

**NICANOR DE GUZMAN, JR., PLAINTIFF-APPELLANT, VS. DOLORES L. SANTOS, AS ADMINIS-TRATRIX OF THE ESTATE OF AMADOR D. SANTOS, DECEASED; BENITO MACROHON, AS PROVINCIAL SHERIFF OF RIZ...**

*G.R. No. L-22636. June 11, 1970*

Ponente: CONCEPCION, C.J.

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**CONCEPCION, C.J.:**

Appeal, taken by both parties, from a decision of the Court of First Instance of Rizal, the dispositive part of which reads:

"WHEREFORE, in view of the foregoing consi-derations, the Court hereby renders judgment declar-ing as null and void the Sheriff's sale of the proper-ties of the plaintiff Nicanor de Guzman Jr. on June 12, 1961 and also annulling all the proceedings in connection therewith including the Notice of Attach-ment or Levy, Notice of Sheriff's Sale, Certificate of Sale and Final Deed of Sale. The injunction is-sued in this case is hereby made permanent. The counterclaim of the defendant is dismissed. The Sheriff is hereby ordered to enforce the writ of execution against Nicanor de Guzman Jr. by first pro-ceeding against his personal properties and when the same are insufficient to go against the real properties in the manner provided by law."

The record shows that on September 13, 1960, herein defendant-appellant Dolores L. Santos, as Administratrix of the estate of Amador Santos, filed with the municipal court of San Juan del Monte, Rizal, an action for unlawful detainer (Civil Case No. 1814), against herein plaintiff-appellant Nicanor de Guzman, Jr. and one Abelardo Santos to eject both, for breach of contract, from a house and lot situated at No. 54 Riverside Street, within said municipality, allegedly leased by Mrs. Santos to De Guzman, and subleased by the latter to Abelardo Santos. After the filing of defendants' answer, controverting the alleged breach of contract, and due trial, judgment was rendered on November 22, 1960, dismissing the complaint.

Mrs. Santos appealed to the Court of First Instance of Rizal, where the action was docketed as Civil Case No. 6512. On motion of said appellant, dated March 20, 1961, that court declared De Guzman and Abelardo Santos in default, the next day, and soon thereafter, or on April 3, 1961, rendered a decision sentencing them to vacate the aforementioned premises and deliver the possession thereof to Mrs. Santos, as well as to pay her the sum of P6,600.00, as accrued rentals for 11 months of 1960, in addition to P600.00 a month from January 1961, until delivery of said premises to Mrs. Santos, with interest at the rate of 6% per annum, apart from the sum of P200.00 as attorney's fees and the costs.

On motion of Mrs. Santos, filed on April 7, 1961, the corres-ponding writ of execution was issued on April 14, 1961, in pursuance of which, Benito Macrohon, as Provincial Sheriff of Rizal, acting through his deputy sheriff, Liberato C. Manalo, issued, on April 19, 1961, a notice of attachment and levy on several real properties, one of which is a residential house and lot of about 1,140 sq. m., located at the corner of Stanford and Shaw Boulevard, Wack-Wack, munici-pality of Mandaluyong, Rizal, and covered by TCT No. 77090, in the name of De Guzman.

After publishing the corresponding notice of Sheriff's sale in the *Nueva Era*, a newspaper of general circulation in Rizal, published in the Spanish language, said house and lot were, on June 12, 1961, sold, at public auction, to the judgment creditor, Mrs. Santos, for the sum of P10,313.20. On June 21, 1962, the Sheriff issued the "officer's deed of absolute sale" of said property to Mrs. Santos. The next day, she moved that De Guzman be ordered to surrender the owner's duplicate of TCT No. 77090, in view of which, the Court ordered him, on June 25, 1962, to show cause why the motion should not be granted. On July 6, 1962, De Guzman filed his opposition to the motion, as well as moved to quash the writ of execution and "to annul all proceedings of the Sheriff thereunder, including the notice of attachment or levy, the notice of sheriff's sale, the certificate of sale and final deed of sale." On July 10, 1962, Mrs. Santos filed her opposition to this motion, which was denied on August 26, 1962.

