anota and the opposition thereto, the court, presided over by respondent herein, Judge Escalona, issued an order, dated October 31, 1964, fixing the sum of P4,000.00 as the amount of Anota's fees and making the same a lien upon the lot adverted to above.

The Tolentinos sought a reconsideration, on December 8, 1964, and prayed that the award be reduced to

P2,000.00. Anota countered, on January 22, 1964, with a motion to strike out the motion for reconsideration, upon the ground that the order of October 31, 1964 was already final and that a writ for the execution thereof should, therefore, be issued. By an order, dated February 27, 1965, Judge Escalona amended his order of October 31, 1964, in the sense that the attorney's fees would be deemed re-duced to P2,000.00 if this sum were judicially consigned by the Tolentinos not later than March 20, 1964, but that, otherwise, said order of October 31, 1964, in its original form, would "stand as it is."

Instead of making said judicial consignment, the Tolentinos filed, on March 16, 1965, a motion praying that the sum of P1,420 be deducted from Anota's attorney's fees, as his share in the redemption price and other litigation expenses. Before the last motion could be acted upon, or on April 5, 1965, the Tolentinos filed another motion praying that the amount of attorney's fees be reduced to P500.00 only. Upon the other hand, Anota moved, on April 12, 1965, that the order of October 31, 1964 be executed, and on May 6, 1965, that the motion for reconsideration of the Tolentinos, dated December 8, 1964, be stricken out. This motion to strike out was denied by Judge Escalona, in an order, dated May 8, 1965, in which he, also, directed the issuance of a writ for the execution of his or-der of October 31, 1964.

Two (2) days later, or on May 10, 1965, the Tolentinos moved for the reconsideration of said order of May 8, 1965, which was de-nied by Judge Escalona on May 15, of the same year. Meanwhile, or on May 8, 1965, the corresponding writ of execution had been issued and respondent Virgilio C. Lentejas, as ex-officio sheriff of Leyte, caused to be published, on August 26, 1965, a notice of sale, at public auction, of the land aforementioned, for the payment of Anota's fees, in the sum of P4,000.00, plus the sheriff's fees and other expenses incidental to the enforcement of said writ. Subsequently, or on Octo-ber 11, 1965, sheriff Lentejas sold the land, at public auction, to Attorney Anota, in full satisfaction of his attorney's fees, plus the Sheriff's fees and incidental expenses.

Over eleven (11) months later, or on September 16, 1966, the Tolentinos commenced the present action, against Judge Escalona, Sheriff Lentejas and Atty. Anota, to annul the aforementioned orders of October 31, 1964, February 27, and May 8 and 15, 1965, as well as the sheriff's notice of sale dated August 26, 1965, and the sale made on October 11, 1965, upon the ground that Judge Escalona had abused his discretion and exceeded his jurisdiction in entertaining the claim for attorney's fees in Civil Case No. 2799, not only be-cause said claim is allegedly "foreign to the matter litigated" therein but, also, because the amount involved is below the minimum origi-nal jurisdiction of Court of First Instance, and that they (the Tolentinos) have "no appeal, nor plain, speedy and adequate remedy in the ordi-nary course of law" against the acts complained of.

This pretense is obviously devoid of merit, for surely, the Tolentinos could have appealed from the contested orders of Judge Escalona, and no plausible reason has been adduced - in fact, no effort has been made - to show that an appeal would not have been a plain, speedy and adequate remedy for the Tolentinos. Having failed to appeal from said orders, they may not avail of the writ of certiorari to offset the adverse effects of their omission.[1]

Then, again, the question whether or not a particular issue may be taken up in a given case, is generally one addressed to the sound discretion of the Court, to be exercised in the interest of justice, and does not affect the jurisdiction of the court to hear and decide said question, unless there are factors entailing a denial of due process, which do not exist in the case at bar. As regards the advisability of passing upon Anota's claim for attorney's fees, it should be noted that the Tolentinos have not merely failed to object to the exercises of the lower court's jurisdiction over said claim. They even asked the court to fix the amount collectible by Anota, and later to reduce said amount, as well as to grant some other affirmative relief in connection therewith. In short, they are now in estoppel to assail the propriety of the action taken by Judge Es-calona thereon.[2]

