

STEPHEN W. MARTIN, PETITIONER AND APPELLEE, VS. CELESTINO GOMEZ, RESPONDENT AND APPELLANT.*G. R. No. L-20394. May 31, 1965*

Ponente: ZALDIVAR. J.

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This is an appeal from the order of the Court of First Instance of Baguio, in its Civil Case No. 669, fixing the amount of costs that was taxed against the respondent-appellant Celestino Gomez. This appeal was originally brought to the Court of Appeals but because it involves only a question of law the Court of Appeals certified this case to this Court pursuant to the provision of Sections 17 and 31 of the Judiciary Act of 1948, as amended.

The appellant Celestino Gomez brought an action in the Court of First Instance of Manila, in Civil Case No. 25918, against one Paglinawan, and having obtained a judgment in his favor Gomez secured a writ of execution. The property that was levied on execution was an Oldsmobile car which was the subject of a chattel mortgage executed by Paglinawan in favor of Gomez, but the chattel mortgage was not registered with the Motor Vehicles Office. The automobile that was the subject of the chattel mortgage was found in the possession of the appellee Stephen w Martin in the City of Baguio. When the Sheriff of the City of Baguio seized the automobile pursuant to the writ of execution issued by the Court of First Instance of Manila, appellee Martin filed a third-party claim with said Sheriff, claiming that he was the owner of said automobile. In view of the third-party claim of appellee Martin the appellant Gomez filed a bond of P4,000.00 in order that the Sheriff could proceed with the auction sale of the automobile. After appellant Gomez had filed the bond and the Sheriff thereby continued to be in possession of the automobile appellee Martin filed an action in the Court of First Instance of Baguio to establish his rights as owner of the automobile and in his complaint he prayed for the issuance of a writ of preliminary injunction against the Sheriff of Baguio to enjoin him from proceeding with the auction sale of the automobile. The complaint of appellee Martin was docketed as Civil Case No. 660, and it is the case now before Us on appeal. The Court of First Instance of Baguio issued the writ of preliminary injunction prayed for, and so the Sheriff desisted from proceeding with the execution sale of the automobile. However, the sheriff continued to have the custody of the automobile pursuant to the writ of execution issued by the Court of First Instance of Manila. Being the custodian of the automobile during the pendency of Civil Case No. 669 before the Court of First Instance of Baguio, the Sheriff caused the automobile to be stored in Baguio, obligating himself thereby to pay for the storage fees of the automobile while the same was under his custody.

The Court of First Instance of Baguio, after trial, rendered judgment declaring the appellee Martin the lawful owner of the car, it having been established that Martin bought the car in good faith, not knowing that the car had been the subject of a chattel mortgage, and it was also established that the supposed chattel mortgage on the car was not registered with the Motor Vehicles Office. In 'ho derision of the Court of First Instance of Baguio it categorically stated that the appellant Gomez should y the storage fees of the automobile as part of the costs.

Celestino Gomez appealed to the Court of Appeals from the decision of the Court of First Instance of Baguio.

While the appeal was pending in the Court of Appeals appellee Martin filed a motion in the Court of First Instance of Baguio for the immediate execution of the judgment, thereby praying for the delivery of the possession of the automobile to him. The Court of First Instance of Baguio granted the motion for immediate execution but imposed the condition that "the petitioner (in order to have the car returned) is hereby required to file a bond in favor of respondents in the amount of P4,000.00 out of which sum the sum of P1,000.00 shall answer for the storage fees, with the condition that in case the petitioner shall be adjudged by the appellate court not to be the owner of the car in question and/or the judgment is reversed totally or partially, the petitioner shall pay respondents the value of the said car in the amount of P4,000.00 which included the storage fees." Appellee Martin did not file the bond as required by the court, and so the car remained in the custody of the Sheriff.

The Court of Appeals, in its decision promulgated on October 14, 1959, affirmed the decision of the Court of First Instance of Baguio in Civil Case No. 669 and, among others, it declared:

"We hereby pronounce petitioner as the true and lawful owner of the car in question; declare the levy on November 29, 1956, and any further proceedings to sell the car or turn it over to respondent Gomez as null and void, thus restraining and enjoining the respondent sheriff, his deputies, agents, or representatives from further depriving the petitioner of his possession, much less ownership of said car, with costs against the respondent-appellant Gomez."

The decision of the Court of Appeals became final executory on November 6, 1959, and on December 8, appellee Martin filed a motion for execution of the said judgment. The motion for execution was accompanied by a "Bill of Costs" which contained the following items:

1. For the filing fee
P16.00
 2. For sheriff's fee of summons
8.65
 3. For sheriff's fee of subpoenas
1.70
 4. For the complaint
8.00
 5. For attendance of petitioner in the CFI
10.00
 6. For attendance of petitioner in the Court of Appeals
20.00
- _____
- Total
- P 64.35

On April 8, 1960 the appellee filed an amended Bill of Costs, which contained the following additional items:

7. For storage fee of the car in the garage of Dr. Rillio from November 20, 1956 to March 23, 1957 at the rate of P5.00 a day

P575.00

8. For storage fees of the car in the garage of Mr. L. Esquejo from March 21, 1957 to December 11, 1959 at the rate of P2.50 per day

2,428.50

The total amount of the amended Bill of Costs was P3,067.85, or an increase over the original Bill of Costs in the sum of P3,003.50 representing the storage fees of the car while the same was in the custody of the Sheriff.

