

**FERMIN BOBIS AND EMILIA GUADALUPE, PLAINTIFFS-APPELLANTS,
VS. THE PROVINCIAL SHERIFF OF CAMARINES NORTE AND ZOSIMO
RIVERA, DEFENDANTS-APPELLEES.**

G.R. No. L-29838. March 18, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal from the judgment of the Court of First Instance of Camarines Norte, dismissing the complaint for the annulment of an execution sale, which was certified to this Court by the Court of Appeals upon the ground that only questions of law are involved in the appeal.

The facts are not disputed. It appears that Rufina Camino and Pastor Eco were the registered owners of a parcel of land, with an area of 10.7791 hectares, covered by Transfer Certificate of Title No. T-398. The said parcel of land was cultivated by the spouses Fermin Bobis and Emilia Guadalupe. On July 25, 1950, one Alfonso Ortega filed a complaint against Rufina Camino, Pastor Eco, Emilia Guadalupe, and Fermin Bobis with the Court of First Instance of Camarines Norte, docketed therein as Civil Case No. 273, for the recovery of possession of one-half (1/2) of the cleared and planted portion of the land, or the payment of the amount of P1,650.00, the value of the improvements introduced by him on the parcel of land in question. On August 16, 1950, the parties executed a compromise agreement whereby they agreed:

"1. The defendants Rufina Camino and Pastor Eco shall pay the plaintiff the sum of One Hundred Forty Pesos (P140.00) Philippine Currency, as full payment for all the improvements (coconuts and bananas) introduced by the plaintiff in the land in question, payable on February 28, 1951;

"2. That plaintiff has no other claim against the defendants except for the improvements;

"3. That hereafter, the plaintiff shall recognize and respect the absolute and exclusive ownership of the land in question; and

"4. That plaintiff in consideration of this amicable settlement renounces his claim for damages."

On August 26, 1950, Rufina Camino and Pastor Eco sold the parcel of land to their co-defendants, spouses Fermin Bobis and Emilia Guadalupe, and TCT No. T-838 was issued in their names. On January 19, 1951, the parties submitted the compromise agreement to the court; and on January 22, 1951, the court promulgated a decision, approving the said compromise agreement.

The defendants Rufina Camino and Pastor Eco, however, only paid the amount of P50.00 to Alfonso Ortega when the obligation became due on February 28, 1951. As a result, a writ of execution was issued on July 18, 1951, commanding the Provincial Sheriff of Camarines Norte that the goods and chattels of the defendants Rufina Camino, Pastor Eco, Emilia Guadalupe, and Fermin Bobis be caused to be made the sum of P140.00. Consequently, the Sheriff levied upon the land which Rufina Camino and Pastor Eco had sold to Fermin Bobis and Emilia Guadalupe. Upon learning of the levy on execution, Emilia Guadalupe and Fermin Bobis filed a motion

seeking the modification of the writ of execution to exclude them therefrom because under the judgment sought to be executed only the defendants Rufina Camino and Pastor Eco were obligated to pay the plaintiff Alfonso Ortega. But, the trial court denied the motion. Subsequently, on September 3, 1951, the Provincial Sheriff sold the parcel of land in question at an execution sale to Zosimo Rivera, the highest bidder.

After the expiration of one year, or on September 17, 1952, with neither Rufina Camino, Pastor Eco, Emilia Guadalupe, nor Fermin Bobis exercising the right of redemption, the Provincial Sheriff executed an Officer's Deed of Sale of the land in favor of the said Zosimo Rivera. The Officer's Deed of Sale was submitted to, and approved by, the trial court on March 23, 1953.

Thereupon, Zosimo Rivera asked for a writ of possession. The Provincial Fiscal of Camarines Norte, in his capacity as ex officio Register of Deeds of the province, also filed a motion praying that Emilia Guadalupe be directed to surrender the owner's duplicate of TCT No. T-838 so that the Sheriff's sale could be annotated therein. The court granted both motions and directed the issuance of a writ of possession, and ordered Emilia Guadalupe to surrender the owner's duplicate copy of TCT No. T-838 within five (5) days from notice. Emilia Guadalupe, however, did not surrender her duplicate copy of the certificate of title and, instead, filed a motion for the reconsideration of the order. The motion for reconsideration was denied by the court, but still, Emilia Guadalupe refused to surrender the owner's duplicate copy of the certificate of title. Nor did she vacate the land despite the writ of possession. As a result, a petition to declare her in contempt of court was filed. After due hearing, Emilia Guadalupe was declared guilty of contempt for disobeying a lawful order and for obstructing the administration of justice and sentenced to undergo imprisonment until such time as she complies with the orders of the court.

On March 4, 1960, Fermin Bobis and Emilia Guadalupe filed the instant action against the Provincial Sheriff of Camarines Norte and Zosimo Rivera with the Court of First Instance of Camarines Norte, docketed therein as Civil Case No. 1169, for the annulment of the sheriff's deed of sale and for damages, upon the ground that the writ of execution issued in Civil Case No. 273 was not in conformity with the judgment rendered therein and therefore, void and of no legal effect. Upon the filing of the complaint, the court ordered the release of Emilia Guadalupe who had been confined in jail for about 8 months.

