

SEVEN BROTHERS SHIPPING CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, HON. RAMON AM. TORRES AS JUDGE OF THE REGIONAL TRIAL COURT, BR. VI, CEBU CITY AND SHIPYARD & ENGINEERI...

G.R. No. 109573. July 13, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision dated November 23, 1992 of the Court of Appeals in CA-G.R. SP No. 23269.

I

On May 18, 1984, private respondent filed a complaint for collection of mechanic's lien and other sums of money with damages against the Maritime Company of the Philippines (MCP) docketed as Civil Case No. CEB-2225. The mechanic's lien included the costs of drydocking fees and repair services done on several vessels owned or chartered by MCP, including the MV "Mayon." Private respondent also asked for the issuance of a writ of preliminary attachment.

Finding the application for preliminary attachment meritorious and upon the posting by private respondent of a bond of P4,000,000.00, respondent Judge issued a writ of preliminary attachment against the MCP on May 18, 1984. The said writ was implemented on the same day with the levy and attachment of the MV "Mayon."

On April 11, 1985, the Banque de L'Indochine et de Suez (Banque Indochine), a foreign bank, intervened in said case in its capacity as a second preferred mortgagee of the MV "Mayon" for the recovery of its unpaid loan to MCP.

On May 7, 1985, MCP filed a motion to sell the MV "Mayon" pursuant to Section 11, Rule 57 of the Revised Rules of Court on the ground that the vessel was deteriorating due to the exposure to the elements, thievery and vandalism.

Acting on the motion, respondent Judge allowed the sale of MV "Mayon" at a public auction. The auction sale was held on July 10, 1985 with the MV "Mayon" sold to the highest bidder, petitioner herein, for the sum of P3,600,000.00. In payment thereof, petitioner issued and deposited with the Provincial Sheriff of Cebu Philtrust Manager's Check No. 018478 dated August 26, 1985 for the amount of P3,600,000.00.

After taking possession and control of the vessel, petitioner had it repaired, spending P35,000,000.00 for the purpose.

Feeling aggrieved by the sale of the MV "Mayon" to petitioner, Banque Indochine filed with the then Intermediate Appellate Court a petition for certiorari and prohibition (AC-G.R. SP No. 06937) claiming irregularities in the

conduct of public auction (Rollo, p. 39).

On September 2, 1987, the Intermediate Appellate Court nullified the auction sale of the MV "Mayon" on the ground that the purchase price of P3,600,000.00 was inadequate. In the same decision, the appellate court enjoined petitioner from rehabilitating the MV "Mayon," from taking said vessel outside Philippine waters and the jurisdiction of the Regional Trial Court, Cebu, and from selling, disposing or encumbering the vessel in favor of any other party.

The decision of the appellate court became final and executory as of September 24, 1987 (Rollo, p. 39).

The Banque Indochine then sought to foreclose the mortgage on the MV "Mayon."

On September 24, 1987, the Banque Indochine filed a complaint before the Regional Trial Court, Makati (Civil Case No. 17909) for the seizure of the MV "Mayon" prior to its extrajudicial foreclosure under the Ship Mortgage Decree (Rollo, pp. 39-40).

On October 1, 1987, Banque Indochine withdrew its complaint-in-intervention in Civil Case No. CEB-2225 (Rollo, p. 40).

On November 4, 1987, the Regional Trial Court, Makati, issued an order in Civil Case No. 17909, directing, among other things, the Deputy Sheriff of said court to deliver the possession of the MV "Mayon," (now bearing the name MV "Diamond Elephant") to Banque Indochine so that the second preferred ship mortgage could be foreclosed.

In compliance with the order, the Deputy Sheriff delivered possession of the MV "Mayon" to Banque Indochine on November 5, 1987.

On November 6, 1987, private respondent filed before the respondent Judge an urgent ex-parte motion in Civil Case No. CEB-2225. The motion partly reads:

"6. That 'MV Mayon' is now afloat at Anchorage South Harbor Manila allegedly in the possession and custody of the Third-Party and may be disposed to the prejudice of herein plaintiff--movant and other creditors of the vessel in this case. Since said vessel is under custodia legis of this Honorable Court by virtue of the writ of preliminary attachment and in pursuance to the decision of the Court of Appeals dated September 2, 1987, enjoining Seven Brothers from taking said vessel outside the jurisdiction of the RTC of Cebu, it is necessary that said vessel be repossessed and brought under the custody and control of this Honorable Court" (Rollo, p. 40).

