

SERVICEWIDE SPECIALISTS INCORPORATED, PETITIONER, VS. HON. COURT OF APPEALS AND ARMANDO CUSTODIO, JR., RESPONDENTS.

G.R. No. 103301. December 08, 1995

Ponente: VITUG, J.

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VITUG, J.:

This petition of Servicewide Specialists, Incorporated, seeks a review on certiorari of the 30th August 1991 decision of the Court of Appeals[1] in CA-G.R. CV No. 20289 setting aside the judgment of the Regional Trial Court of Manila, Branch 19,[2] which disposed of then Civil Case No. 83-18536, a suit for replevin and damages, as follows:

"WHEREFORE, judgment is hereby rendered, in favor of plaintiff and against the defendant Armando Custodio, Jr., ordering him to deliver and return the motor vehicle in question, complete with accessories and equipment; and in the event that manual delivery of the said motor vehicle cannot be effected, ordering said defendant to pay the sum of P54,642.50, plus interest at the rate of 14% per annum, from June 18, 1983 until fully paid, and to pay the costs.

"SO ORDERED."[3]

The litigation concerns a motor vehicle, a Colt Galant Sigma 1600E, 1977 model, 4-door sedan, colored Baikal White, with Serial No. A-121--UL-493 and Engine No. 2G-171-34. The decisions of both the appellate court and the trial court rest on the following representation of the facts:

"Plaintiffs evidence shows that, on August 29, 1977, Eleuterio Bondoc executed and delivered to Carmark Philippines a promissory note in the sum of P66,119.04, payable in installments, Exhibit A, and in order to secure payment, a chattel mortgage was executed in favor of Carmark Philippines over the aforementioned motor vehicle, Exhibit B, which was subsequently assigned in favor of Filinvest Corporation, with the conformity of Eleuterio Bondoc, Exhibit C.

"On July 27, 1979, Eleuterio Bondoc, as vendor, executed a deed of sale with assumption of mortgage of the balance of the account in favor of Cesar Dollente, Exhibits D and D-1, which, upon approval by Filinvest Corporation, Cesar Dollente executed and delivered to Filinvest Corporation a promissory note in the amount of P37,528.83, payable in installments, Exhibit E. On October 26, 1979, Cesar Dollente, as vendor, executed a deed of sale with assumption of mortgage over the aforementioned vehicle for the balance of his account in favor of Ernesto Dollente, Exhibit E. On September 28, 1979, Ernesto Dollente executed and delivered to Filinvest Corporation a promissory note for the sum of P37,528.83, payable in monthly installments. This obligation was secured by a chattel mortgage executed between Cesar Dollente and Ernesto Dollente, which was annotated and registered, Exhibit B-1. Subsequently, Filinvest Corporation assigned all its rights and interests on the promissory note and chattel mortgage to plaintiff, with notice to Ernesto Dollente. The original defendant Ernesto Dollente, having defaulted in the payment of the monthly installments which fell due on June 15, 1979 up to September 15, 1981, plaintiff demanded from said defendant the payment of the entire balance, which includes interest thereon and to return the motor vehicle in question. By reason of the refusal of the original defendant to pay the entire balance and to surrender possession of the subject motor vehicle, this

case was filed and, upon its filing, upon motion, a writ of seizure was issued and the same was implemented by the sheriff. A counter-replevin bond having been filed, defendant Armando Custodio, Jr. had obtained possession of the mortgaged vehicle.

"Traversing the plaintiff's claim, defendant's evidence shows that, on September 8, 1978, defendant Armando Custodio, Jr. obtained the motor vehicle in question by purchase from Ernesto Dollente, Exhibit 1. Ernesto Dollente bought the same on April 14, 1978 from Venus Motor Sales, Exhibits 2 and 3. When defendant bought the said vehicle from Ernesto Dollente, he was issued a clearance from the Constabulary Highway Patrol Group, Exhibits 4 and 4-A. Since then defendant has been possessing the vehicle in question. This vehicle was previously registered at Urdaneta, Pangasinan." [4]

Finding preponderance of the evidence in favor of herein petitioner, the lower court ruled:

"The claim of herein defendant that, Ernesto Dollente's breach of the chattel mortgage should not bind him, because he is not a privy to such contract, is hardly acceptable, for the reason that the registration of the chattel mortgage is an effective and binding notice to him of its existence. The transaction of Ernesto Dollente, which led to the transfer of the registration of this motor vehicle in favor of defendant Armando Custodio, Jr., is doubtful and must have been conveniently arranged or manipulated to effect this transfer. It is settled that once a mortgage is registered with the Register of Deeds and in the Land Transportation Commission, it is binding against anybody, including defendant Armando Custodio, Jr. As correctly pointed out, in purchasing the motor vehicle in question, defendant Armando Custodio, Jr. knew or, at least, was presumed to know, by the mere fact that the mortgage was registered in the Office of the Register of Deeds, as in this case, the said chattel mortgage was subject to a mortgage lien." [5]

