

**NICANOR NACAR, PETITIONER, VS. CLAUDIO A. NISTAL AS
MUNICIPAL JUDGE OF ESPERANZA, AGUSAN DEL SUR; PROVINCIAL
SHERIFF OF AGUSAN DEL SUR, ILDEFONSO JAPITANA AND ANTONIO
DOLORICON,...**

G.R. No. L-33006. December 08, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Nicanor Nacar filed this petition for certiorari, prohibition, and mandamus with preliminary injunction to annul an order of the respondent judge of the municipal court of Esperanza, Agusan del Sur directing the attachment of seven (7) carabaos, to effect the return of four (4) carabaos seized under the questioned order, and to stop the respondent judge from further proceeding in Civil Case No. 65.

Respondent Ildefonso Japitana filed the complaint in Civil Case No. 65 and entitled it "Claim Against the Estate of the Late Isabelo Nacar With Preliminary attachment." On the basis of this complaint, including an allegation "that defendant are (sic) about to remove and dispose the above-named property (seven carabaos) with intent to defraud plaintiff herein", and considering that Mr. Japitana had given security according to the Rules of Court, Judge Nistal issued the order commanding the provincial sheriff to attach the seven (7) heads of cattle in the possession of petitioner Nicanor Nacar. Actually only four (4) carabaos were attached because three (3) carabaos had earlier been slaughtered during the rites preceding the burial of the late Isabelo Nacar.

Nicanor Nacar filed a motion to dismiss, to dissolve writ of preliminary attachment, and to order the return of the carabaos. Private respondent Japitana filed an opposition to this motion while intervenor Antonio Doloricon filed a complaint in intervention asserting that he was the owner of the attached carabaos and that the certificates of ownership of large cattle were in his name.

The respondent Judge denied the motion to dismiss prompting Mr. Nacar to come to the Supreme Court.

In a resolution dated January 13, 1971, this Court, upon the posting of a bond in the amount of P1,000.00, directed the issuance of a preliminary mandatory injunction. The respondents were enjoined from further enforcing the writ of attachment and to return the seized carabaos. The judge was restrained from further proceeding with Civil Case No. 65.

We find the petition meritorious.

The pertinent portions of the complaint filed by Mr. Japitana with the municipal court read as follows:

"ILDEFONSO JAPITANA Civil Case No. 65

Plaintiff,

F O R:

CLAIM AGAINST THE ESTATE OF THE
LATE ISABELO NACAR WITH PRE-
- Versus - LIMINARY ATTACHMENT

NICANOR NACAR

Defendant.

x - - - - - x

COMPLAINT

COMES NOW the undersigned plaintiff and before this Honorable Court, respectfully avers:

xxx xxx xxx

"That at various dates since the year 1968, the defendant have (sic) in-curred indebtedness to the plaintiff in the total sum of TWO THOUSAND SEVEN HUNDRED NINETY ONE (P2,791.00) PESOS, which said amount had long been overdue for pay-ment, and which the defendant up to this date have (sic) not been able to pay, despite repeated demands from the plaintiff;

"That the defendant Isabelo Nacar died last April, 1970 leaving among other things personal property consisting seven (7) heads of carabaos now in the possession of the defendant Nicanor Nacar;

"That plaintiff herein file a claim against the estate of the late Isabelo Nacar to recover the aforementioned sum of P2,791.00;

"That defendant are (sic) about to remove and dispose the above mentioned property with intent to defraud plaintiff herein;

"That plaintiff is willing to put up a bond for the issuance of a preli-minary attachment in an amount to be fixed by the Court, not exceeding the sum of P2,791.00 which is the plaintiff's claim herein;

"WHEREFORE, it is respectfully prayed that pending the hearing of this case, a writ of preliminary attachment be issued against the properties of the defendant to serve as security for the payment or satisfaction of any judgment that may be recovered herein; and that after due hearing on the principal cause of action, judgment be rendered against the defendant for the sum of P2,791.00 with legal interest from September 15, 1970 plus costs of this suit." (Annex "A", p. 7 rollo).

In his motion to dismiss, the petitioner raised the issue of lack of jurisdiction and absence of a cause of action. Mr. Nacar averred that the indebted-ness mentioned in the complaint was alleged to have been incurred by the late Isabelo Nacar and not by Nicanor Nacar. There was, therefore, no cause of action against him. The petitioner also stated that a municipal court has no jurisdiction to entertain an action involving a claim filed against the estate of a deceased person.