Acting on the aforementioned motion, respondent Judge issued an order on the same day, November 6, 1987, directing the Provincial Sheriff of the Regional Trial Court, Cebu "to take all measures necessary to put back the vessel 'MV Mayon' wherever found under attachment and prevent the said vessel from being taken away from the jurisdiction of this Court, in conformity with, and obedience to, the decision of the Honorable Court of Appeals abovequoted" (Rollo, p. 41).

In compliance with said order, the Provincial Sheriff tried to repossess the vessel from Banque Indochine which was then being towed out of Philippine waters to Hongkong. He was able to bring the vessel back to Manila on November 9, 1987.

Thereafter, in two separate motions filed on December 16 and 18, 1987, private respondent, as plaintiff in Civil Case No. CEB-2225, sought for the lifting of the preliminary attachment of the MV "Mayon" in said case "because it finds it unproductive and expensive to be paying for premiums for the attachment bond" (Rollo, p. 41) and instead prayed that "accordingly, the Philippine Coast Guard, the Bureau of Customs, the Philippine Ports

Authority and other law enforcement authorities be directed to allow the vessel MV 'Mayon' to leave the territorial waters of Philippine jurisdiction and sail for any foreign port" (Rollo, p. 41).

On December 29, 1987, private respondent filed before respondent Judge a "Notice of the Dismissal of Complaint" manifesting that it was totally withdrawing its original and amended complaints in Civil Case No. CEB-2225 pursuant to Section 1, Rule 17 of the Revised Rules of Court. The notice of dismissal, as well as the ex-parte motion to lift the preliminary attachment, was denied by respondent Judge in an order dated February 16, 1988 (Rollo, p. 42).

Earlier, in an order dated February 15, 1988, respondent Judge denied Banque Indochine's special appearance in Civil Case No. CEB-2225 and its urgent motion to post a counterbond in order to discharge private respondent's writ of attachment (Rollo, p. 42).

On March 9, 1988, the Banque Indochine filed a petition for certiorari and prohibition with this Court (G.R. Nos. 82405-06) against the petitioner, private respondent, Philippine Coast Guard, Bureau of Customs and Philippine Ports Authority (Rollo, p. 42). The petition sought the judicial confirmation of Banque Indochine's better right to the possession of the MV "Mayon" as against the respondents in its petition.

In the meanwhile, pending before the Regional Trial Court, Branch 31, Manila, was Civil Case No. 85-30134, entitled "Genstar Container Corporation v. Maritime Company of the Philippines" involving one of the vessels of MCP. In this case, a writ of execution and attachment was issued for the levy of the MV "Puerto Princesa." In satisfaction of this writ, the MV "Puerto Princesa" was eventually sold at a public auction to Express, Inc. (Rollo, p. 42).

On April 23, 1988, armed men boarded the MV "Mayon," which was anchored at Manila Bay, and seized it purportedly by virtue of a court order. Then, the vessel was towed to Taiwan.

After learning that the MV "Mayon" was taken to Taiwan, Banque Indochine questioned the legality of the proceedings in Civil Case No. 85-30134 by filing a supplemental petition in G.R. Nos. 82405-06 before the Supreme Court (Rollo, p. 43).

On November 24, 1988, we dismissed Banque Indochine's petition for certiorari in G.R. Nos. 82405-06. We ruled that the petition had become moot and academic since the MV "Mayon" was already outside Philippine waters without hope of being brought back to Philippine jurisdiction.

On August 16, 1989, petitioner filed a motion in Civil Case No. CEB-2225 to withdraw the amount of P3,600,000.00 it had previously deposited representing the purchase price of the MV "Mayon" (Rollo, p. 43).

On December 29, 1989, respondent Judge issued an order denying the motion to withdraw, stating that the purchase price could not be returned unless the vessel was also returned to the Philippines.

Its motion for reconsideration of the abovementioned order having been likewise denied, petitioner appealed to the Court of Appeals in CA-G.R. SP No. 23269.

The Court of Appeals denied the petition and disposed as follows:

"The assailed order is basically interlocutory because it does not dispose of the main case yet. As such, it cannot be questioned on certiorari except when there is a clear showing of a grave abuse of discretion (*Planters Products, Inc. v. Court of Appeals*, 193 SCRA 563) about which we see none in this case" (Rollo, p. 44).

Hence, this petition.

II

Petitioner claims that the Court of Appeals erred: (1) in not ordering the refund of the proceeds of the sale of the MV "Mayon" after the trial court had annulled the sale of said vessel; and (2) in holding that the proper remedy was an ordinary appeal and not a petition for certiorari.

