

CONSORCIO MEDRANO, ET AL., PETITIONERS, VS. THE HON. COURT OF APPEALS (5TH DIV.) AND MAMERTA MACASERO, ET AL., RESPONDENTS.

G.R. No. 11993. April 13, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari to review the decision of the Court of Appeals, modifying the judgment of the Court of First Instance of Cebu in Civil Case No. R-362, by excluding from the said decision the award of damages in favor of petitioners.

The statement of the case and the facts involved, as well as the different issues raised therein are adequately and correctly narrated in the well-prepared appealed decision, penned by Justice Dionisio de Leon, and we are quoting with favor the pertinent portions thereof:

"This ejectment case started in the Municipal Court of Cebu City on February 28, 1947. The plaintiffs are the owners of a lot situated at the corner of P. del Rosario and D. Jakosalem Streets Cebu City, and the defendants are the owners of the house built upon an area of 209.89 square meters of said lot. The plaintiffs seek the payment by the defendants of the sum of P19,249.80 by way of unpaid rentals from May, 1945, to March, 1947, when they filed an amended complaint, at the rate of P5.00 per square meter a month, the rental asked in their letter of demand received by the defendants sometime on May 8, 1946, and the ejectment of the defendants from the lot. Upon an affidavit of attachment subscribed and sworn to by Filemon K. Perez, one of the plaintiffs, and attached to the original complaint, alleging that plaintiffs, have a cause of action against the defendants and the attachment prayed for comes under one of the cases mentioned in Section 1, Rule 59, of the Rules of Court the Municipal Court, issued an ex-parte order of attachment upon the filing of the necessary bond, which was executed by the Sheriff's office on March 3, 1947, by attaching a piano, typewriter office furniture, boxes of medicine and other drugs, and the house belonging to the defendants.

"In their answer and amended answer, the defendants alleged, among others, that the rate of rental fixed by the plaintiffs was illegal, exorbitant and unconscionable, and asked, by way of counterclaim, for damages, caused by the attachment on their properties which was supposedly without justification.

"On July 9, 1947 the Municipal Court rendered judgment, ordering the defendants to vacate the premises, fixing the rental at P50.00 a month from April, 1946,*and at P320.00 a month from the time of extrajudicial demand on May 8, 1946, or a total of P4,469.03 up to June, 1947, and condemning the defendants to pay said sum and the further sum of P320.00 a month as rental from July 1947, until they finally vacate the premises.

"Defendants appealed to the Court of First Instance of Cebu. They failed, however, to file the necessary supersedeas bond and to pay either to the plaintiffs or to the Clerk of Court the rentals at P320.00 per month beginning July, 1947, pursuant to Section 8, Rule 72, Rules of Court, Upon application of the plaintiffs, an order of execution was issued by the Court of First Instance on March 15, 1948, and a writ of execution directed against the defendants issued on March 17, 1948, for the total sum of P7,349.03, representing the back rentals of P4,469.03, as fixed by the Municipal Court, and current rentals from July, 1947, to March, 1948.

Thereafter, the order of execution was levied on the house of defendants, on monthly rentals of said house, a bank deposit in the sum of P300.00, and goods and furniture also belonging to defendants. More rents were garnished sometime thereafter. On June 19, 1948, the furniture, medicine and other drugs attached by the Sheriff's Office by virtue of the order of attachment issued by the Municipal Court on March 3, 1947, were sold at public auction, for P1,000.00. On June 30, 1948, the house was sold to one Conrado D. Cabugas for the sum of P200.00. On December 7, 1948, the Sheriff's Office also garnished the sum of P246.00 deposited by the defendants with the Clerk of Court.

"In the meantime, the defendants filed an amended answer to the complaint in the Court of First Instance, alleging, among others, that the rate of rental of P5.00 per square meter a month was illegal, excessive and unjust, and, by way of counterclaim asked for damages by reason of the alleged wrongful attachment and sale of their properties.

"After trial, judgment was rendered by the lower court, the dispositive portion of which reads as follows:

"The court awards the following damages to the defendants:

"(1) P1,500.00 value of the piano attached and sold;

"(2) P5,000.00 assessed value of their house;

"(3) P8,000.00, worth of their stock at the time it was attached;

"(4) P246.00, the sum deposited in, consignment by the defendants which was later attached and levied upon in the execution.

"The court makes no findings for damages on the loss of the goodwill of the drugstore of the defendants and the alleged resultant mental suffering and illness claimed by them. Also no finding as to costs.

"The findings of the City Court ordering the defendants to vacate from the premises and remove their house, although having already become academic, is hereby confirmed.

