SERVICEWIDE SPECIALISTS, INC. PETITIONER, VS. COURT OF APPEALS, HILDA TEE, & ALBERTO M. VILLAFRANCA, RESPONDENTS.

G.R. No. 110048. November 19, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for review on certiorari under Rule 45 of the Decision of the Court of Appeals[1] in CA-G.R. CV No. 19571, affirming the judgment of the Regional Trial Court of Manila, Branch XX, dismissing Civil Case No. 84-25763 for replevin and damages.

The litigation involves a motor vehicle, a Colt Galant, 4-door Sedan automobile, with Motor No. 2E-08927, Serial No. A112A-5297, Model No. 1976.

The appellate court culled the facts that matter as follows:[2]

> "On May 14, 1976, Leticia L. Laus of Quezon City purchased on credit a Colt Galant xxx from Fortune Motors (Phils.) Corporation. On the same date, she executed a promissory note for the amount of P56,028.00, inclusive of interest at 12% per annum, payable within a period of 48 months starting August, 1976 at a monthly installment of P1,167.25 due and demandable on the 17th day of each month (Exhibit "A", pp. 144, Orig. Records,). It was agreed upon, among others, that in case of default in the payment of any installment the total principal sum, together with the interest, shall become immediately due and payable (Exhibit "A"; p. 144, Orig. Records). As a security for the promissory note, a chattel mortgage was constituted over the said motor vehicle (Exhibit "B", ibid.), with a deed of assignment incorporated therein such that the credit and mortgage rights were assigned by Fortune Motors Corp. in favor of Filinvest Credit Corporation with the consent of the mortgagor-debtor Leticia Laus (Exhibits "B-1" and "B-2"; p. 147, ibid.). The vehicle was then registered in the name of Leticia L. Laus with the chattel mortgage annotated on said certificate. (Exhibit "H"; p. 154, ibid.)
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> On September 25, 1978, Filinvest Credit Corporation in turn assigned the credit in favor of Servicewide Specialists, Inc. (Servicewide, for brevity) transferring unto the latter all its rights under the promissory note and the chattel mortgage (Exhibit "B-3"; p. 149, ibid.) with the corresponding notice of assignment sent to the registered car owner (Exhibit "C"; p. 150, Ibid.).
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> On April 18, 1977, Leticia Laus failed to pay the monthly installment for that month. The installments for the succeeding 17 months were not likewise fully paid, hence on September 25, 1978, pursuant to the provisions of the promissory note, Servicewide demanded payment of the entire outstanding balance of P46,775.24 inclusive of interests (Exhibits "D" and "E"; pp. 151-152, ibid.). Despite said formal demand, Leticia Laus failed to pay all the monthly installments due until July 18, 1980.
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> On July 25, 1984, Servicewide sent a statement of account to Leticia Laus and demanded payment of the amount of P86,613.32 representing the outstanding balance plus interests up to July 25, 1985, attorney's fees, liquidated damages, estimated repossession expense, and bonding fee (Exhibit "F"; p. 153, ibid.)

> As a result of the failure of Leticia Laus to settle her obligation, or at least to surrender possession of the motor vehicle for the purpose of foreclosure, Servicewide instituted a complaint for replevin, impleading Hilda Tee and John Dee in whose custody the vehicle was believed to be at the time of the filing of the suit.

In its complaint, plaintiff alleged that it had superior lien over the mortgaged vehicle; that it is lawfully entitled to the possession of the same together with all its accessories and equipments; (sic) that Hilda Tee was wrongfully detaining the motor vehicle for the purpose of defeating its mortgage lien; and that a sufficient bond had been filed in court. (Complaint with Annexes, pp. 1-13, ibid.). On July 30, 1984, the court approved the replevin bond (p. 20, ibid.)

On August 1, 1984, Alberto Villafranca filed a third party claim contending that he is the absolute owner of the subject motor vehicle duly evidenced by the Bureau of Land Transportation's Certificate of Registration issued in his name on June 22, 1984; that he acquired the said mother vehicle from a certain Remedios D. Yang under a Deed of Sale dated May 16, 1984; that he acquired the same free from all lien and emcumbrances; and that on July 30, 1984, the said automobile was taken from his residence by Deputy Sheriff Bernardo Bernabe pursuant to the seizure order issued by the court a quo.

