

AIR FRANCE, PETITIONER, VS. HONORABLE COURT OF APPEALS, IOLANI DIONISIO, MULTINATIONAL TRAVEL CORPORATION OF THE PHIL., FIORELLO AND VICKY PANOPIO, RESPONDENTS.

G.R. No. 104234. June 30, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] which annulled and set aside the orders of the Regional Trial Court of Manila, Branch 27.

The facts, as found by respondent Court of Appeals, are as follows:

Petitioner Air France filed a complaint for sum of money and damages against private respondents Multinational Travel Corporation of the Philippines, Fiorello Panopio and Vicky Panopio before the Regional Trial Court of Manila, Branch 27, then presided over by the Hon. Ricardo Diaz.

After trial, the court rendered judgment on August 31, 1987 in favor of petitioner, ordering private respondents to pay petitioner, jointly and severally, the amount of P2,518,698.66, with legal rate of interest per annum from September 22, 1986, until fully paid and P50,000.00 as and for attorney's fees.

On December 29, 1989, petitioner moved for the issuance of an alias writ of execution on the ground of unsatisfied judgment. It likewise moved to declare the sale to Iolani Dionisio of a parcel of land with a house erected thereon in the name of the Multinational Food Corporation and covered by Transfer Certificate of Title No. 353935 as one in fraud of creditors.

Petitioner, in said motion, stated that private respondent spouses jointly owned 91% of Multinational Food and Catering Corporation (Multinational Food), other stockholders being: Aldo Glen Panopio (brother of Fiorello) - 3%; Jaime Dionisio (husband of private respondent Iolani Dionisio) - 3%; and Marie Rose Ricasa - 3%. Petitioner stated that although Multinational Food was registered with the Securities and Exchange Corporation, it neither engaged in operations nor held meetings because of adverse business conditions. The Corporation, through its President Iolani Dionisio, filed a sworn statement to this effect with the SEC dated July 28, 1986. However, petitioner alleged that despite its being non-operational, Multinational Food acquired from Ayala Investment and Development Corporation (Ayala Corporation) the subject property on February 1, 1985.

Petitioner further alleged that private respondent spouses subsequently sold the property to Iolani Dionisio on April 11, 1985. However, the sale was not registered until one year and nine months later or at the time petitioner was pursuing the issuance of a writ of attachment.

Petitioner's motion was set for hearing on January 4, 1990, on which date the respondent court ordered the issuance of an alias writ of execution and on January 8, 1990, the same was issued.

Private respondent spouses filed their opposition thereto on the following grounds:

"x x x (a) the respondent court has no jurisdiction because the alleged buyer in the person of Iolani Dionisio is not a party in the case; (b) that Iolani Dionisio was not served with summons and therefore to declare the sale to her in fraud of creditors without even jurisdiction would amount to deprivation of property without due process of law; and (c) that the proper remedy is an independent civil action where indispensable parties are to be impleaded to afford them to answer and/or refute charges."

On January 19, 1990, the trial court issued an order requiring Iolani Dionisio and Multinational Food to answer the allegations contained in petitioner's motion. However, both parties failed to file their respective answers thereto.

On November 19, 1990, the court issued an order finding the sale in favor of Iolani Dionisio of the subject property covered by TCT No. 353935 registered with the Registry of Deeds of Quezon City in the name of Multinational Food as having been made in fraud of creditors.

Private respondents filed a motion for reconsideration which was denied in the order of February 15, 1991; whereupon, they then filed a petition for certiorari with the Court of Appeals, alleging that the lower court acted with grave abuse of discretion amounting to lack of jurisdiction.

On February 24, 1992, the appellate court rendered a decision annulling and setting aside the questioned orders. It further enjoined petitioner from proceeding against the property in question.

Hence, this petition.

The sole issue to be resolved in the instant case is whether or not the Court of Appeals erred in annulling and setting aside the orders of the trial court.

Petitioner claims that a separate civil action, as proposed by private respondents, will only perpetrate fraud.