III

Where a judicial sale is voided without fault of the purchaser, the latter is entitled to reimbursement of the purchase money paid by him subject to setoffs for benefits enjoyed while he had possession of the property. The party, who questions the sale, will not ordinarily be permitted to retain any benefit therefrom at the expense of the bona fide purchaser.

As a general rule, a judicial sale can only be set aside upon the return to the buyer of the purchase price with simple interest, together with all sums paid out by him in improvements introduced on the property, taxes, and other expenses incurred by him.

Where a purchaser at a judicial sale is entitled to reimbursement of his purchase money and other sums that he has expended because of a void or ineffectual sale, he is ordinarily entitled to a lien on the property until he is repaid whatever may be due him (47 Am Jur 2d, 578-579, 586--588). If the property purchased has disappeared or is brought out of the territorial jurisdiction of the Philippines, the purchase price should be returned.

Absent proof to the contrary, petitioner appears to be a purchaser in good faith. It had nothing to do with the fraudulent removal of MV "Mayon" out of Philippine jurisdiction and said loss occurred while the vessel was in custodia legis. It was, as a purchaser at the public auction, a third party in Civil Case No. CEB-2225.

The following facts as found by this Court in its Resolution dated July 10, 1989 in G.R. Nos. 82405-06, shed light on the issue of fraudulent removal of MV "Mayon":

"Petitioners claim that the MV 'Puerto Princesa' no longer existed at the time of the alleged sale and that the MV 'Mayon' subject of this case was unlawfully taken by respondent Deputy Sheriff Enriquez from respondent Seven Brothers and smuggled out of the country as the MV 'Puerto Princesa'.

x x x x x x x x

"The respondents have not rebutted the foregoing evidence; on the contrary, respondent Seven Brothers, Yu Hue and Johnny Yu admitted in their Manifestation (Rollo, Vol. III, p. 1480) that they cannot comply with the directive of this court to surrender possession of the MV 'Mayon' to petitioners because the vessel 'Mayon' or 'Diamond Elephant' was taken from their custody on April 23, 1988 at around 12:00 p.m." (Rollo, pp. 321-323).

Judicial sales are governed by the general principles of the Law on Sales. Under Article 1495 of the Civil Code of the Philippines, the vendor is bound to transfer the ownership of and deliver, as well as warrant, the thing which is the object of the sale. Likewise, under Article 1163 of the same Code, the vendor is also obliged to take care of it with the proper diligence as that of a good father of a family. The vendor has the obligation to preserve the thing from the perfection of the contract until the thing is delivered to the vendee (V Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 48 [1992]).

Furthermore, when the Court of Appeals nullified the auction sale of the MV "Mayon," said vessel reverted to its original status of being under attachment.

This is also the observation made by the trial court in its Order dated February 15, 1988, the pertinent portion of

which reads as follows:

"In the second instance, contrary to the movant's allegation, the vessel MV 'Mayon' was not 'reattached.' The Urgent Ex-Parte motion of the plaintiff dated November 6, 1987 prayed for a repossession by the provincial sheriff of Cebu, not a 'reattachment' and the order of the Court dated November 6, 1987 clearly stated that 'per force of the decision above-quoted, (CA Decision in CA-G.R. SP Nos. 07686 and 06937) the status of the vessel MV 'Mayon' was necessarily reverted to its original one, that is under attachment xxx" (Rollo, p. 169; Underlining supplied).

The garnishment of the property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the control of the court issuing the writ (Uy, Jr. v. Court of Appeals, 191 SCRA 275 [1990]). During the life of the attachment, the attaching officer is liable for its safe-keeping (Adlawan v. Tomol, 184 SCRA 31 [1990]).

The integrity of judicial sales shall be compromised if we do not order the return of the purchase price paid by the buyer, when the possession of the property can not be transferred to him. Nobody shall participate in a judicial sale if the rule is otherwise.

Petitioner also claims that an appeal in this case is not an adequate remedy. We agree. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari where the appeal is not adequate, speedy and effectual. It is the danger of failure of justice without the writ, not the mere absence of all other legal remedies, that must determine the propriety of certiorari (Lansang, Jr. v. Court of Appeals, 184 SCRA 230 [1990]). Certiorari may be granted when it is shown that the appeal will not promptly relieve a party from the injurious effects of the order complained of (Hualam Construction and Development Corp. v. Court of Appeals, 214 SCRA 612 [1992]).

WHEREFORE, the petition is GRANTED and a new judgment is entered granting the motion to withdraw the amount of P3,600,000.00 representing the purchase price of the MV "Mayon."

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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