On June 3, 1964, the trial court rendered a decision, the dispositive portion of which reads, as follows:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered (a) dismissing the complaint with costs against the plaintiffs; (b) declaring the sale executed by Camino and Eco in favor of Emilia Guadalupe rescinded; (c) declaring the sale executed by defendant Provincial Sheriff in favor of Zosimo Rivera valid and legal; (d) declaring said defendant Zosimo Rivera the owner of the land described in the complaint; and (e) ordering Emilia Guadalupe to execute a deed of conveyance in favor of defendant Zosimo Rivera."^[1]

The plaintiffs appealed to the Court of Appeals, but the latter court elevated the case to this Court for final determination for the reason that only questions of law are involved in the appeal.

The appellants contend that the trial court erred:

"1. In declaring that the sale executed by the Provincial Sheriff in favor of Zosimo Rivera valid and legal and that Zosimo Rivera is now the owner of the land in question;

"2. In dismissing the complaint for annulment of the sale made by the Provincial Sheriff which is void from the beginning;

"3. In declaring the sale executed by Camino and Eco in favor of Emilia Guadalupe rescinded when there is no action for the same;

"4. In ordering Emilia Guadalupe to execute a deed of conveyance in favor of defendant Zosimo Rivera when

the property is of the conjugal partnership of Fermin Bobis and Emilia Guadalupe; and

"5. In not granting damages against Zosimo Rivera and the Provincial Sheriff when the machination to deprive plaintiffs of their land is very evident in their actuations not only because of the ridiculously niggardly price but also because the true plaintiff (Ortega) was not benefited by the sale."

We find the appeal impressed with merit. The writ of execution issued in Civil Case No. 273 is null and void with respect to the spouses Fermin Bobis and Emilia Guadalupe; hence, the sale of their property at a subsequent sale at public auction to the defendant Zosimo Rivera is, likewise, void and of no legal effect. The judgment rendered in Civil Case No. 273 decreed:

"1. That defendants Rufina Camino and Pastor Eco shall pay the plaintiff the sum of One Hundred Forty Pesos (P140.00) Philippine Currency, as full payment for all the improvements (coconuts and bananas) introduced by the plaintiff in the land in question, payable on February 28, 1951;

"2. That plaintiff has no other claim against the defendants except for the improvements;

"3. That hereafter, the plaintiff shall recognize and respect the absolute and exclusive ownership of the land in question; and

"4. That plaintiff in consideration of this amicable settlement renounces his claim for damages."

As will be seen, only Rufina Camino and Pastor Eco were adjudged to pay Alfonso Ortega the amount of P140.00 on February 28, 1951. Although they were included as party defendants, the spouses Fermin Bobis and Emilia Guadalupe were not ordered to pay Alfonso Ortega. Obviously, they were absolved from liability. Accordingly, as to them, there was nothing to execute since they have been absolved from liability. When, therefore, the lower court, in issuing the writ of execution of the judgment, commanded the Provincial Sheriff that the goods and chattels of the defendants Rufina Camino and Pastor Eco, Emilia Guadalupe and Fermin Bobis be caused to be made the sum of P140.00 thereby making the spouses Fermin Bobis and Emilia Guadalupe equally liable for the judgment debt of the spouses Rufina Camino and Pastor Eco, adding to the judgment sought to be executed a new relief, it acted in excess of jurisdiction, if not abuse of authority. As the late Chief Justice Moran says in his Comments on the Rules of Court, "The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law." [2]

Besides, the judgment rendered in Civil Case No. 273 was based upon a compromise agreement of the parties. In the case of *Ybleon vs. Sison*, [3] this Court ruled that "a judge or court, which sets aside a judgment rendered upon consent of the parties and based on a compromise entered into by them, which is converted into such judgment, cannot amend or set it aside without the consent of said parties, or without first having declared in an incidental preliminary hearing that such compromise is vitiated by any of the grounds for nullity enumerated in Article 1817 (now Art. 2038) of the Civil Code." Since the modification and amendment of the judgment was made unilaterally in the writ of execution, without any preliminary hearing, it was unjustified.

It results that the writ of execution is null and void and of no legal effect with respect to the spouses Fermin Bobis and Emilia Guadalupe. The annulment of the writ of execution carries with it the annulment of the sale made by the sheriff pursuant to the said writ, as well as the order of the court approving the sale. The limbs cannot survive after the trunk has perished. [4]

Since the right of Zosimo Rivera over the land in question is derived from a void execution sale, he acquired no

title therein.

Besides, Section 35, Rule 39 of the Rules of Court provides that a purchaser of real property at an execution sale "shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor to the property as of the time of the levy." It follows that if at that time the judgment debtor had no more right to, or interest in, the property because he had already sold it to another, then the purchaser acquires nothing. Such appears to be the case here for it is not disputed that before the execution sale, and even before the levy on execution, or the rendition of the judgment in Civil Case No. 273, the judgment debtors Rufina Camino and Pastor Eco had already deeded the property to Fermin Bobis and Emilia Guadalupe and a new certificate of title was issued in the names of the vendees.

