HON. BERNARDO P. ABESAMIS, SHERIFF SILVERIO BERNAS AND JEROME SOLCO, PETITIONERS, VS. COURT OF APPEALS (FORMER FIFTEENTH DIVISION), DAE SUGAR MILLING CO., INC., AZUCAR MANAGEMEN...

G.R. No. 109559. July 19, 2001

Ponente: PARDO, J.

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PARDO, J.:

We decide the above-cases jointly.

The cases

G. R. No. 109559 is an appeal via certiorari of Jerome Solco[2] from the decision of the Court of Appeals[3] declaring the writ and alias writ of execution issued by the trial court[4] null and void as against DAE Sugar Milling Co., Inc., Azucar Management and Development Corporation, and Rosita Lopingco, not parties to the compromise.[5]

G. R. No. 109581 is an appeal via certiorari of Eduardo R. Lopingco[6], from the same decision of the Court of Appeals assailing it insofar as it upholds the trial court's decision approving the compromise agreement he had voluntarily entered into.[7]

The Facts

On August 30, 1991, petitioner Jerome Solco filed with the Regional Trial Court, Quezon City, Branch 85 an action for damages totalling P11,621,913.00, moral damages and exemplary damages, attorney's fees and costs, with preliminary attachment against respondents DAE Sugar Milling Corporation, Azucar Management and Development Corporation, Eduardo L. Lopingco, Teody Lopingco and Rosita Lopingco, claiming that the sugar quedans he had purchased turned out to be worthless.

On September 12, 1991, petitioner Solco amended the complaint increasing his demand for actual damages to P28,520,320.70.[8]

In their answer, respondents contended that the quedans were owned by the corporation's controlling stockholder, respondent Eduardo Lopingco, and were merely borrowed by petitioner for use as collateral for a loan he had intended to obtain from lending institutions.

On May 27, 1992, petitioner Solco and respondent Eduardo R. Lopingco,[9] assisted by their respective counsel, entered into a "Compromise Agreement"[10] wherein Lopingco acknowledged "his liability on plaintiff's claim" in the total amount of P68,421,050.00, inclusive of attorney's fees, and promised to pay said amount in seven and thereafter, in six monthly installments; that as security for his installment payments, respondent Eduardo Lopingco agreed that his personal properties under attachment shall remain attached; and that in the event of default, respondent also agreed that his attached properties could be sold to satisfy all amounts still due from him.

The parties submitted the "Compromise Agreement" to the trial court. On May 27, 1992, the trial court rendered a judgment approving the compromise agreement in accordance with its terms and conditions and enjoined the parties to comply therewith. All other claims and counterclaims of the parties were considered waived.

Respondent Eduardo R. Lopingco, however, failed to comply with the terms of the compromise agreement, so that on June 24, 1992, petitioner Solco filed with the trial court a motion for "the issuance of a writ of execution against respondent Eduardo R. Lopingco, for the amount of P68,421,050.00, plus interest at the rate of 30% per annum from today until the date of full payment."

On July 3, 1992, the trial court issued the writ of execution[11] as prayed for by virtue of which the court's branch sheriff levied upon and/or garnished certain personal property belonging to respondent Lopingco as well as respondents AZUCAR and DASUMICO; and certain real property belonging to respondents Eduardo Lopingco and Rosita Lopingco, and AZUCAR and DASUMICO, with a total value of P36,111,000.00, which according to the sheriff's report/return was in partial satisfaction of the court's judgment in the case.[12]

On July 9, 1992, the trial court issued a Notice of Levy on Execution[13] including property of Talisay-Silay and Ma-ao which were not parties to the case.

The notice was annotated as Entry No. 350179 on TCT 115609, the certificate of title covering the vast tract of land and sugar mill owned and registered in the name of Talisay-Silay, located in the municipality of Talisay-Silay, Negros Occidental.

Talisay-Silay learned of the annotation only when it secured a xerox copy of its title from the Register of Deeds. The owner's duplicate copy of the title does not bear such inscription.

