

SY SEN BEN, PLAINTIFF-APPELLANT, VS. ROBERT MEDIALDEA, THE REGISTER OF DEEDS OF DAVAO CITY, JAMES IAN O. YEUNG, MARLINA T. SHENG, NANETTE CRISOLOGO AND JESUS CRISOLOGO, DEFENDAN...

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal is the Order[1] dated May 23, 2011 of the Regional Trial Court of Davao City, Branch 16, rendered in Civil Case No. 33,580-10, which is a Complaint for Annulment of Sheriff's Provisional Certificate of Sale, with a Prayer for a Writ of Preliminary Injunction.

The facts[2] of the case are as follows:

At the heart of this dispute is a parcel of land covered by Transfer Certificate of Title (TCT) No. T-195366, situated in the City of Davao, Philippines, more particularly described as follows:

"A parcel of land (lot 74 of the subdivision plan Psd-23107, being a portion of the land described on the original plan Psn-2123, G.L.R.O. Record No.) situated in the City of Davao. Bounded on the N., by Lot 79, 78 and 77 of the subdivision plan; on the E., by lot 75 of the subdivision plan; on the S., by Road Lot 2, of the subdivision plan; and on the W., by Lot 73 of the subdivision plan. Beginning at a point marked "1" on plan being N. 57 deg. 17'E., 728.34 m. from ELIN 1 City of Davao."[3]

Sometime in 1998, plaintiff-appellant Sy Sen Ben (Sy) filed a complaint against So Keng Koc (So) and Robert Allan Limso (Limso) for sum of money with damages before the Regional Trial Court of Davao City, Branch 8 (RTC-8). The case was docketed as Civil Case No. 26,513-98.

On September 8, 1998, RTC-8 approved Sy's prayer for a Writ of Preliminary Attachment. Consequently, the properties of So and Limso were levied upon, including the subject property. The Writ of Attachment was recorded in the TCT of the subject property.

Later in the same year, defendants-appellees Jesus and Nanette Crisologo (Crisologo) also filed a complaint against So and Limso. The case was docketed as Civil Case Nos. 26,810-98 and 26,811-98 before the Regional Trial Court of Davao City, Branch 15 (RTC-15). As a result, the subject property was also levied by the Crisologos, upon Order of RTC-15 dated October 7, 1998 which approved their prayer for a preliminary Writ of Attachment. The Writ was recorded in the TCT on October 8, 1998.[4]

During the trial under RTC-8, a compromise agreement was reached by the parties wherein the defendants bound themselves to convey the properties of So in favor of Sy, as settlement of the money claim of the latter.

As a result, on October 19, 1998, RTC-8 rendered a Decision approving the compromise agreement, to wit:

"WHEREFORE, finding the aforementioned Compromise Agreement to be in order and not otherwise contrary to law, morals and public policy, the same is hereby Approved and judgment is hereby rendered in accordance

with its terms and conditions, without pronouncement as to costs.

Parties are hereby directed to comply with the terms and conditions of the aforequoted agreement failure of which execution shall issue upon motion seasonably filed."[5]

The Decision became final and executory on November 18, 1998.

Sometime thereafter, the Crisologos filed a complaint for Injunction/Reconveyance before the Regional Trial Court of Davao, Branch 10 (RTC-10) against Sy involving the same subject property. The case was docketed as Civil Case No. 26,891-98.

The case remains pending before RTC-10.[6]

On July 1, 1999, RTC-15 rendered a Decision in favor of the Crisologos. The dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering defendants Robert Limso and So Keng Koc to pay solidarily the plaintiffs:

IN CIVIL CASE NO. 26,810-98

1. Forty Six Million Four Hundred Eighty One Thousand Six Hundred Seventy One Pesos (P46,481,671.00) plus two point four percent (2.4%) interest per month to be computed from December 16, 1997 until fully paid.
2. One Hundred Thousand Pesos (P100,000.00) as moral damages;
3. Two Hundred Thousand Pesos (P200,000.00) as exemplary damages;
4. Four Million Pesos (P4,000,000.00) as attorney's fees;
5. One Hundred Sixty Five Thousand Seven Hundred Sixty Pesos and Thirty Five Centavos (P165,760.35) for the Writ of Attachment premiums. One Hundred Seventy Five Thousand Two Hundred Ninety Eight Pesos (P175,298.00) for the filing fees. One Hundred Sixteen Thousand Six Hundred Fifty Four Pesos (P116,654.00), Two Thousand Nine Hundred Eighteen and Sixty Centavos (P2,918.60) for the legal research fund.