Meanwhile, or on July 12, 1962, De Guzman had commenced the present action, in the Court of First Instance of Rizal - in which it was docketed as Civil Case No. 7266 - against Mrs. Santos, Sheriff Macrohon and Deputy Sheriff Manalo, to annul the default judgment in Civil Case No. 6512 of said court, the certificate of sale and the deed of absolute sale above referred to, as well as to recover damages and secure a writ of preliminary injunction, to restrain said defendants from procuring the surrender and cancellation of De Guzman's TCT No. 77090 of Rizal. The writ of preliminary injunction was issued the day following. Subsequently, said defendants moved to dismiss the complaint, upon the ground "that there is another action pending between the same parties and for the same cause," - referring to De Guzman's motion of July 6, 1962, in Civil Case No. 6512 - but the motion (to dismiss) was denied, on August 31, 1962. Accordingly, the defendants filed their answer with counterclaim, to which De Guzman replied seasonably. In due course, thereafter, the court of first instance rendered its aforementioned decision - annulling the sheriff's sale, making the injunction permanent, dismissing defendants' counterclaim and directing the sheriff "to enforce the writ of execution against Nicanor de Guzman Jr. by first proceeding against his personal properties and when the same are insufficient to go against the real properties in the manner provided by law" - from which both parties have appealed directly to the Supreme Court.

De Guzman maintains that the lower court should have annulled the judgment in default rendered in Case No. 6512, whereas the defendants aver that said court erred: (1) in denying their motion to dismiss, instead of dismissing the present action as being barred by a prior judgment or order; (2) in annulling the sheriff's sale, including the certificate of sale and the deed of absolute sale executed in favor of Mrs. Santos; (3) in not dismissing the action of De Guzman upon the ground of laches; and (4) in dismissing the counterclaim of Mrs. Santos.

The appeal taken by plaintiff De Guzman is anchored upon the theory that the judgment in default rendered against him in Civil Case No. 6512 is void ab initio for lack of notice to him: (1) of the receipt by the Court of First Instance of Rizal of the record of ejectment case No. 1814 of the municipal court of San Juan del Monte; and (2) of the motion of Mrs. Santos, dated March 20, 1961, to declare the defendants in said Civil Case No. 6512 in default. This contention is clearly devoid of merit for notice of receipt of said record was sent by the Clerk of the Court of First Instance of Rizal, on February 22, 1961, and served on March 1, 1961, upon Atty. Arsenio Cabrera, the then counsel of record of De Guzman, and it is well settled that notice upon such counsel is notice upon his client. In fact, service of said notice would have been defective had it been made upon the latter, instead of to the former.[1] Then, again, it has been repeatedly held that a defendant who has not filed his answer or motion to dismiss within the period provided by law therefor is not entitled to notice of the motion filed to declare him in default.[2]

The defendants allege that the lower court should have granted their motion to dismiss, dated July 28, 1962, predicated upon the pendency of another action between the same parties and for the same cause and that, in any event, the present case should have been dismissed, upon the ground that it is barred by a prior judgment or

order, namely, that issued on August 31, 1962, in Civil Case No. 6512, denying the motion of De Guzman, of July 6, 1962, praying that the writ of execution issued in that case be quashed, that the sheriff's proceedings thereunder - including the notice of attachment or levy, the notice of sheriff's sale, the certificate of sale and the deed of absolute sale executed in favor of Mrs. Santos - be annulled, and that her motion of June 22, 1962, for the surrender of the owner's duplicate of TCT No. 77090, be denied. It should be noted, how-ever, that the present action was commenced on July 12, 1962 or about a month and a half before said order of August 31, 1962. In other words, such order was subsequent to the filing of the complaint in the present case and, accordingly, could not have barred its insti-tution.