As Talisay-Silay was not a party to the case, on October 22, 1992, it filed a third party claim and, on December 23, 1992, a motion for cancellation of entry no. 350179 on TCT No. 115609, asking the trial court to lift the levy thereon.

On September 17, 1992, petitioner filed with the trial court an urgent ex parte motion for an alias writ of execution which, although opposed by respondents[14] the trial court granted on October 7, 1992. On October 12, 1992, the branch clerk of court issued an alias writ of execution[15] against all the defendants in the case.

On October 15, 1992, respondents DAE Sugar Milling Co., Inc., et al. filed with the Court of Appeals a petition[16] for certiorari assailing the trial court's judgment by compromise of May 27, 1992 and its order of October 7, 1992, and alias writ of execution of October 12, 1992.

On December 14, 1992, the Court of Appeals promulgated its decision ruling that the compromise agreement cannot be extended to other defendants who did not participate in the compromise agreement approved by the court nor give proper authority to their co-defendants Eduardo R. Lopingco to bind them in the agreement.

Accordingly, the Court of Appeals set aside the writ of execution insofar as petitioners DASUJICO, AZUCAR and Rosita Lopingco are concerned. The Court of Appeals declared the decision by compromise effective and binding only as against petitioner Solco and respondent Eduardo R. Lopingco.[17]

On December 29, 1992, petitioner Solco filed with the Court of Appeals a motion for partial reconsideration.[18]

On March 24, 1993, the Court of Appeals denied petitioner's motion.[19]

On April 30, 1993, petitioner Jerome Solco filed with the Supreme Court a petition for review on certiorari to set aside the resolution of the Court of Appeals declaring the writs of execution by the lower court void as against DAE Sugar Milling Co., Inc. Azucar Management Development Corp. and Rosita Lopingco.[20]

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Also on April 30, 1993, Eduardo R. Lopingco filed with the Supreme Court a petition for review on certiorari of the same decision of the Court of Appeals to set aside the compromise agreement and the judgment based thereon and to declare void all writs and levies made in contravention of law and to remand the case to the trial court for further proceedings.[21]

On December 9, 1993, the parties, namely, petitioner Jerome Solco and respondents DAE Sugar Milling Co., Inc. and Eduardo R. Lopingco, through counsel, filed with the Supreme Court a joint motion[22] informing the Court that petitioner Jerome Solco and respondent DAE Sugar Milling Co., Inc. had entered into a memorandum of agreement[23] and requested that the same be approved and that the Court issue a resolution directing the Register of Deeds of Negros Occidental to register the memorandum of agreement on the property covered by TCT No. 115609.

On January 17, 1994, Ma-ao Sugar Central Co., Inc. and Talisay Silang Sugar Milling Co. Inc. filed with the Supreme Court a motion for intervention stating that the memorandum of agreement which DAE Sugar, Solco and respondent Eduardo R. Lopingco executed aside from containing void, illegal and anomalous terms was in fraud of creditors Ma-ao and Talisay Silay.[24]

On July 13, 1994, the Court resolved to consolidate G. R. No. 109581 with G. R. No. 109559.[25]

On January 10, 1996, the trial court issued an order granting Talisay-Silay's Motion for Partial Reconsideration and Supplemental Motion for Partial Reconsideration, lifting the levy and sale on execution of its properties covered by TCT No. 115609, and ordering the Register of Deeds to cancel Entry No. 350179 on the TCT.[26]

The Issues

In G. R. No. 109559, the issue raised is whether respondents DASUMICO and AZUCAR were bound by the compromise agreement entered into by petitioner and respondent Eduardo R. Lopingco even without express resolution of the board of directors authorizing him to enter into such compromise.

In G. R. No. 109581, the issue raised is whether the judicial compromise of the parties may be set aside owing to serious flaws therein.

However, these issues were superseded by the subsequent filing by the petitioner and respondent of a memorandum of agreement. The issue now is whether the Court may approve the latter agreement.

