

SAMUEL M. SALAS, CRISTOBAL JABSON AND MASTERBUILT INDUSTRIES, INC., PETITIONERS, VS. PURIFICACION CASTRO, LIZA CASTRO--SANTUA, RAMON C. CASTRO AND HON. BUENAVENTURA GUERRERO, JU...

G.R. No. 100416. December 02, 1992

Ponente: CAMPOS, JR. J.

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CAMPOS, JR. J.:

This petition for Certiorari, Mandamus and Prohibition seeks to annul the Order issued by the Honorable Buenaventura J. Guerrero, presiding judge of the Regional Trial Court, Makati, Branch 133, dated April 2, 1991 granting the preliminary injunction enjoining petitioners from enforcing a writ of execution issued by the Honorable Salvador S. Tensuan, presiding judge of the Regional Trial Court, Makati, Branch 146, pursuant to the judgment in Civil Case No. 88-2648.

The petitioners raise the following questions for resolution by this Court, to wit:

- "1. May Branch 133, Regional Trial Court-Makati presided by respondent Judge, restrain and enjoin, by injunction, the execution of final and executory judgment of Branch 146, Regional Trial Court-Makati?
2. May persons found by Branch 146, Regional Trial Court-Makati to have moneys due and owing to a judgment debtor file a separate action for "Damages with Preliminary Injunction" before a different, co-equal and coordinate Branch 133, Regional Trial Court-Makati, and may the latter court consider and resolve the issue of whether or not said persons have moneys due to the judgment debtor, and upon its own finding that no such moneys are due, enjoin the enforcement of the writ of execution issued by the first court?
3. May affidavits and receipts pre-sented by stockholders as proof of full payment of subscription to the capital stock of a corporation pre-vail and override official records certified by the Securities and Ex-change Commission showing the un-paid subscriptions of stockholders?
4. In fine, and in order not to render ineffective the provisions of Sections 39, 40, 41, 42 and 45 Rule 39, Revised Rules of Court, on execution proceedings directed against or involving property of persons not party to the case but having credits due to the judgment debtor, is it not appropriate, equitable and justified that the cumulative remedies available to third party claimants under Section 17, Rule 39, Revised Rules of Court, be deemed limited to cases of "wrong-ful levy" when properties of third persons not party to the case were mistakenly levied as property of the judgment debtor, while those cases where the court that rendered judgment actually and knowingly directs process like execution, garnishment or such orders upon third persons not party to a case, relief and remedy must be sought only from the same court or to a superior court and not with any coordinate or co-equal court?"[1]

The facts which gave rise to the instant petition are as follows:

Petitioner Masterbuilt Industries, Inc. (MII, for short), a manufacturer of ZEBRA brand of utility motor vehicles, obtained judgment in Civil Case No. 88-2648 for "Replevin or Damages" in its favor and against Master Ace

Sales and Development, Inc. (MASD, for short), before the Regional Trial Court, Makati, Branch 146. In this judgment, MASD was ordered to pay MII in the principal sum of P983,000.00, representing the purchase price of five (5) units of utility motor vehicles delivered to MASD by MII, as one of its dealers. After this judgment became final, MII moved for the issuance of the writ of execution, which the court did, directing herein petitioner, Cristobal Jabson, the deputy sheriff, to implement the judgment. Upon Sheriff's Return showing that the writ of execution was unsatisfied, as defendant MASD had already moved out of its address, without leaving any forwarding address and upon verification with the Securities and Exchange Commission showing that certain incorporators had remaining balances or unpaid subscriptions, MII moved for the issuance of an Alias Writ of Execution praying that judgment be enforced against the funds, goods and chattels of defendants MASD and goods of its incorporators only up to the extent of their unpaid subscriptions, as follows:

Name

Amount of Unpaid

Subscription

CONCEPCION PESTANO

P 375,000.00

LEVISA PESTANO

375,000.00

PURIFICACION CASTRO

150,000.00

LIZA C. CASTRO

300,000.00

RAMON C. CASTRO

300,000.00

It is this alias writ which Sheriff Jabson intended to implement upon the funds of herein private respondents which gave rise to the action for injunction filed by them with respondent RTC-Makati, Branch 133. In this civil case, the presiding judge issued an order granting preliminary injunction and later denied MII's motion to reconsider said order. Hence this petition for certiorari.