In dismissing the complaint filed in the instant case, the trial court found that the sale of the land to Fermin Bobis and Emilia Guadalupe was tainted with fraud since the said sale was made during the pendency of Civil Case No. 273, and that the price was inadequate.

The rule, however, is that fraud is not presumed. As fraud is criminal in nature, it must be proved by clear preponderance of evidence.[5] In order that a contract may be rescinded as in fraud of creditors, it is essential that it be shown that both contracting parties have acted maliciously and with fraud and for the purpose of prejudicing said creditors, and that the latter are deprived by the transaction of all means by which they may effect collection of their claims. All these circumstances must concur in a given case. The presence of only one of them is not enough.[6] In this particular case, there is no evidence that the spouses Rufina Camino and Pastor Eco connived with the spouses Fermin Bobis and Emilia Guadalupe to defraud Alfonso Ortega. Nor is there evidence to show that the sale of the land to Fermin Bobis and Emilia Guadalupe tended to deprive Alfonso Ortega of means to collect his claim from the spouses Rufina Camino and Pastor Eco. As a matter of fact, no oral or documentary evidence was presented by the parties, and the trial court merely assumed that the sale to Fermin Bobis and Emilia Guadalupe was fraudulent because of the inadequacy of the price, and that the sale was executed during the pendency of Civil Case No. 273. While these circumstances may be considered badges of fraud,[7] the sale cannot be considered in fraud of creditors in the absence of proof that the vendors Rufina Camino and Pastor Eco had no other property except that parcel of land they sold to the spouses Fermin Bobis and Emilia Gudalupe. Besides, Alfonso Ortega knew of such sale and did nothing to have it annulled as in fraud of creditors. Nor did he cause a cautionary notice to be inscribed in the certificate of title to protect his interests. Moreover, the sale was not fictitious, designed to escape payment of the obligation to Alfonso Ortega. The tenacity by which Emilia Guadalupe had clung to her property to the extent of undergoing imprisonment is indicative of their good faith.

In his answer, the defendant Zosimo Rivera claimed that the appellant's cause of action is barred by a prior judgment. Apparently, the said defendant was referring to the denial of the appellant's motion to modify the writ of execution filed in Civil Case No. 273. However, the denial of the appellant's motion to modify the writ of execution, which for all purposes was a third party claim, does not constitute a bar to another action even if no appeal was taken from the disapproval of the third party claim.[8] A third-party claimant may file a separate reivindicatory action against the execution creditor or the purchaser of the property at the sale at public auction. He may also file a complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff. Such reivindicatory action is reserved to the third-party claimant by Section 17, Rule 39 of the Rules of Court despite the disapproval of its claim by the court itself.[9] Appeal is not proper in the case,[10] nor a writ of certiorari or prohibition.[11]

With respect to the claim of the appellants for damages, it is the rule that when the property of one person is taken by the sheriff upon an execution against another person, the sheriff is liable as any private person would be for wrongly taking property of another. But, such does not obtain in the present case. The sheriff did not wrongfully

take the property of the appellant spouses Fermin Bobis and Emilia Guadalupe to satisfy the judgment debt of another. The writ of execution specifically ordered him to cause the goods and chattels of Emilia Guadalupe, Fermin Bobis, Rufina Camino, and Pastor Eco to be made the sum of P140.00, and the sheriff merely followed the order. The defect was in the writ of execution issued by the lower court and not in the levy or in the sale at public auction. Hence, no fault can be attributed to the sheriff. Therefore, he cannot be made liable for the damages incurred by the appellant spouses. Corollarily, no damages can also be recovered from the buyer of the property at the sale at public auction.

WHEREFORE, the judgment appealed from should be, as it is hereby, SET ASIDE and another one entered, declaring the writ of execution, dated July 18, 1951, issued in Civil Case No. 273 of the Court of First Instance of Camarines Norte, entitled, "Alfonso Ortega, plaintiff, versus Rufina Camino, et al., defendants," the sale made by the sheriff pursuant to said writ, as well as the order of the court approving said sale, null and void and of no legal effect with respect to the spouses Fermin Bobis and Emilia Guadalupe. Without pronouncement as to costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., is on leave.

[1] Record on Appeal, p. 29.

[2] Vol. I, 1952 Ed., p. 809.

[3] 59 Phil. 281.

[4] Garchitorena vs. Sotelo, 74 Phil. 25.

[5] 37 C.J.S. 393.

[6] See Solis vs. Chua Pua Hnos. and Ilustre, 50 Phil. 636.

[7] Oria vs. McMicking, 21 Phil. 243.

[8] Queblar vs. Barduno, 67 Phil. 316.

[9] Planas vs. Madrigal, 94 Phil. 754; Potenciano vs. Dineros, 97 Phil. 196.

[10] Queblar vs. Barduno, supra.

[11] Lara vs. Bayona, G.R. No. L-7920, May 10, 1955.

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