Upon the other hand, let us grant, merely for the purpose of argument, that said motion of De Guzman of July 6, 1962, and that of Mrs. Santos, dated June 22, 1962, for the surrender of the owner's duplicate of TCT No. 77090, may be considered as an "action." Is the "cause" therein the same as that set up in the case at bar? In this connection, it should be noted that the latter seeks to annul the judgment rendered in Civil Case No. 6512, which, if valid, was concededly final and executory prior to June 22, 1962. In fact, such was the theory therein sustained by Mrs. Santos, and such was, indeed, the position taken by the court of first instance in said case No. 6512, in its order of August 31, 1962, which, as a consequence, did not pass upon the merits of the issue on the validity of said judgment. In other words, it was thus impliedly held that such issue could not fittingly be settled in case No. 6512. Hence, the proper forum for its determination is the case at bar.

Concerning the sale at public auction made in favor of Mrs. Santos, on June 12, 1961, the lower court declared it null and void, upon the ground of: (1) lack of proper service to De Guzman of the requisite notice of levy or attachment of the real property in ques-tion; (2) insufficient publication of the notice of the sheriff's sale; (3) failure of the sheriff to proceed against the personal properties of De Guzman, to satisfy the money judgment in favor of Mrs. Santos, before selling his aforementioned real property; and (4) gross inade-quacy of the sale price.

As regards the first ground, De Guzman affirms that he has not been notified, either personally or by registered mail, of the attach-ment or levy of the real property in question. Upon the other hand, defendants maintain that copy of the notice of attachment or levy was served upon De Guzman, through his mother, Mrs. Pacita de Guzman, who stays in said property, but refused to acknowledge receipt of said copy. With respect to the last ground, it appears that His Honor, the trial Judge, had made an ocular inspection of the property and found that the house therein is one "of strong materials and the wood used" therein "belong to the best group of native wood, that the pre-mises are properly landscaped and fully improved and x x x is located in about the best place in Mandaluyong, Rizal" - at the corner of Stan-ford and Shaw Boulevard, which is "very near the aristocratic Wack Wack Golf and Country Club and about a kilometer away from the Provincial Government of Rizal" - and that the property, with all its improvements, is easily worth over P200,000. In relation to the third ground, the decision appealed from has the following to say, the accuracy of which is not disputed by herein defendants-appellants:

"In the case at bar, it is beyond dispute that Nicanor de Guzman Jr. owns personal properties worth several times more than the personal judgment against him. This is not only borne out by the testimonies of said party and his mother Pacita de Guzman but is con-firmed by the Court in its ocular inspection of the pre-mises. If the Sheriff's representative only wanted to execute the judgment against Nicanor de Guzman Jr. out of his personal properties he could have easily done so. It is clear that the debtor in this case was never given a chance to settle his obligation out of his personal properties because the Sheriff's representative never took the serious trouble of seeing the debtor personally. As to the extent of de Guzman Jr.'s personal properties, opposing counsel in his memoran-dum makes mention of said personal properties to be worth about P80,000.00. x x x."

Although much can be said in favor of the foregoing findings of the lower court, We deem it unnecessary to dwell upon the same and pass upon the merits of the grounds therein relied upon, in view of the conclusion We had

reached in connection with the second objection to the contested sale.

Indeed, the pertinent part of Section 16, Rule 39, of the Old Rules of Court, now Section 18, Rule 39 of the present Rules, provides:

"SEC. 18. Notice of sale of property on execution. - Before the sale of property on execution, notice thereof must be given as follows:

"(a) xxx xxx xxx

"(b) xxx xxx xxx

"(c) In case of real property, by posting a similar notice particularly describing the property for twenty (20) days in three public places in the municipality or city where the property is situated, and also where the pro-property is to be sold, and, if the assessed value of the property exceeds four hundred pesos (P400), by publish-ing a copy of the notice once a week, for the same period, in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language."