IN CIVIL CASE NO. 26,811-98

1. Fourteen Million Four Hundred Thousand Five Hundred Eighty Five Pesos (P14,400,585.00) plus two point four percent (2.4%) per month to be computed from December 16, 1997 until fully paid.
2. One Hundred Thousand Pesos (P100,000.00) as moral damages and Two Hundred Thousand Pesos (P200,000.00) as exemplary damages.
3. One Million Pesos (P1,000,000.00) as attorney's fees.
4. Costs of suit.

SO ORDERED."[7]

The case was elevated on appeal. On July 22, 2008, the Court of Appeals rendered a Decision which partially granted the appeal with modifications with regard to the exemplary damages and interest. The dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the instant appeal is partially GRANTED. Accordingly, the assailed Decision of the Regional Trial Court, 11th Judicial Region, Branch 15, Davao City, dated July 1, 1999, is hereby MODIFIED in the sense that appellant's loan obligations are subject to an interest of twelve percent (12%) per annum, to be computed from December 16, 1997 (for Case No. 26,810-98) and September 23, 1998 (for Case No. 26,811-98) until fully paid, and that the award for exemplary damages is hereby DELETED."[8]

Thereafter, on July 5, 2010, defendant-appellee Robert M. Medialdea (Medialdea), Sheriff IV of RTC-15 issued a

Notice of Sale to the parties setting the auction sale on August 26, 2010. However, the August 26, 2010 auction sale was not conducted since a Third Party Claim was filed by Sy before RTC-15.

On September 3, 2010, Medialdea issued a 2[nd] Notice of Sale setting the auction sale on October 7, 2010. The notice was also sent to Atty. Leonides Tan, counsel of Sy.

Medialdea conducted the public auction sale on October 7, 2010. The subject property was sold and adjudicated in favor of the defendants-appellees James Ian O. Yeung and Marlina T. Sheng, being the highest/sole bidder for the amount of P16,000,000.00.

Notably, the Sheriff's Certificate of Sale was issued without any express mention of the third party claim of Sy.

Thus, Sy was constrained to file a complaint for Injunction with a Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order before the Regional Trial Court of Davao City, Branch 16 (RTC-16) against Medialdea.

Subsequently, Sy amended his complaint to annul the Sheriff's (Provisional) Certificate of Sale. The amended complaint also impleaded the Register of Deeds of Davao City, James Ian O. Yeung, Marlina T. Sheng, Nanette Crisologo and Jesus Crisologo as defendants.

On March 3, 2011, defendants-appellees filed a Motion to Dismiss the complaint based on absence of legal capacity to sue (on the part of Sy) and prescription.

On May 23, 2011, the court a quo rendered the assailed Order ruling in favor of defendants-appellees. The pertinent portion of which reads:

"Plaintiff (sic) inaction for a period of more than eleven (11) years is not attributable to any other persons, but only to him. Like Rip Van Winkle, plaintiff slept on his right unaware that he already lost the right to enforce the judgment in his favor.

With the foregoing facts and jurisprudence as guide, this Court finds that plaintiff's cause of action against TCT No. T-195366 in the name of So Keng Koc has long prescribed.

As such, the instant Amended Complaint is hereby DISMISSED.

With the dismissal of the instant case, the issue on the application for preliminary injunction becomes academic."[9]

On June 13, 2011, Sy filed a motion for reconsideration which the court a quo denied on October 10, 2011.

Undeterred, Sy elevated the assailed Order on appeal before this Court.