The Court's Ruling

We find the memorandum of agreement dated November 25, 1993, executed by petitioner Jerome Solco and respondent DAE Sugar Milling Co., Inc. (DAE) void in that:

a)

Solco and Dae Sugar have nothing to ratify because the levy and sale on execution of TCT No. 115609 have been nullified by both the Court of Appeals and the Regional Trial Court. Thus, the levy and sale to be implemented or validated are now nonexistent.

b)

TCT No. 115609 is registered in the name of Talisay-Silay. As found by the lower court, Dae Sugar did not acquire it by the Agreement to Sell. Dae Sugar is falsely warranting "its title to and ownership of" TCT No. 115609 which does not belong to it at all.

c)

> Dae Sugar is illegally ceding, transferring and conveying to Solco, "in a manner absolute, final and irrevocable" TCT No. 115609.
>
> d)
>
> Dae Sugar cannot satisfy its obligation to Solco by assigning to the latter TCT No. 115609 which it did not own.

Consequently, we deny the joint motion for the approval of the memorandum of agreement.

Talisay-Silay's right of ownership is evidenced by its certificate of title. In Demasiado vs. Velasco,[27] we sustained the indefeasibility and conclusiveness of a torrens title, ruling that:

> "Under Section 47 of the Land Registration Act (Act No. 496), the certificate of title covering registered land shall be received as evidence in all courts of the Philippines, and shall be conclusive as to all matters contained therein (principally, the identity of the owner of the land covered thereby)."

In its order dated January 10, 1996, the lower court upheld the ownership of Talisay-Silay of the property covered by TCT No. 115609.

With the object of settling their obligation to petitioner Solco, respondents Eduardo R. Lopingco and Dae Sugar were ceding the property covered by TCT No. 115609 to petitioner Solco under the memorandum of agreement. Pursuant to the agreement, the transfer of such property "shall be considered as full settlement of (Dae Sugar's) obligation" to petitioner Solco.

Dae Sugar warrants that it has become the owner of the property by virtue of an agreement to sell executed with Talisay-Silay.

However, the agreement to sell between Talisay-Silay and Dae Sugar did not transfer the property to the latter since the agreement was to sell and not one of sale. Thus, a deed of sale or some other contract was necessary to consummate the sale.

"In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective."[28]

No deed of sale has been executed as the conditions of the sale have not been complied with. Significantly, Dae Sugar and Lopingco never asked for the execution of such deed for the simple reason that they were not entitled thereto.

Dae Sugar did not own the property covered by TCT No. 115609. The total claim of petitioner Solco was only P28 million while Talisay-Silay's property covered by TCT No. 115609 had a present market value of around P400 million. With respect to Ma-ao's claim, TCT No. 115609 is a substitute collateral to secure an obligation amounting to at least P135 million. The Court of Appeals nullified the writs of execution issued against respondents other than Eduardo R. Lopingco. Dae Sugar is not liable and is not a judgment debtor.

Finally, even if it be assumed that Dae Sugar and Azucar were mere alter egos of respondent Eduardo Lopingco, this will only result in the validation of the compromise agreement executed between Jerome Solco and Eduardo

R. Lopingco. Nonetheless, the levy and sale on execution of property other than those owned by Eduardo R. Lopingco remain void. Thus, the levy on, and sale, of the property covered by TCT No. 115609, which belongs to, and registered in the name of, Talisay-Silay can not be validated.

In Consolidated Bank and Trust Corp. vs. Court of Appeals,[29] the Court made it clear that:

> "The trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him. (Section 15, Rule 39, Revised Rules of Court). The exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties unquestionably owned by the judgment debtor and are not exempt by law from execution. For the power of the /court in the execution of its judgment extends only over properties belonging to the judgment debtor. (See Reyes vs. Grey, 21 Phil. 258 [1920], Herald Publishing, Inc. vs. Agana).
>
> x x x x x
>
> "We rule that the levy under attachment or levy on execution of the CMI properties effected by the deputy sheriff is null and void."

In Republic vs. Enriquez,[30] we said:

> "x x x The power of the court in execution of judgments extends only to properties unquestionably belonging to the judgment debtor. Execution sales affect the rights of the judgment debtor only, and the purchaser in an auction sale acquires only such right as the judgment debtor had at the time of sale. It is also well-settled that the sheriff is not authorized to attach or levy property not belonging to the judgment debtor."