The same grounds have been raised in this petition. Mr. Nacar contends:

xxx xxx xxx

"9. That the respondent judge acted without jurisdiction. The municipal courts or inferior courts have NO jurisdiction to settle the estate of deceased persons. The proper remedy is for the creditor to file the proper proceedings in the court of first instance and file the corresponding claim. But assuming without admitting that

the respondent judge had jurisdiction, it is very patent that he committed a very grave abuse of discretion and totally disregarded the provisions of the Rules of Court and decisions of this honorable Court when he issued an ex-parte writ of preliminary attachment, when there is no showing that the plaintiff therein has a sufficient cause of action, that there is no other security for the claim sought to be enforced by the plaintiff; or that the amount claimed in the action is as much as the sum for which the order is prayed for above all legal counterclaims; There was no bond to answer for whatever damages that herein petitioner may suffer; (Rollo, pp. 3-4).

xxx xxx xxx

The respondent judge tried to avoid the consequences of the issues raised in the motion to dismiss by stating that although the title of the complaint styled it a claim against the estate of the late Isabelo Nacar, the allegations showed that the nature of the action was really for the recovery of an indebtedness in the amount of P2,791.99.

The rule cited by the judge is correctly stated but it is hardly relevant to the contents of the complaint filed by Mr. Japitana.

It is patent from the portions of the complaint earlier cited that the allegations are not only vague and ambiguous but downright misleading. The second paragraph of the body of the complaint states that the defendant (herein petitioner Nicanor Nacar) at various dates since the year 1968 incurred debts to the plaintiff in the total sum of P2,791.00. And yet, in the subsequent paragraphs, one clearly gathers that the debts were actually incurred by the late Isabelo Nacar, who died several months before the filing of the complaint. The complaint which the respondent judge reads as one for the collection of a sum of money and all the paragraphs of which are incidentally unnumbered, expressly states as a material averment:

xxx xxx xxx

That plaintiff herein file (sic) a claim against the estate of the late Isabelo Nacar to recover the aforementioned sum of P2,791.00;

xxx xxx xxx

Under the circumstances of this case, respondent Japitana has no cause of action against petitioner Nacar. *Mathay v. Consolidated Bank and Trust Company* (58 SCRA 559) gives the elements of a valid cause of action:

"A cause of action is an act or omission of one party in violation of the legal right of the other. Its essential elements are, namely: (1) the existence of a legal right in the plaintiff, (2) a correlative legal duty in the defendant, and (3) an act or omission of the defendant in violation of plaintiff's right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or other appropriate relief. (*Ma-ao Sugar Central Co., Inc. vs. Barrios, et al.*, 79 Phil. 666, 667; *Ramitere, et al. vs. Montinola Vda. de Yulo, et al.*, L-19751, February 28, 1966, 16 SCRA 251, 255). On the other hand, Section 3 of Rule 6 of the Rules of Court provides that the complaint must state the ultimate facts constituting the plaintiff's cause of action. Hence, where the complaint states ultimate facts that constitute the three essential elements of a cause of action, the complaint states a cause of action; (*Community Investment and Finance Corp. vs. Garcia*, 88 Phil. 215, 218) otherwise, the complaint must succumb to a motion to dismiss on that ground."

Indeed, although respondent Japitana may have a legal right to recover an indebtedness due him, petitioner Nicanor Nacar has no correlative legal duty to pay the debt for the simple reason that there is nothing in the complaint to show that he incurred the debt or had anything to do with the creation of the liability. As far as the debt is concerned, there is no allegation or showing that the petitioner had acted in violation of Mr. Japitana's rights with consequential injury or damage to the latter as would create a cause of action against the former.

It is also patent from the complaint that respondent Japitana filed the case against petitioner Nacar to recover seven (7) heads of carabaos allegedly belonging to Isabelo Nacar which Japitana wanted to recover from the possession of the petitioner to answer for the outstanding debt of the late Isabelo Nacar. This matter, however, is only ancillary to the main action. The ancillary matter does not cure a fatal defect in the complaint for the main action is for the recovery of an outstanding debt of the late Isabelo Nacar due respondent Japitana, a cause of action about which petitioner Nacar has nothing to do.

In fact the fatal defect in the complaint was noticed by the respondent court when it advised respondent Japitana to amend his complaint to conform with his evidence and from the court's admission that it was inclined to dismiss the case were it not for the complaint in intervention of respondent Doloricon. Respondent Doloricon filed his complaint for inter-vention on the ground that the four carabaos, subject of the writ of attachment, were actually his carabaos. Thus, the respondent court in its Order denying the petitioner's motion to dismiss, to dissolve writ of preliminary attachment and to order the return of the carabaos said:

"x x x Antonio Doloricon further mani-fested before this Court that he is filing a third-party complaint alleging that he is the true and lawful owner of the carabaos in questions.

