

NARCISO DEL ROSARIO, PETITIONER, VS. HON. JUDGE YATCO, PROVINCIAL SHERIFF OF BULAGAN AND ISABELO DE CHANGCO, RESPONDENTS.

G.R. No. L-18735. December 29, 1966

Ponente: REGALA, J.

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REGALA, J.:

In Civil Case No. 2869 of the Court of First Instance of Quezon City, the plaintiff Isabelo de Changco obtained on June 16, 1955 a judgment for a sum of money against the defendant Narciso del Rosario. On February 10, 1956, the said plaintiff asked for a writ of execution by virtue of which the property of del Rosario covered by Transfer Certificate of Title No. 4853 of the Registry of Deeds of Bulacan was levied upon, the provincial sheriff there of having caused a notice of levy inscribed in said Registry of Deeds.

On December 28, 1959, del Rosario, judgment debtor, mortgaged the levied property to Severo Brigino, Fausta Roxas and Simeona Roxas. Later, or on June 14, 1961, the said del Rosario, joined by his mortgagees filed before the court a Petition to Cancel Notice of Levy in Civil Case No. 2869, on the ground that since more than five years have already elapsed after the notice of levy and yet no execution sale was made during that period, the plaintiff is already barred from enforcing the judgment and his only recourse is to institute an ordinary action to revive judgment.

The plaintiff, Isabelo Changco, filed opposition to the petition to cancel notice of levy, arguing that the judgment in the case was already enforced by the issuance of the writ of execution on February 10, 1956 by virtue of which notice of levy dated February 16, 1956 was duly inscribed and annotated on the title covering the property involved.

After consideration of the petition and opposition thereto, the court issued an order dated July 8, 1961, giving the plaintiff Isabelo de Changco "sixty (60) days within which to take the necessary steps to have the execution issued in this case be satisfied by going through with the sale of the properties levied otherwise the court will order the cancellation of the levy on execution as prayed for in the petition." His motion for the reconsideration of this order having been denied, the defendant, del Rosario, brought the instant petition for certiorari with injunction protesting against the order giving de Changco a period of time to sell the properties levied upon and the order denying reconsideration thereof. Petitioner contends that since more than five years have elapsed since the entry of judgment, execution sale can no longer take place.

As prayed for, We issued, at the outset of the certiorari proceedings, a preliminary injunctive writ restraining the carrying out of the questioned orders.

After going over the record, We do not think the judge committed any abuse of discretion in giving the plaintiff 60 days to sell the properties levied upon. Section 6, Rule 39 of the Rules of Court, upon which the herein petitioner bases his argument, reads:

"Execution by motion or by independent action.—A judgment may be executed on motion within five (5) years from the date of its entry, or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

This rule is no authority for petitioner's contention because while it limits the time within which a writ of execution may be issued to enforce a judgment, it does not prescribe a period when the sale at public auction by the sheriff shall take place after the issuance of the writ of execution and a valid levy made pursuant thereto. This observation was first made by this Court in the case of *Government of the Philippines v. Echaus, et al.*, 71 Phil. 319, referring to a similar provision in the Code of Civil Procedure^[1] which was governing at that time. The following is the ruling laid down in the said case which was recognized and restated in *Nestora Rigor vda. de Qulambao et al v. Manila Motor Co., Inc.* and the Court of Appeals, G. R. No. L-17384, decided on October 31, 1961.

"We are of the opinion that a valid execution issued and levy made within the period provided by law may be enforced by a sale thereafter, xxx The sale of the property by the sheriff and the application of the proceeds are simply the carrying out of the writ of execution and levy which when issued were valid. This rests upon the principle that the levy is the essential act by which the property is set apart for the satisfaction of the judgment and taken into custody of the law, and that after it has been taken from the defendant, his interest is limited to its application to the judgment, irrespective of the time when it may be sold, (*Southern Cal. Co. v. Hotel Co.*, 94 Cal. 217, 222). (Italics supplied)

It appearing that the execution and levy in this case was made within the five-year period limited by the Rules, We see no error committed by the respondent judge in issuing the orders complained of.

IN VIEW HEREOF, We are dismissing the petition for certiorari and injunction. The writ of preliminary injunction issued heretofore is hereby ordered dissolved. Costs against the petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Section 443, which reads:

"When Execution May Issue—The party in whose favor judgment is given may, at any time within five years after entry thereof, have a writ of execution issued for its enforcement, as hereinafter provided.

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