

**ALIPIO N. CASILAN AND THE PROVINCIAL SHERIFF OF LEYTE,
PETITIONERS, VS. HON. FILOMENO B. YBANEZ, AS JUDGE OF THE
COURT OF FIRST INSTANCE OF TACLOBAN CITY, AND ANTONIO
MONTILLA, ...**

G. R. Nos. L-19968-69. October 31, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari to set aside the writ of preliminary injunction issued by the respondent Judge of the Court of First Instance of Leyte, IVth Branch, in its Civil Cases Nos. 2985 and 2990, as well as the judgment making the injunction permanent.

The fact on record are that the Court of First Instance of Quezon City, in its Civil Case No. Q-1941, rendered a decision in favor of herein petitioner Alipio N. Casilan, and against private party respondent Hipolita Chapman, sentencing the latter to pay petitioner the sum of P15,000.00. The judgment having become final, the corresponding writ of execution was issued on 14 March 1961; and pursuant thereto, the Provincial Sheriff of Leyte, on 25 March 1961, levied upon certain properties allegedly owned by respondent Chapman, consisting of two parcels of land (Lots Nos. 5439 and 5040 of the Cadastral Survey of Tacloban, Leyte), a residential house, and some machinery, and advertised the same for sale. The levy on the realty was entered in the Daybook of the Register of Deeds on 29, March 1961 and noted on the back of the original certificate of title in the name of Louis Chapman, deceased husband of respondent Hipolita Chapman. It appears that since 31 March 1954, this certificate had been cancelled and replaced by Transfer Certificate of Title No. T-81 in the name of Hipolita, and the levy was not noted on the latter certificate at the time it was entered in the Daybook, apparently because Casilan was unaware of the transfer.

Before the sheriff's sale could be held, respondent Antonio Montilla, who claimed to be a prior judgment and execution creditor of Hipolita Chapman, and respondent Paz B. Tiongson, allegedly a mortgagee of the lands levied upon, filed separate actions in the Court of First Instance of Leyte, claiming to be preferred and duly recorded creditors, and obtained writs of preliminary injunction against Casilan and the Sheriff restraining them from proceeding with the sale. After due trial, judgment was rendered by the same court on 21 March 1962 declaring Casilan's levy subordinated to the claims of the other two creditors, Montilla and Tiongson, and making the previous injunction writs permanent. Notified of this judgment on 21 April 1962, Casilan moved for reconsideration sixteen (16) days later, on 7 May 1962; but on 5 June 1962, his counsel received notice that reconsideration was denied. Thirty-five (35) days afterwards, on 10 July 1962, Casilan applied to this Court for a writ of certiorari, on the ground that the injunctions issued by the Court of First Instance of Leyte constituted unlawful interference with the judgments and orders of a coordinate court (that of Quezon City).

The petition is without merit.

As things stand now, this Court can no longer interfere with the preliminary injunctions issued by the Leyte court

in its cases Nos. 2985 and 2990, because such preliminary writs have already been vacated, being superseded and replaced by the permanent injunction ordered in the decision on the merits rendered on 21 March 1962. And as to the permanent injunction, no action can be taken thereon without reviewing the judgment on the merits, such injunction being but a consequence of the pronouncement that the credits of Tiongson and Montilla are entitled to priority over that of Casilan. Since the court below had the power and right to determine such question of preference, its judgment is not without, nor in excess of, jurisdiction; and even assuming that its findings are not correct, they would, at most, constitute errors of law, and not abuses of discretion, correctible by certiorari. The obvious remedy for petitioner Casilan was a timely appeal from the judgment on the merits to the Court of Appeals, the amount involved being less than P200,000. But the judgment has become final and unappealable and can not be set aside through certiorari proceedings.

In view of the foregoing, the petition for a writ of certiorari is denied. Costs against petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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