Upon motion of the plaintiff below, Alberto Villafranca was substituted as defendant. Summons was served upon him. (pp. 55-56, ibid).

On March 20, 1985, Alberto Villafranca moved for the dismissal of the complaint on the ground that there is another action pending between the same parties before the Regional Trial Court of Makati, Branch 140, docketed as Civil Case No. 8310, involving the seizure of subject motor vehicle and the indemnity bond posted by Servicewide (Motion to Dismiss with Annexes; pp. 57-110, ibid.) On March 28, 1985, the court granted the aforesaid motion (p. 122, ibid.), but subsequently the order of dismissal was reconsidered and set aside (pp. 135-136, ibid.). For failure to file his Answer as required by the court a quo, Alberto Villafranca was declared in default and plaintiff's evidence was received ex parte.

On December 27, 1985, the lower court rendered a decision dismissing the complaint for insufficiency of evidence. Its motion for reconsideration of said decision having been denied, xxx."

In its appeal to the Court of Appeals, petitioner theorized that a suit for replevin aimed at the foreclosure of a chattel is an action quasi in rem, and does not require the inclusion of the principal obligor in the Complaint. However, the appellate court affirmed the decision of the lower Court; ratiocinating, thus:

> "A cursory reading, however, of the Promissory Note dated May 14, 1976 in favor of Fortune Motors (Phils.) Corp. in the sum of P56,028.00 (Annex "A" of Complaint, p. 7, Original Records) and the Chattel Mortgage of the same date (Annex "B" of Complaint; pp. 8-9, ibid.) will disclose that the maker and mortgagor respectively are one and the same person: Leticia Laus. In fact, plaintiff-appellant admits in paragraphs (sic) nos. 2 and 3 of its Complaint that the aforesaid public documents (Annexes "A" and "B" thereof) were executed by Leticia Laus, who, for reasons not explained, was never impleaded. In the case under consideration, plaintiff-appellant's main case is for judicial foreclosure of the chattel mortgage against Hilda Tee and John Doe who was later substituted by appellee Alberto Villafranca. But as there is no privity of contract, not even a causal link, between plaintiff-appellant Servicewide Specialists, Inc. and defendant-appellee Alberto Villafranca, the court a quo committed no reversible error when it dismissed the case for insufficiency of evidence against Hilda Tee and Alberto Villafranca since the evidence adduced pointed to Leticia Laus as the party liable for the obligation sued upon (p. 2, RTC Decision)."[3]

Petitioner presented a Motion for Reconsideration but in its Resolution[4] of May 10, 1993, the Court of Appeals denied the same, taking notice of another case "pending between the same parties xxx relating to the very chattel mortgage of the motor vehicle in litigation."

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Hence, the present petition for review on certiorari under Rule 45. Essentially, the sole issue here is: Whether or not a case for replevin may be pursued against the defendant, Alberto Villafranca, without impleading the absconding debtor-mortgagor?

Rule 60 of the Revised Rules of Court requires that an applicant for replevin must show that he "is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof."[5] Where the right of the plaintiff to the possession of the specified property is so conceded or evident, the action need only be maintained against him who so possesses the property. In rem action est per quam rem nostram quae ab alio possidetur petimus, et semper adversus eum est qui rem possidet.[6]

Citing Northern Motors, Inc. vs. Herrera,[7] the Court said in the case of BA Finance (which is of similar import with the present case):

> "There can be no question that persons having a special right of property in the goods the recovery of which is sought, such as a chattel mortgagee, may maintain an action for replevin therefor. Where the mortgage authorizes the mortgagee to take possession of the property on default, he may maintain an action to recover possession of the mortgaged chattels from the mortgagor or from any person in whose hands he may find them."[8]

Thus, in default of the mortgagor, the mortgagee is thereby constituted as attorney-in-fact of the mortgagor, enabling such mortgagee to act for and in behalf of the owner. That the defendant is not privy to the chattel mortgage should be inconsequential. By the fact that the object of replevin is traced to his possession, one properly can be a defendant in an action for replevin. It is here assumed that the plaintiff's right to possess the thing is not or cannot be disputed.[9] (Italics supplied)