The plaintiff-appellee assigns the following errors:

I.WHETHER OR NOT PLAINTIFF-APPELLANT'S COMPLAINT FILED BEFORE THE COURT A QUO HAS PRESCRIBED;

II.WHETHER OR NOT THE SUBJECT PROPERTY COVERED BY TCT NO. T-195366 WHICH HAS ALREADY BEEN ADJUDICATED IN FAVOR OF PLAINTIFF-APPELLANT IN A DECISION RENDERED BY RTC-BRANCH 8 AND DESPITE THE PENDENCY OF ANOTHER CASE FILED BY DEFENDANTS-APPELLEES FOR INJUNCTION/ RECONVEYANCE BEFORE RTC-BRANCH 10, CAN BE SOLD AT PUBLIC AUCTION, WITHOUT VIOLATING EXISTING RULES AND JURISPRUDENCE NOT TO MENTION THE VESTED RIGHTS ACQUIRED BY PLAINTIFF-APPELLANT; AND

III.WHETHER OR NOT THE DECISION OF RTC-BRANCH 15 IS BINDING UPON

PLAINTIFF-APPELLANT WHEN HE WAS NEVER IMPEADED AS A PARTY DEFENDANT, IN VIOLATION OF HIS RIGHT TO DUE PROCESS.[10]

Our Ruling

The appeal is meritorious.

Well-settled is the rule that when a writ of attachment has been levied on real property or any interest therein belonging to the judgment debtor, the levy creates a lien which nothing can destroy but its dissolution.[11]

In the case at bar, Sy's Prayer for a Writ of Preliminary Attachment was approved by RTC-8 on September 8, 1998. Consequently, the writ was recorded by the Register of Deeds, viz:

"Entry No. 1121177 — Writ of Attachment in Civil Case No. 26,513-98

Entry No. 1121176 — Notice of Levy executed by Conrado P. Macutay, Jr., Sheriff IV, Regional Trial Court, Branch 8, Davao City in connection with Civil Case No. 26,513-98 entitled "Sy Sen Ben, Plaintiff versus So Keng Koc and Robert Allan Limso, Defendants": and that all the rights, shares, titles and participations of the Defendant So Keng Koc over the property covered by the Certificate of Title is hereby levied and attached to satisfy the amount of P6,572,323.04.

Date of Instrument: September 8, 1998

Date of Inscription: September 8, 1998."[12]

On the other hand, the Crisologos' prayer for a Writ of Attachment was approved by RTC-15:

"Entry — Writ of Preliminary Attachment in Civil Case No. 26,810-98;

Entry No. 1127802 — ADDITIONAL NOTICE OF LEVY — executed by Aquillo Angon, Sheriff IV, RTC, Branch 15, Davao City, in Civil Case No. 26,810-98 entitled, "Nanette Crisologo & Jesus Crisologo, Plaintiffs versus Robert Allan Limso and So Keng Koc and Jean Gotamco, Defendants"; and that all the rights, shares, titles and participations of the defendants over the property covered by this Cert. of Title is hereby levied and attached to satisfy the amount of P46,481,671.00.

Date of instrument: Oct. 7, 1998;

Date of inscription: Oct. 8, 1998 at 10:55 a.m.

x x x

Entry No. 1127803 — ADDITIONAL NOTICE OF LEVY — executed by Aquillo Angon, Sheriff IV, RTC, Br. 15, Davao City, in Civil Case No. 26,811-98 entitled "Nanette Crisologo and Jesus Crisologo, Plaintiffs versus Robert Allan Limso & So Keng Koc and Jean Gotamco, Defendants"; and that all the rights, shares, titles and participations of the defendant over the property covered by this Cert. of Title is hereby levied and attached to satisfy the amount of P14,400,585.00

Date of instrument: Oct. 7, 1998;

Date of inscription: Oct. 8, 1998 at 10:55 a.m.

x x x"[13]

Based on the abovementioned evidence on record, it is obvious that the subject property was already in custodia legis by virtue of a Writ of Attachment issued by RTC-8 when RTC-15 approved the Crisologos' prayer for a Writ of Attachment. Thus, it was error on the part of RTC-15 to issue the subsequent Writ of Attachment while the Writ issued by RTC-8 was still subsisting.

The same issue was elucidated and put to rest by the Supreme Court in *Republic v. Saldares*, to wit:

"By an order of attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally, or otherwise, pending the action. When a writ of attachment has been levied on real property or any interest therein belonging to the judgment debtor, the levy creates a lien which nothing can destroy but its dissolution. This well-settled rule is likewise applicable to a writ of sequestration.

Attachment is in the nature of a proceeding in rem. It is against a particular property of a debtor. The attaching creditor thereby acquires a specific lien upon the attached property which ripens into a judgment against the res when the order of sale is made. Such a proceeding is in effect a finding that the property attached is an indebted thing and results in its virtual condemnation to pay for the owner's debt. The law does not provide the length of time during which an attachment lien shall continue after the rendition of the judgment, and it must therefore continue until the debt is paid, or sale is had under execution issued in the judgment, or until the judgment is satisfied, or the statement discharged or vacated in some manner provided by law.