Then again, it is well-settled that a claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. If the first alternative is chosen, the Court may pass upon said claim, even if its amount were less than the minimum prescribed by law for the jurisdiction of the court over the subject-matter of the case, so long as the main action is within the jurisdiction of said court, upon the theory that the right to recover attorney's fees is but an incident of the case in which the services of counsel have been rendered. Thus, in *Palanca v. Pecson*,^[3] it was held:

"x x x that the application to fix the attorney's fees is usually made before the court which renders the judgment or may be enforced in an independent and separate action. We see no valid reason why a probate court cannot pass upon a proper petition to determine attorney's fees, if the rule against multiplicity of suits is to be activated and if we are to concede that, as in the case before us, said court is to a certain degree already familiar with the nature and extent of the lawyer's services."

In *Dahlke v. Viña*,^[4] this Court quoted, with approval, from *Corpus Juris*,^[5] the following:

"x x x. Thus in some jurisdictions the attorney's lien upon a judgment may be established and enforced upon an application to the court in the case wherein the judgment was rendered, and, although it is sometimes held that this lien may be enforced in an independent action by the attorney, yet ordinarily a motion in the cause is the proper remedy. The attorney need not become a party to the cause in order to enforce his lien upon the judgment, but in a proper case he may be permitted to intervene. In such a proceeding it would be proper practice for the attorney, on being admitted as a party, to file a petition in his own name against both plaintiff and defendant, setting forth the particulars of his claim and lien, so that if disputed by them answers could be filed, and the issue made up, as in other cases. x x x."

To the same effect, substantially, are *Talisay-Silay v. Court of Industrial Relations*^[6], *Philippine Products Co. v. Court of Appeals*^[7] and *Republic v. Central Surety*^[8]. In *Missouri, K & T RY. Co. of Texas v. Bacon*^[9], the language used was:

"The amount claimed by the intervener being a sum less than \$500, it is the contention of appellant that the district court had no jurisdiction to try the cause. The district court having obtained jurisdiction of the original cause, it had the authority to dispose of all matters arising out of it. In a similar case, where less than \$1,000 was involved in the suit after the compromise, the Supreme Court entertained jurisdiction, and granted a writ, thereby indicating that the court concluded that the amount originally sued for was the sum that fixed their jurisdiction: *Railway v. Ginther*, 96 Tex. 295, 72 S. W. 166. It has always been the rule in Texas that when a court once obtains jurisdiction over the subject-matter it has the power to adjust all rights growing out of it, even as to the demands that are not, when standing alone, sufficient to give the court jurisdiction. x x x."

WHEREFORE, the petition in this case is hereby dismissed and the writ prayed for denied, accordingly, with costs against petitioners herein.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] *Gov't. of U.S. v. Judge*, CFI, Pamp., 49 Phil. 495; 50 Phil. 975; *Silvestre V. Torres*, 57 Phil. 885, 890; *Profeta v. Gutierrez David*, 71 Phil. 582; *Santos v. Pecson*, 79 Phil. 261; *Bimeda v. Perez*, 93 Phil. 636; *Grospe v. CA*, 106 Phil. 1144; *Phil. Surety v. Jacala*, L-12766, May 25, 1960; *Pachoco v. Tumangday*, L-14500, May 25, 1960; *Jose v. Zulueta*, L-16598, May 31, 1961; *Lopez v. Alvendia*, L-20697, Dec. 24, 1964; *Republic v. Maglanoc*, L-20397, April 29, 1966.

[2] Tijam v. Manila Surety, L-21450, April 15, 1968; Young Men Labor Union v. CIR, L-20307, Feb. 26, 1965; People v. Acierto, 92 Phil. 534.

[3] 94 Phil. 419.

[4] 51 Phil. 707.

[5] Vol. 6, p. 794.

[6] L-21582, November 29, 1966.

[7] L-20308, November 15, 1967.

[8] L-27802, October 26, 1968.

[9] 80 S. W. 572.

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