"IN VIEW OF ALL THE FOREGOING, this Court for the interest of both parties will not for the meantime dismiss this case. Antonio Doloricon is hereby given 10 days from receipt hereof within which to file his third-party complaint. The plaintiff who in his opposition to defendant's motion to dismiss pray (sic) for the custody of the carabaos. (sic) This Court further requires plaintiff to put up the additional bond of P1,000.00 after which the latter may be entitled of (sic) the custody of the carabaos subject of litigation pending final termination of this case." (Rollo, pp. 18-19)

The respondent court's reason for not dismissing the case is contrary to applicable precedents on the matter. We ruled in *Mathay v. Consolidated Bank and Trust Company*, supra:

"Section I, Rule 16 of the Rules of Court, providing in part that:

"Within the time for pleading a motion to dismiss may be made on any of the following grounds; x x x

""(g) That the complaint states no cause of action. x x x'

explicitly requires that the sufficiency of the complaint must be tested exclusively on the basis of the complaint itself and no other should be considered when the ground for motion to dismiss is that the complaint states no cause of action. Pursuant thereto this Court has ruled that:

""As a rule the sufficiency of the complaint, when challenged in a motion to dismiss, must be determined exclusively on the basis of the facts alleged therein.' *Uy Chao vs. De La Rama Steamship Co., Inc.* L-14495, September 29, 1962, 6 SCRA 69, 72. See also *De Jesus, et al. vs. Belarmino, et al.*, 95 Phil. 365, 371; *Dalandan, et al. vs. Julio, et al.*, L-19101, February 29, 1964, 10 SCRA 400; *Remitere, et al. vs. Montinola Vda. de Yulo, et al.*, L-19751, February 28, 1966, 16 SCRA 250, 254; *Acuña vs. Batac Producers Cooperative Marketing Association, Inc., et al.*, L-20338, June 30, 1967, 20 SCRA 526, 531.)

Hence, it was error for the respondent court not to dismiss the case simply because respondent Doloricon filed the complaint for intervention alleging that he owned the carabaos.

Moreover, even assuming that respondent Japitana had a legal right to the carabaos which were in the possession of petitioner Nacar, the proper procedure would not be to file an action for the recovery of the outstanding debts of the late Isabelo Nacar against his stepfather, the petitioner Nacar as defendant. As we said in *Maspil v. Romero* (61 SCRA 197):

"Appropriate actions for the enforcement or defense of rights must be taken in accordance with procedural rules and cannot be left to the whims or caprices of litigants. It cannot even be left to the untrammelled discretion of the courts of justice without sacrificing uniformity and equality in the application and effectivity thereof."

Considering the foregoing, the respondent court's denial of the motion to dismiss the complaint and its issuance of a writ of attachment based on the allegations of the complaint are improper. With this conclusion, we find no need to discuss the other issue on whether or not the procedural rules on the issuance of a writ of attachment were followed by the respondent court in issuing the subject writ of attachment.

WHEREFORE, the petition is hereby granted. The preliminary mandatory injunction issued on January 13, 1971 is made permanent and the cash bond filed by the petitioner in connection therewith is ordered returned to him.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.
Vasquez, J., see concurring opinion.

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CONCURRING OPINION

Vasquez, J.:

I concur in the result.

The fundamental error committed by the private respondents was in pursuing their claim in an ordinary action; and that by the respondent municipal judge in entertaining the same.

As can be seen from the caption and the body of the complaint filed in Civil Case No. 65, the claim of the private respondents was not against herein petitioner Nicanor Nacar but against the estate of the deceased Isabelo Nacar. It is a claim for money arising from unpaid indebtedness granted on various dates. Isabelo Nacar died before the said complaint was filed. It does not appear that any proceeding has been filed to settle his estate.

Under these facts, the filing of an ordinary action to recover said claim is not allowed in any court. Even if settlement proceedings had been taken to settle the estate of Isabelo Nacar, the suit to recover the claim of the private respondents may not be filed against the administrator or executor of his estate. This is expressly provided for in Section 1 of Rule 87 of the Rules of Court, as follows:

"No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; xxx."

The claim of private respondents, being one arising from a contract, may be pursued only by filing the same in the administration proceedings that may be taken to settle the estate of the deceased Isabelo Nacar. If such a proceeding is instituted and the subject claim is not filed therein within the period prescribed, the same shall be deemed "barred forever." (Sec. 5, Rule 86, Rules of Court). Even if this action were commenced during the lifetime of Isabelo Nacar, the same shall have to be dismissed, and the claim prosecuted in the proper administration proceedings (Sec. 21, Rule 3, Ibid.).

It would seem that the main purpose of the private respondents in filing Civil Case No. 65 was to attach the seven carabaos owned by Isabelo Nacar. A case had to be filed in order to justify the issuance of a writ of attachment.

Unfortunately, said remedy may not be allowed. The carabaos, if really owned by Isabelo Nacar, pertained to his estate upon his death. The claim of the private respondents may only be satisfied by a voluntary act on the part of the heirs of Isabelo Nacar, or pursued in the appropriate settlement proceedings. A municipal court may not entertain such a proceeding, it not being vested, under the law then in force, with probate jurisdiction.

Civil Case No. 65 should accordingly be dismissed and the writ of attachment issued therein dissolved.

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