We find petitioner's contention to be devoid of merit.

First, the subject property is registered with the Register of Deeds of Quezon City in the name of the Multinational Food and Catering Corporation and not in the name of either the Multinational Travel Corporation of the Philippines or of the spouses Fiorello and Vicky Panopio who are the judgment debtors.

It is well-settled that the power of the court in the execution of judgments extends only over properties unquestionably belonging to the judgment debtor.[2] Here, the property in question was sold to private respondent Iolani Dionisio, who was not a party to the case subject of execution.

In *Bayer Philippines, Inc. v. Agana*,[3] the Court said:

"x x x Once a court renders a final judgment, all the issues between or among the parties before it are deemed resolved and its judicial function as regards any matter related to the controversy litigated comes to an end. The execution of its judgment is purely a ministerial phase of adjudication. Indeed, the nature of its duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the loser is generally ministerial. x x x.

x x x x x x x x

In other words, construing Section 17 of Rule 39 of the Revised Rules of Court, the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment should not be decided in the action where the third-party claims have been presented, but in the separate action instituted by the claimants.

This is evident from the very nature of the proceedings. In *Herald Publishing, supra*, We intimated that the levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under authority of the

court only when the property levied upon unquestionably belongs to the defendant. If he attach properties (sic) other than those of the defendant, he acts beyond the limits of his authority. Otherwise stated, the court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor, and should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action." (Italics supplied)

Multinational Food and Iolani Dionisio, not being parties to the case, the property covered by TCT No. 353935 may not be levied upon to satisfy the obligations of private respondent spouses and the Multinational Travel Corporation.

Petitioner's contrary claim that the property belongs to private respondent spouses, if true, requires a rescissory action which cannot be done in the same case, but through the filing of a separate action.

Rescission is a relief which the law grants on the premise that the contract is valid for the protection of one of the contracting parties and third persons from all injury and damage the contract may cause, or to protect some incompatible and preferential right created by the contract.[4]

Under Art. 1381 of the Civil Code, the following contracts are rescissible:

"x x x x x x x x

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission."

Rescissible contracts, not being void, they remain legally effective until set aside in a rescissory action and may convey title. Nor can they be attacked collaterally upon the grounds for rescission in a land registration proceeding.[5]

An action for rescission may not be raised or set up in a summary proceeding through a motion, but in an independent civil action and only after a full-blown trial. As Article 1383 of the Civil Code provides:

"Art. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same."

Regarding contracts undertaken in fraud of creditors, the existence of the intention to prejudice the same should be determined either by the presumption established by Article 1387[6] or by the proofs presented in the trial of the case.[7] In any case, the presumption of fraud established by this article is not conclusive, and may be rebutted by satisfactory and convincing evidence.[8] To repeat, an independent action is necessary to prove that the contract is rescissible.

Under Article 1389 of the Civil Code, an "accion pauliana,"[9] the action to rescind contracts made in favor of creditors, must be commenced within four years.

Clearly, the rights and defenses which the parties in a rescissible contract may raise or set up cannot be properly

ventilated in a motion but only in a full trial.

The appellate court did not err in holding that the trial court acted with grave abuse of discretion in resolving these matters through mere motion of petitioner.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] CA - G.R. SP No. 26591, Celso L. Magsino, J., ponente, Serafin E. Camilon and Artemon D. Luna, JJ., concurring; Rollo, p. 21.

[2] Escovilla, Jr. v. Court of Appeals, 179 SCRA 108 (1989).

[3] 63 SCRA 364-366 (1975).

[4] Aquino v. Tañedo, 39 Phil. 517.

[5] Borja v. Addison, 44 Phil. 895.

[6] Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence.

[7] Ayles v. Reyes, 18 Phil. 243.

[8] Peña v. Mitchell, 9 Phil. 587; Buencamino v. Bantug, 58 Phil. 571; Gatchalian v. Manalo, 68 Phil 708.

[9] Moreno, Philippine Law Dictionary, p. 14, 1988 edition.

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