In our view, the disputed properties of LBLC were already under custodia legis by virtue of a valid writ of sequestration issued by the PCGG on April 2, 1986, when respondent Judge Saldares issued the assailed writ of attachment in favor of private respondent Hung Ming Kuk. At that time the writ of sequestration issued by PCGG against LBLC was subsisting. Said writ of the PCGG could not be interfered with by the RTC of Lianga, because the PCGG is a coordinate and co-equal body. The PCGG had acquired by operation of law the right of redemption over the property until after the final determination of the case or until its dissolution." [14]

In a similar vein, the Supreme Court, in *Consolidated Bank v. IAC*, ruled, thus:

"The rule is well settled that when a writ of attachment has been levied on real property or any interest therein belonging to the judgment debtor, the levy thus effected creates a lien which nothing can destroy but its dissolution (*Chua Pua Hermanos v. Register of Deeds of Batangas*, 50 Phil. 670; *Government, et. al. v. Mercado*, 67 Phil. 409).

The foregoing conclusion has two necessary consequences.

Firstly, it follows that the writ of possession issued by the Malolos court in favor of respondent GOLDEN STAR is null and void ab initio because it interfered with the jurisdiction of a co-ordinate and co-equal court (See *De Leon v. Salvador*, 36 SCRA 567):

While property or money is in custodia legis, the officer holding it is the mere hand of the court, his possession is the possession of the court, and to interfere with it is to invade the jurisdiction of the court itself (*Gende v. Fleming*, 371 N.E. 2d. 191; *Bishop v. Atlantic Smokeless Coal Co.*, 88F. Supp. 27, 7 CJS 320). x x x" [15]

Moreover, Medialdea violated the provision of the Rules of Court with regard to third party claims. Section 26, Rule 39 provides:

Section 26. Certificate of sale where property claimed by third person. — When a property sold by virtue of a writ of execution has been claimed by a third person, the certificate of sale to be issued by the sheriff pursuant to sections 23, 24 and 25 of this Rule shall make express mention of the existence of such third-party claim.

As can be gleaned from the records, Medialdea was silent with regard to the third party claim of Sy in the certificate of sale. Furthermore, no evidence was adduced to prove that a bond was filed by the attaching party, as required by Section 14, Rule 57:

"Section 14. Proceedings where property claimed by third person. — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless

the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for the taking or keeping of such property to any such third-party claimant, if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action. x x x

Verily, such antecedents cast doubt on the regularity of the proceedings of the sale.

With regard to the issue of prescription, We find that the protraction in the execution of the Decision of RTC-8 cannot be attributed to Sy. The Crisologos had filed a complaint for injunction against Sy after the compromise agreement was approved by RTC-8.

In a plethora of cases, the Supreme Court has ruled that where the cause of the delay was beyond the control of a prevailing party, prescription would not set in against him.[16]

WHEREFORE, the appeal is GRANTED. The Order dated May 23, 2011 of the Regional Trial Court of Davao City, Branch 16, rendered in Civil Case No. 33,580-10 is REVERSED and SET ASIDE.

The Sheriff's Certificate of Sale is hereby CANCELLED.

SO ORDERED.

[*]Contreras, and Perez, JJ., concur.

[*] New Member vice J. Camello, per Raffle dated May 29, 2014

[1] Penned by Hon. Emmanuel Carpio; Rollo, pp. 45-48; Records, pp. 111-114.

[2] As culled from the records.

[3] Records; p. 104.

[4] Rollo, p. 17.

[5] Records; pp. 11-13, 41-43.

[6] Supra, p. 94.

[7] Supra, p. 91.

[8] Ibid.

[9] See footnote 1.

[10] Rollo, pp. 22-23.

[11] Republic v. Saludaes; G.R. No. 111174; March 9, 2000.

[12] Records, p. 105.

[13] Supra, p. 106.

[14] See footnote 11.

[15] Consolidated Bank v. IAC; G.R. No. 73976; May 29, 1987.

[16] Farolan v. Court of Appeals; G.R. No. 139946; November 27, 2002.

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