On appeal to it, the Court of Appeals saw merit in the contention of private respondent that the dismissal at the instance of petitioner himself of the amended complaint against Ernesto Dollente after a failure of summons on him, was "fatal to the entire action" Dollente being, in the considered view of the appellate court, an indispensable party to the proceedings. The appellate court elaborated:

"x x x it is abundantly clear that the dismissal of the complaint as against the principal defendant Dollente has robbed the action of any cause for survival. The replevin suit owed its existence to an alleged right to possession of the motor vehicle, which right in turn was founded on the alleged default of Dollente. Now, since 'the case against Ernesto Dollente' was dismissed, albeit without prejudice, there remains no cause of action against said defendant in the case. And since, there is no distinct cause of action against the remaining defendant, herein appellant Custodio, there remains no provable cause in the action. The plaintiff's right to possession of the car in case which is 'conditioned upon the fact of actual default on the part of the principal obligor' the existence of which fact 'may naturally be the subject of controversy' could not properly be established in the absence, and after the plaintiff-initiated exclusion, of the principal obligor and principal defendant. There is no question, under the circumstances, that Dollente was an indispensable party in the action. His presence is indispensable, essential and compulsory if a final determination of the action should be achieved (Sec. 7, Rule 3).

"It was clearly an error for the trial court to have proceeded with the case without the indispensable Dollente. The judgment rendered by the trial court following such flawed proceedings is therefore ineffectual and ineffective." [6]

While, in its present petition for review on certiorari, Servicewide has raised a number of points, the crucial issue still remains, however, to be whether or not an action filed by the mortgagee for replevin to effect a foreclosure of the property covered by the chattel mortgage would require that the mortgagor be so impleaded as an indispensable party thereto.

Rule 60 of the Rules of Court allows a plaintiff, in an action for the recovery of possession of personal property,

to apply for a writ of replevin if it can be shown that he is "the owner of the property claimed x x x or is entitled to the possession thereof." [7] The plaintiff need not be the owner so long as he is able to specify his right to the possession of the property and his legal basis therefor. The question then, insofar as the matter finds relation to the instant case, is whether or not the plaintiff (herein petitioner) who has predicated his right on being the mortgagee of a chattel mortgage should implead the mortgagor in his complaint that seeks to recover possession of the encumbered property in order to effect its foreclosure.

The answer has to be in the affirmative. [8] In a suit for replevin, a clear right of possession must be established. A foreclosure under a chattel mortgage may properly be commenced only once there is default on the part of the mortgagor of his obligation secured by the mortgage. The replevin in the instant case has been sought to pave the way for the foreclosure of the object covered by the chattel mortgage. The conditions essential for that foreclosure would be to show, firstly, the existence of the chattel mortgage and, secondly, the default of the mortgagor. These requirements must be established since the validity of the plaintiff's exercise of the right of foreclosure are inevitably dependent thereon. It would thus seem, considering particularly an adverse and independent claim of ownership by private respondent, that the lower court acted improvidently when it granted the dismissal of the complaint against Dollente, albeit on petitioner's (then plaintiff) plea, on the ground that the "non-service of summons upon Ernesto Dollente (would) only delay the determination of the merits of the case, to the prejudice of the parties." [9] In *Imson v. Court of Appeals*, we have explained:

"x x x. An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

"Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. He is not indispensable if his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation." [10]

Without the presence of indispensable parties to a suit or proceeding, a judgment of a court cannot attain real finality. [11]

Having arrived at the foregoing conclusion, the Court need not take up the other issues raised by petitioner.

In passing, the failure of summons upon Ernesto Dollente, per the Sheriff's Return dated July 19, 1983, [12] is said to have been due to defendant's being no longer a resident "at the given address as per information gathered from the present occupant of the premises." It appears that the remedial measures provided in Rule 14 of the Rules of Court regrettably have not been properly availed of; for instance, substitute service of summons under Section 8 thereof could have been resorted to. [13]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Penned by Associate Justice Alfredo L. Benipayo and concurred in by Associate Justices Manuel C. Herrera and Cancio C. Garcia.

[2] Presided by Judge Wenceslao M. Polo.

[3] Rollo, p. 57.

[4] Records, pp. 516-518.

[5] Records, pp. 519-520.

[6] Rollo, pp. 59-60.

[7] Section 1. Application. — Whenever the complaint in an action prays for the recovery of possession of personal property, the plaintiff may, at the commencement of the action or at any time before answer, apply for an order for the delivery of such property to him, in the manner hereinafter provided.

Section. 2. Affidavit and bond. — Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:

(a) That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

(b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof according to his best knowledge, information, and belief;

(c) That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or if so seized, that it is exempt from such seizure; and

(d) The actual value of the property.

The plaintiff must also give a bond, executed to the defendant in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the defendant if the return thereof be adjudged, and for the payment to the defendant of such sum as he may recover from the plaintiff in the action.

[8] Sec. 7. Compulsory joinder of indispensable parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (Rule 3, Rules of Court)

[9] Records, p. 184.

[10] 239 SCRA 58, 65.

[11] Uy v. Court of Appeals, 232 SCRA 579; see also Galarosa v. Valencia, 227 SCRA 728.

[12] Records, p. 34.

[13] Laus v. Court of Appeals, 219 SCRA 688.

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