In order to give the appellant Celestino Gomez a chance to present evidence to show that the storage fees that were included in the amended Bill of Costs were exorbitant the lower court set a hearing on the said amended bill of costs. The parties had agreed to reduce the amount of storage fees in favor of Dr. Rillo at the rate of P3.00 per day and in favor of Mr. L. Esquejo at the rate of P1.60 per day. September 15, 1960 the lower court fixed the storage in an order, which reads as follows:

"Respondent Celestino Gomez objects to the storage fees as part the costs on the ground that the same are not justified by the Rules of Court. Sheriff's fees and custodian's fee are part of the costs (*Macondray & Co. vs. Bernabe*, 67, Phil. 658). The decision of this court charging storage fees as costs against Celestino Gomez was completely affirmed by the Court of Appeals and that the decision is now final. The parties have agreed to reduce the amount of storage fees in favor of Dr. Rillo at the rate of P3.00 per day and Esquejo at the rate of P1.50 per day. The car was stored in the garage of Dr. Rillo 117 days or a total of P351.00 and 993 days with Esquejo or a total of P1,489.50. Total storage fees are, therefore, fixed at P1,840.50 which must be paid by Celestino Gomez. Once final this taxation of costs may be collected by writ of execution."

The appellant Gomez filed a motion for reconsideration of the order of the court fixing the storage fees at P1,840.50 and including said amount as part of the costs that should be paid by him. Upon the denial of his motion for reconsideration said appellant filed a second motion for reconsideration which was also denied. Hence, this appeal by said appellant from that order of the lower court declaring the storage fees as part of the costs and fixing the amount of storage fees at P1,840.50.

In this appeal appellant Gomez contends that the lower court erred in including storage fees as costs, because the same is not included in the enumeration of costs under Sections 10 and 11, Rule 131 of the Rules of Court. (The incidents in the present case took place before the promulgation of the Revised Rules of Court. Rule 131 of the old Rules of Court is now Rule 142 of the Revised Rules of Court).

In this connection let it be noted that in the decision of the Court of First Instance of Baguio, declaring appellee Martin the lawful owner of the automobile question and ordering its return to him, it is stated:

"However, the storage fees of the car must be charged against the respondent Celestino Gomez."

When the above-mentioned decision of the trial court appealed to the Court of Appeals (CA-G. R. No. 22190) the question of the propriety or legality of the inclusion storage fees as part of the costs was not raised by appellant Gomez. This part of the decision should have been questioned in that (first) appeal. The Court of Appeals affirmed the decision of the trial court "with costs against the respondent-appellant Gomez." It may be considered, therefore, that the Court of Appeals had also affirmed that part of the decision of the trial court taxing storage fees as part of the costs.

Be that as it may, We are of the opinion that the trial court acted correctly in taxing as costs the storage fees of the automobile in question while the same was under the custody of the Sheriff of Baguio. Let it be noted that the

Sheriff of Baguio was in custody of the automobile pursuant to the writ of execution issued by the Court of First Instance of Manila in Civil Case No. 25918. By all means, under the circumstances, the Sheriff is entitled to collect fees: (1) "for executing process . . .", and (2) "for serving an attachment against the .property of the defendants ... together with a reasonable allowance to be made by the court for expenses, if any, necessarily incurred in caring for property attached (Section 7, paragraphs (a) and (b), Rule 130 of the old Rules of Court).

In the present case the Sheriff of Baguio attached, or levied on, the automobile in question, took custody of it, and while in custody he caused the same to be stored in a garage. The lower court had found that the reasonable fees for the storage of the car for a period of 1,110 days was P1,840.50.

It may be argued that the Sheriff of Baguio attached the automobile in question and took custody of it pursuant to the order of the Court of First Instance of Manila in Civil Case No. 25918 and not in connection with Civil Case No. 669 of the Court of First Instance of Baguio which is now before Us on appeal. It must be remembered, however, that Civil Case No. 669 of the Court of First Instance of Baguio is connected with, or is an offshoot of, Civil Case No. 25918 of the Court of First Instance of Manila. It was because the automobile in question was levied on execution pursuant to the writ of execution issued by the Court of First Instance of Manila that the appellee Martin had to file a third-party claim and later a complaint in Civil Case No. 669 before the Court of First Instance of Baguio to assert his right as owner and possessor of the said automobile. When appellee Martin filed his third- party claim the Sheriff could have left that automobile in the possession of said appellee but appellant Gomez filed a bond in order that the execution proceedings might continue and so the Sheriff continued to have the automobile under his custody. In other words, it was the appellant Gomez who was responsible for the car being held by the Sheriff, and if for no other reason but on the ground of equity he should be made to pay for the storage fees of the automobile while the same was in the custody of the Sheriff from the time that it was seized until the day when it was returned to appellee Martin. The lower court presumably must have this circumstance in mind when in its decision it stated that "the storage fees of the car must be charged as costs against the respondent Celestino Gomez."