"The Provincial Sheriff of Cebu is hereby absolved of any responsibility, having performed his duty in accordance with legal orders of this Court

"The plaintiffs have brought this appeal, contending that the lower court erred:

'1. In holding that the plaintiff-appellants are liable for damages arising from legal orders, executed by the Deputy Provincial Sheriff of Cebu after the said trial court holds that "the Provincial Sheriff of Cebu is hereby absolved of any responsibility, having performed his duty in accordance with legal orders of this Court; and,

'2. In disturbing the decision of the Municipal Court fixing the amount of rentals payable to the plaintiff-appellants by the defendant-appellees, after the said trial court ordered it executed and after the same holds that "the findings of the City Court ordering the defendants to vacate from the premises and remove their house, although having already become academic, is hereby confirmed.* * *

Petitioners assign eight errors supposedly committed by the Court of Appeals. Because of the view we take of this case, we find it unnecessary to discuss most of said alleged errors. The first error assigned is as follows:

"The Honorable Court of Appeals erred in departing from the usual procedure enunciated under the provision of Section 5, Rule 53 of the Rules of Court which provides that 'no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief,' when it lengthily justified and delved into the question of whether the attachment levied on the properties of the defendant-appellees was lawful or actionable for damages, a question which was not assigned as error nor argued in the brief of the plaintiff-appellants."

Strictly speaking, petitioners are right in that plaintiffs Mamerta Macasero, et al., respondents herein, in their appeal in the Court of Appeals did not allege or assign as error of the trial court, its holding that the issuance of

the writ of attachment by the Municipal Court of Cebu was unlawful. However, we should not forget that although under Section 5, Rule 53 of the Rules of Court, "no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief", nevertheless, the appellate tribunal, under the same rule, may *motu proprio* consider plain errors, even if not specified and raised by the parties.[1] The award of damages made by the trial court was precisely based on the alleged wrongful issuance of the writ of attachment. Naturally, that question was important and the Court of Appeals was fully justified in discussing and determining that decisive question, though not expressly and specifically assigned by plaintiffs-appellants in their appeal to the Court of Appeals.

Was the issuance of the writ of attachment by the Cebu City court really wrongful as found by the trial court so as to justify the award of damages to the defendants? Ordinarily, damages are awarded by reason of the issuance of a writ of attachment when the party, ordinarily the plaintiff, who had asked for and obtained the writ, loses in the action. In the present case, the plaintiffs won the case in the Municipal Court of Cebu and in the Court of First Instance of Cebu, and yet the latter court ordered them to pay damages to the defendants on the ground that the writ of attachment had wrongfully been issued.

After carefully studying the record, we agree with the Court of Appeals that the writ of attachment had not been wrongfully or improvidently issued to the plaintiffs, respondents herein. Rather, it was the fault of the defendants, appellants herein, in not pursuing the remedies available to them, such as the dissolution of the writ of attachment by asking for a hearing and the opportunity to introduce evidence to prove that the petition for the writ of attachment had no basis. We quote the Court of Appeals on this point:

"The defendants should have moved to quash the attachment before or even after their properties have been attached (Section 13, Rule 59), by traversing the contents of the affidavit of attachment. A hearing on the motion would be had for the reception of defendants' evidence on the falsity of the recitals of the affidavit, otherwise a denial of such right to hearing would be tantamount to abuse of discretion. (National Coconut Corporation vs. Pecson, 90 Phil., 809)" * * *.

All the trouble and financial difficulties that visited the appellants herein were mainly due to their own fault and negligence. Had they taken the precaution to file a supersedeas bond in their appeal to the Court of First Instance, and had they religiously paid the rentals for the property they were occupying, as fixed by the court, there would have been no execution, of the judgment against them. As to the alleged wrongful issuance of the writ of attachment, we quote with favor the pertinent portion of the appealed decision with which we are in conformity:

"* * * The affidavit was executed by one of the plaintiffs, and it stated that he has personal knowledge of the facts alleged in the complaint; that a sufficient cause of action exists; that the case is one of those contemplated in Section 1, Rule 59, Rules of Court; that the plaintiffs have no security for their demand; and, that the amount due the plaintiffs is, over and above all legal counterclaim, as much as the sum for which the attachment is sought. While the affidavit must be criticized as being couched in general terms, as for instance, where it is merely stated that the case is one of those mentioned in Section 1, Rule 59, the ground relied upon for the attachment is readily ascertainable by a cursory reading of the writ of attachment dated March 3, 1947, and this circumstance yields to the presumption that the Municipal Court examined and gave full credence to the recitals of the affidavit, verified that a cause of action against the defendants existed, and was convinced that the issuance of the attachment falls under Section 1 (e) of Rule 59, that is, that the defendants 'are about or are now transferring their properties with the intent to defraud their creditors, especially the herein plaintiffs.' There is no proof that this ground for attachment was untrue. The Municipal Court stated in its judgment that there was justification for the issuance of the writ of attachment, while the Court of First Instance merely commented that it was wrong to issue the writ of attachment without conducting a preliminary hearing on the petition for attachment, considering that the basis of the amount of the attachment was the new and increased rate of rental unilaterally fixed by the plaintiffs. The total amount sought in the original complaint was

P11,149.80. However, the proceeds of the sale of the house and goods, as well as the amount of the defendants' bank deposit, totalled only P1,500.00, while the total amount of the judgment of the Municipal Court alone was P4,469.03,

We deem it unnecessary to discuss the other points raised by petitioners-appellants.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, and Endencia, JJ., concur.

[1] Moran: Comments on the Rules of Court (1957 ed.), Vol. 1, pp. 737-739, citing the cases of *Hernandez vs. Andal*, 78 Phil., 196; and *Relativo vs. Castro, et al.*, 76 Phil., 563.

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