Before even discussing the issues raised by the petitioners, We find it important to lay down the basic principles regarding the remedy herein involved. It is very essential to note that the writ of certiorari is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. Where the error is not one of jurisdiction but an error of law or of fact which is a mistake of judgment, appeal is the remedy.[2] Where the proper remedy is appeal, the action for certiorari will not be entertained.[3] The original action for certiorari is not a substitute for appeal.[4]

To the query of whether or not the RTC-Makati, Branch 133 may restrain and enjoin the execution of a final and executory judgment of RTC-Makati, Branch 146. We answer in the affirmative.

There is no question that the action filed by private respondents herein, as third-party claimants, before RTC-Makati, Branch 133, wherein they claimed that their bank accounts cannot be garnished pursuant to a judgment where they are not parties thereto is within the respondent court's jurisdiction. The respondent court found basis in exercising its jurisdiction in Section 17, Rule 39 of the Rules of Court, which provides:

"Sec. 17. Proceedings where property claimed by third person. -- If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

"The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action. (Underscoring supplied).

"x x x x x"

Jurisdiction over the subject matter of the case is conferred by law, and this jurisdiction is determined by the allegations of the complaint.[5] In the allegations of the complaint filed by the respondents, they claimed that there remains no unpaid subscriptions to which they may be held accountable for, thus, they are third parties insofar as the judgment against MASD is concerned. They claim that the court which issued the alias writ of execution authorizing the garnishment of their bank accounts in satisfaction of the debt of MASD, acted outside of its jurisdiction. It is these allegations which confer jurisdiction upon respondent court.

We cannot agree with the petitioner that because they alleged in their motion to dismiss that the respondents are incorporators of MASD with unpaid subscriptions to which MII as judgment creditor may garnish and claim as satisfaction of MASD's debt, the respondent court loses jurisdiction over the case. Jurisdiction cannot be made to depend upon the pleas and defenses set up by a defendant in a motion to dismiss or answer, otherwise, jurisdiction should become dependent almost entirely upon the defendant.[6] Defense of lack of jurisdiction which is dependent on a question of fact does not render the court to lose or be deprived of its jurisdiction. The Court has authority to hear evidence for the purpose of determining whether or not it has jurisdiction.[7]

The rule that no court has power to interfere by injunction with the judgments or decrees of a concurrent or coordinate jurisdiction having equal power to grant the injunctive relief sought by injunction, is applied in cases where no third-party claimant is involved, in order to prevent one court from nullifying the judgment or process of another court of the same rank or category, a power which devolves upon the proper appellate court.[8] Because the power of the court in the execution of its judgment extends only to properties belonging to the judgment debtor,[9] the Rules of Court grants a third-party claimant remedies which were lucidly restated in *Sy vs. Discaya*,[10] thus:

"As held in the case of *Ong vs. Tating, et al.*, construing the aforecited rule, a third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the

rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.

Independent of the above-stated recourse, a third-party claimant may also avail of the remedy known as "tercecia", provided in Section 17, Rule 39, by serving on the officer making the levy an affidavit of his title and a copy thereof upon the judgment creditor. The officer shall not be bound to keep the property unless such judgment creditor or his agent, on demand of the officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the sheriff within one hundred twenty (120) days from the filing of the bond.

The aforesaid remedies are nevertheless without prejudice to "any proper action" that a third-party claimant may deem suitable to vindicate "his claim to the property." Such a "proper action" is, obviously, entirely distinct from that explicitly prescribed in Section 17 of Rule 39, which is an action for damages brought by a third-party claimant against the officer within one hundred twenty (120) days from the date of the filing of the bond for the taking or keeping of the property subject of the "terceria."