However, in case the right of possession on the part of the plaintiff, or his authority to claim such possession or that of his principal, is put to great doubt (a contending party may contest the legal bases for plaintiff's cause of action or an adverse and independent claim of ownership or right of possession may be raised by that party), it could become essential to have other persons involved and impleaded for a complete determination and resolution of the controversy.[10] In the case under scrutiny, it is not disputed that there is an adverse and independent claim of ownership by the respondent as evinced by the existence of a pending case before the Court of Appeals involving subject motor vehicle between the same parties herein.[11] Its resolution is a factual matter, the province of which properly lies in the lower Court and not in the Supreme Court, in the guise of a petition for review on certiorari. For it is basic that under Rule 45, this Court only entertains questions of law, and rare are the exceptions and the present case does not appear to be one of them.

In a suit for replevin, a clear right of possession must be established. (Italics supplied) 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 this case has been resorted to in order to pave the way for the foreclosure of what is covered by the chattel mortgage. The conditions essential for such foreclosure would be to show, firstly, the existence of the chattel mortgage and, secondly, the default of the mortgagor. These requirements must be shown because the validity of the plaintiff's exercise of the right of foreclosure is inevitably dependent thereon.[12]

Since the mortgagee's right of possession is conditioned upon the actual fact of default which itself may be controverted, the inclusion of other parties, like the debtor or the mortgagor himself, may be required in order to allow a full and conclusive determination of the case. When the mortgagee seeks a replevin in order to effect the eventual foreclosure of the mortgage, it is not only the existence of, but also the mortgagor's default on, the chattel mortgage that, among other things, can properly uphold the right to replevy the property. The burden to establish

a valid justification for such action lies with the plaintiff. An adverse possessor, who is not the mortgagor, cannot just be deprived of his possession, let alone be bound by the terms of the chattel mortgage contract, simply because the mortgagee brings up an action for replevin."[13]

Leticia Laus, being an indispensable party, should have been impleaded in the complaint for replevin and damages. 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 complete relief between him and those already parties to the action or will simply avoid multiple litigation.[14] Without the presence of indispensable parties to a suit or proceeding, a judgment of a Court cannot attain real finality.[15]

That petitioner could not locate the mortgagor, Leticia Laus, is no excuse for resorting to a procedural short-cut. It could have properly availed of substituted service of summons under the Revised Rules of Court.[16] If it deemed such a mode to be unavailing, it could have proceeded in accordance with Section 14 of the same Rule.[17] Indeed, petitioner had other proper remedies, it could have resorted to but failed to avail of. For instance, it could have properly impleaded the mortgagor. Such failure is fatal to petitioner's cause.

With the foregoing disquisition and conclusion, the other issues raised by petitioner need not be passed upon.

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals in CA-G.R. CV No. 19571 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Penned by Justice Fermin A. Martin, Jr., and concurred in by Justices Seragin E. Camilon and Alfredo L. Benipayo.

[2] Rollo, Annex "A", pp. 31-33.

[3] Ibid, p. 3.

[4] Rollo, Annex "B", p. 39.

[5] Section 2 (a).

[6] Ba Finance Corp. vs. CA, 258 SCRA 102,111 (1996).

[7] 49 SCRA 392, 396.

[8] Infra, pp. 111-112.

[9] Ibid.

[10] Ibid. p. 112.

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[11] Docketed as C.A.-G.R. CV No. 36141.

[12] Servicewide Specialists, Inc. vs. CA, 251 SCRA 70, p. 75 (1995).

[13] BA Finance vs. CA, infra, pp. 113-114.

[14] Servicewide Specialists, Inc. vs. CA, infra, pp. 75-76; quoting Imson vs. CA, 239 SCRA 58, 65.

[15] Ibid., p. 76, citing Uy vs. CA, 232 SCRA 579; see also Galarosa vs. Valencia, 227 SCRA 728.

[16] Section 7, Rule 14. Substituted Service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing herein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[17] Service upon defendant whose identity or whereabouts are unknown. - In an action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service, may, be leave of court, be effected upon by him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

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