The Judgment

WHEREFORE, the Court:

- DENIES the "Joint Motion (Re: Settlement Agreement of the Parties)" and declares the "Memorandum of Agreement" attached thereto as contrary to law and thus, VOID;

- DENIES petitions in both cases (G. R. Nos. 109559 and 109581 and AFFIRMS the decision of the Court of Appeals in CA-G. R. SP No. 29716;

- ORDERS the Register of Deeds of the Province of Negros Occidental to CANCEL Entry No. 350179 and all annotations made on TCT No. T-115609.

- DISMISSES the complaint and counterclaims in Civil Case No. Q-91-9906 of the Regional Trial Court, Quezon City.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] It is improper to include the Judge as co-petitioner or respondent (Rule 45, Sec. 4, 1997 Rules of Civil Procedure, as amended).

[2] For purposes of this decision, we shall refer to Jerome Solco as petitioner throughout the decision even though he is respondent in G. R. No. 109581.

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[3] In CA-G. R. SP No. 29176, promulgated on December 14, 1992.

[4] In Civil Case No. Q-91-9906, Decision, dated May 27, 1992, approving the compromise agreement.

[5] G. R. No. 109559, Petition, Annex "A", Rollo, pp. 40-47.

[6] For purposes of this decision, we shall refer to Eduardo R. Lopingco as respondent throughout the decision even though he is petitioner in G. R. No. 109581.

[7] G. R. No. 109581, Petition, Annex "A", Rollo, pp. 29-37.

[8] Petition, Annexes "F", "F-1"-"F-13", CA Rollo, pp. 58-71

[9] The latter acting for himself and allegedly for the other defendants.

[10] Petition, Annexes "I", "I-1"-"I-3", CA Rollo, pp. 85-88.

[11] Petition, Annex "B", CA Rollo, p. 29.

[12] Petition, Annexes "K", "K-1"-"K-4", CA Rollo, pp. 95-99.

[13] Petition, Annex "K-14", CA Rollo, pp. 109-110.

[14] Petition, Annexes "L", "L-1"-"l-2", CA Rollo, pp. 131-133.

[15] Petition, Annex "D", CA Rollo, p. 34.

[16] CA Rollo, pp. 1-25.

[17] G. R. No. 109559, Petition, Annex "A", Rollo, pp. 40-47.

[18] Petition, Annex "H", Rollo (in G.R. No. 109559), pp. 69-81.

[19] Petition, Annex "I", Rollo (in G. R. No. 109559), pp. 82-83.

[20] Petition, G. R. No. 109559, Rollo, pp. 12-39.

[21] Petition, G. R. No. 109581, Rollo, pp. 8-27.

[22] In G. R. No. 109559, Rollo, pp. 125-126.

[23] Annex "A", Joint Motion (Re: Settlement Agreement Between the Parties) dated November 25, 1993, Rollo (G. R. No. 109559), pp. 127-133.

[24] Motion for Intervention, G.R. No. 109559, Rollo, pp. 149-174.

[25] Rollo, G. R. No. 109581, pp. 127-130. On July 9, 1997, the Court gave due course to the petition in G. R. No. 109559 (Rollo, p. 545).

[26] Rollo, pp. 557-582, at p. 561.

[27] 71 SCRA 105, 112 [1976].

[28] Dawson vs. Register of Deeds of Quezon City, 295 SCRA 733, 741 - 742 [1998]; Salazar vs. Court of Appeals, 258 SCRA 317, 325 [1996], citing Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc. 46 SCRA 381, 387 [1972]; Jacinto vs. Kapataz, 209 SCRA 246, 254 [1992]; Visayan Sawmill Co., Inc. vs. Court of Appeals, 219 SCRA 378, 389 [1993]; Pingol vs. Court of Appeals, 226 SCRA 118, 126 [1993].

[29] 193 SCRA 158, 172 -174 [1991].

[30] 166 SCRA 608, 612 [1988].

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