Did the trial court correctly include this storage fees as part of the costs. We believe so.

The taxation of storage fees as costs is authorized under paragraph (g), Section 10, of Rule 131 of the old Rules of Court, which provides that the prevailing party in the Court of First Instance may recover as costs.

"(g) The lawful fees paid by him for service of any process in action. . ."

The above-quoted provision of paragraph (g), Section 10, of Rule 131 of the Old Rules of Court is a reproduction of a similar provision in Section 492 of Act 190 (old Code of Civil Procedure). A similar provision appeared in Section 491 of Act 190 regarding costs in the Justice of the Peace Courts. In the case of *Macondray & Co., Inc. vs. Jose Bernabe, et al.*, (67 Phil. 658, 661), this had occasion to state what is comprehended in the statement which reads:

"The lawful fees paid by him for service of any process in action." The pertinent part of the decision in the *Macondray* case reads as follows:

" 'A. Process Generally.—Definition.—As a legal term, process is a generic word of very comprehensive signification and many meanings. In its broadest sense, it is equivalent to, or synonymous with, 'proceedings' or procedure and embraces all the steps and proceedings in a cause from its commencement to its conclusion. Sonic times the term is also broadly defined ns the menus whereby a court compels a compliance with its demands.' (50 C. .J., 411.) (Italics ours.)

"Within the aforesaid definition fall, in our opinion, all the proceedings for the execution of the order of attachment, with respect to personal properly, from the time the sheriff attaches and takes possession of the

attached properties by virtue of the order of the court and conserves and places the same under his custody until the attachment is lifted or the property is sold at public auction upon a judgment or order of the same court which issued the attachment. The sheriff's or custodian's fees for his services from and during the attachment are consequently a part of the costs, and the plaintiff is entitled to recover the same."

As we have adverted to, under paragraphs (a) and (b) of Sec. 7 of Rule 130 of the old Rules of Court the sheriffs are entitled to collect fees for executing process, and for serving an attachment against the property of the defendant together with a reasonable allowance for expenses necessarily incurred in caring for property attached. In the case now before Us it is undeniable that the storage fees constitute reasonable expenses necessarily incurred in caring for the automobile that was levied on execution and held by the Sheriff. The act of the Sheriff in having under his custody the automobile in question is "service of any Process in action" as construed by this Court in the Macondray case, and for this "service" he is entitled to be paid the fees as provided by law. The fees of the Sheriff in having under his custody a property that is attached or levied on execution includes reasonable expenses in caring for the property. And so in the present case the Sheriff of Baguio is entitled to the sheriff's fees which, as we have said, include reasonable expenses in caring for the automobile in question and this sheriff's fee is included in the lawful fees contemplated in paragraph (g), Sec. 10, Rule 131 of the old Rules of Court.

Appellant Gomez also contends that even granting that the storage fees may be taxable as costs, he should not be made to pay the storage fees from the time that the appellee Martin filed the complaint in Civil Case No. 669 and after his petition for execution was granted. This contention is without merit. The Sheriff of Baguio continued to hold possession of the automobile in question after appellee Martin had filed his third-party claim because appellant Gomez filed a bond so the Sheriff could proceed with the proceedings on the execution of the judgment. Appellee Martin had to file an action and ask for a writ of preliminary injunction in order that the Sheriff could not proceed with the execution sale. When the Sheriff was enjoined from proceeding with the execution sale he continued having custody of the automobile. Appellant Gomez should have taken steps so the Sheriff would release the automobile, but this he did not do. It is true that appellee Martin asked for immediate execution of the judgment in Civil Case No. 669 after the Court of First Instance of Baguio rendered judgment in his favor. But the order of the court granting the petition for execution imposed the condition that appellee Martin should file a bond of P4,000.00, and said appellee did not file the required bond. So the execution of the judgment in Civil Case No. 669 was not carried out, and the Sheriff continued to have custody of the car until the delivery of said car to appellee Martin after the Court of Appeals had finally decided that the car should be returned to said appellee. Appellant Gomez was responsible for the Sheriff's having taken possession of the automobile and holding it during the pendency of Civil Case No. 669, so he must answer for all the expenses incurred in the storage of the car.

We hold, therefore, that the lower court did not err in including the storage fees of the car as part of the costs of the suit in the present case, and in fixing the amount of said storage fees at P1,840.50.

In view of the foregoing, the order appealed from is affirmed, with costs against appellant Celestino Gomez.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Regala, Makalintal and Bengzon, J. P., JJ., concur.

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