Pursuant to this provision, before a real property can be validly sold on execution, when its assessed value exceeds P400 - that of the property in question is P58,780 - notice of the scheduled sale, particularly describing the property, shall be posted for 20 days in three public places in the municipality or city where it is situated, and, in addition thereto, copy of said notice shall be published, once a week, for the same period, "in one newspaper published in the English language, and in one published in the Spanish language" - "(i)f there are newspapers published in the province in both the English and Spanish languages." It is not denied that there are such newspapers, published in both languages, with general circu-lation in the Province of Rizal. Yet, the notice of the contested sale was published for not more than 15 days (on May 15, 22 and 29) and in one (1) newspaper only, the Nueva Era, published in the Spanish language, which has a very limited circulation. It is thus manifest that the publication made in the case at bar has not complied with the aforementioned provision and that the sale made to Mrs. Santos is, accordingly, null and void.<sup>3</sup>

Herein defendants insist that the right of De Guzman to question the aforesaid irregularities in the publication of the notice of sale had been waived by him when, on June 5, 1961, he asked that the sale, ori-ginally scheduled for that date, be postponed to June 12, "without need of further publication nor posting of said sale." This request entailed a waiver of the publication of another notice as to the date of the sale. It did not imply a renunciation of the right to question the same for non-publication of the notice in a newspaper published in the English language, and for the failure of the Nueva Era to publish the notice for twenty (20) days.

The plea of laches set up by the defendants-appellants is based upon Mateo vs. Court of Appeals,<sup>4</sup> which is not in point. That case was predicated upon the rule that "when the time in which the debtor may redeem from a valid sale of his property has expired, he has no further right to or interest in the property sold." This certainly is the rule when there has been a valid sale, not when the sale is null and void, as it is in the case at bar.

It may not be amiss to note that, since the rendition of the default judgment in Civil Case No. 6512, on April 3, 1961, appellant De Guzman has been far from negligent in the assertion of his rights. Thus, on April 14, 1961, he filed a manifestation adopting by reference the answer filed by him and Abelardo Santos in the municipal court of San Juan del Monte. On the same date, he filed a motion to set aside the order of default and for the admission of said answer. Notice of the order denying that motion having been served upon his counsel, on May 2, 1961, De Guzman filed, on June 1, 1961, a motion for re-consideration and new trial, dated May 28, 1961, which was denied on June 12, 1961. On the same date, he filed a motion to quash the writ of execution and to dismiss the

case, which was denied on June 21. Then, he filed a motion for reconsideration, dated July 20, which was denied on August 17, 1961. On August 29, 1961, he filed a notice of appeal, to which Mrs. Santos countered with a motion to dismiss the appeal, which was granted on September 20, 1961. Thereafter, De Guzman instituted Case CA-G.R. No. 30911-R of the Court of Appeals, against Mrs. Santos, the provincial sheriff of Rizal and His Honor, the trial Judge, for writs of certiorari, prohibition, mandamus and preliminary injunction, to restrain the trial court from further proceeding in Civil Case No. 6512, and to annul its order of September 20, 1961 dismissing the appeal. Said Case CA-G.R. No. 30911-R was dismissed by the Court of Appeals on July 3, 1962. Then came De Guzman's motion of July 6, 1962, in Civil Case No. 6512, to quash the writ of execution issued therein and annul all proceedings of the sheriff thereunder, which was followed, on July 12, 1962, by the institution of the present case.

It is thus clear that plaintiff-appellant herein is not guilty of laches.

Being a mere corollary of the preceding questions, which have already been disposed of, the counterclaim for damages of defendant Dolores L. Santos needs no further discussion.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against appellant Dolores L. Santos.

**IT IS SO ORDERED.**

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Castro, J., took no part.

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[1] *Elli v. Ditan*, L-17444, June 30, 1962; *Palad vs. Cui*, 28 Phil. 44.

[2] *Duran v. Arboleda*, 20 Phil. 253; *Inchausti & Co. v. De Leon*, 24 Phil. 224; *Monteverde v. Jaranilla*, 60 Phil. 297; *Manila Motor Co. v. Endencia*, 72 Phil. 130; *Pielago v. Generosa*, 73 Phil. 654.

3 *Campomanes v. Bartolome*, 38 Phil. 808; *Iturralde v. Velazquez*, 41 Phil. 886, 894; *Borja v. Addison*, 44 Phil. 895, 904; *Balagtas v. Arguelles*, 57 Phil. 317; *Ago v. Court of Appeals*, L-17898, Oct. 31, 1962.

4 L-7056, May 31, 1956.

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