Quite obviously, too, this "proper action" would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim; and it may be brought against the sheriff and such other parties as may be alleged to have colluded with him in the supposedly wrongful execution proceedings, such as the judgment creditor himself. Such "proper action," as above pointed out, is and should be an entirely separate and distinct action from that in which execution has issued, if instituted by a stranger to the latter suit.

The remedies above mentioned are cumulative and may be resorted to by a third-party claimant independent of or separately from and without need of availing of the others. If a third-party claimant opted to file a proper action to vindicate his claim of ownership, he must institute an action, distinct and separate from that in which the judgment is being enforced, with the court of competent jurisdiction even before or without need of filing a claim in the court which issued the writ, the latter not being a condition sine qua non for the former. In such proper action, the validity and sufficiency of the title of the third-party claimant will be resolved and a writ of preliminary injunction against the sheriff may be issued."

In their second query, the petitioners contend that the issue to be resolved by respondent court is whether or not RTC-Makati, Branch 146, erred in its findings that certain persons have money due and owing to the judgment creditor. To this contention, We do not agree because the issue joined in the case before the respondent court is whether or not the respondents are third-party claimants as far as the garnished bank accounts are concerned. It would have been different if the respondents herein had been examined and heard before the RTC-Makati, Branch 146 pursuant to Section 39, Rule 39 of the Rules of Court, whereafter they have been found by said court to have moneys due and owing to the judgment debtor. In the latter case, RTC-Makati, Branch 133, would not have jurisdiction to review such findings.

The third and fourth queries do not involve the jurisdiction of the court but mixed questions of fact and law involving the exercise of jurisdiction by the lower court which would now involve mistakes of fact or errors of judgment and/or of law which are correctible by appeal.[11] Because certiorari is not a substitute for appeal,[12] We are not ready to rule on the issues not involving jurisdiction or grave abuse of discretion amounting to lack of jurisdiction. They may be pure questions of law, as petitioner may put it, but still they are proper subjects of

appeal, not certiorari.

Certiorari does not lie in the instant case. For certiorari to lie upon a court having jurisdiction, there must be a capricious, arbitrary and whimsical exercise of power. The abuse of discretion must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically.[13]

We do not find such grave abuse of discretion to be committed by the respondent court.

WHEREFORE, premises considered, the petition is hereby DISMISSED for lack of merit with costs against the petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[1] Rollo, p. 3.

[2] Matute vs. Macadaeg and Medel, 99 Phil. 340 (1956); De Gala-Sison vs. Maddela, 67 SCRA 478 (1975).

[3] Nocon vs. Hon. F. Geronimo, et al., 101 Phil. 735 (1957).

[4] Lobete vs. Sundiam, 123 SCRA 95 (1983).

[5] Orosa, Jr. vs. Court of Appeals, 193 SCRA 391 (1991); Campos Rueda Corp. vs. Hon. Bautista, et al., 116 Phil. 546 (1962).

[6] Commart (Phils.), Inc. vs. Securities & Exchange Commission, 198 SCRA 73 (1991).

[7] Evangelista vs. Court of Agrarian Relations of Iloilo, et al., 109 Phil. 957 (1960).

[8] Arabay, Inc. vs. Salvador, 82 SCRA 138 (1978) cited in Traders Royal Bank, Inc. vs. Intermediate Appellate Court, 133 SCRA 141 (1984).

[9] Consolidated Bank and Trust Corp. vs. Court of Appeal, 193 SCRA 158 (1991).

[10] 181 SCRA 378 (1990).

[11] Tirona vs. Nañawa, 21 SCRA 395 (1967); Rep. of the Phils. vs. Hon. Perez, et al., 118 Phil. 342 (1963); Rueda vs. Court of Agrarian Relations and David, 106 Phil. 300 (1959).

[12] Vivo vs. Reyes, 95 SCRA 81 (1980).

[13] Francisco vs. Mandi, 152 SCRA 711 (1987).

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