

MARIANO CORDOVA, PETITIONER, VS. HON. GREGORIO NARVASA, ET AL., RESPONDENTS.

G.R. No. 12348. May 28, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari with preliminary injunction seeking to set aside two orders of respondent Judge which are alleged to have been issued in excess of jurisdiction or with grave abuse of discretion. The writ prayed for was issued upon filing by petitioner of the required bond.

The orders complained of involved the payment of two-judgment credits, one in favor of petitioner and the other of Jacinta Abella against a common debtor, G.K. Co Bun Kim. The only property of Co Bun Kim for the payment of said credits is a seventeen-door apartment building in Ermita, Manila, and the funds in the hands of the receiver of the building. The receivership was instituted in Civil Case No. 16221 of the Court of First Instance of Manila at the instance of one Natalio Enriquez in order to preserve the property and secure payment of the credit existing in his favor.

The judgment credit of petitioner originated from a loan of P20,986.42 taken by Co Bun Kim from one Concha Apacible which he obtained for the improvement and preservation of the building under receivership which he built on a parcel of land he leased from spouses Rafael Alonso and Consuelo A. Lara. This loan was secured by Co Bun Kim with a mortgage over the same building which was duly recorded. On August 31, 1951, upon failure of Co Bun Kim to pay the loan as agreed upon, Apacible filed an action in the court of first instance for the foreclosure of the mortgage which was docketed as Civil Case No. 14603. Judgment was rendered on April 23, 1952 ordering Co Bun Kim to pay Apacible the sum of P20,986.42, with interest, attorneys' fees and costs. A writ of execution was secured by Apacible on July 7, 1952, but the execution was not carried out because the building was placed under receivership in Civil Case No. 16221 which was instituted by Co Bun Kim against Natalio Enriquez for the annulment of a third mortgage on the building for the amount of P50,000. It must be noted that the mortgage in favor of Apacible is only a second mortgage on the building, the first mortgage thereon for the sum of P30,000 being in favor of Tabacalera Company, and the third mortgage in favor of Natalio Enriquez. When Enriquez learned of the existence of the two prior mortgages, he bought the rights of Tabacalera and Apacible under their mortgages. The mortgage credit of Apacible was acquired by him on September 20, 1952 and that of Tabacalera on October 21, 1952. Subsequently however, or on March 26, 1956, Natalio Enriquez transferred and assigned all his rights under the three mortgages to the herein petitioner Mariano Cordova.

In the meantime, Co Bun Kim failed to pay the rentals of the land on which the building is erected and so on April 25, 1953, Jacinta Abella, who bought the land from its original owners, filed an action to collect them in the Court of First Instance of Manila which was docketed as Civil Case No. 19409. Judgment was rendered in favor of Abella ordering Co Bun Kim to pay the rentals from

January, 1953 to January, 1955, which judgment was affirmed by the Supreme Court on February 28, 1957.

On April 8, 1957, petitioner filed a motion in the receivership case (Civil Case No. 16221) praying that the receiver be authorized to pay him the judgment rendered in favor of Apacible which was assigned to him in preference to the judgment rendered in favor of Jacinta Abella for rentals of the building on the ground that his mortgage credit has preference under the law over that of Abella. Petitioner, on the same date, filed another motion praying that the judgment rendered in favor of Abella be held in abeyance until his judgment credit shall have been satisfied based on the same ground of preference that his credit enjoys under the law. Both motions were denied by respondent Judge thereby giving the impression that the judgment in favor of Jacinta Abella for back rentals may be executed in preference to that of petitioner. Hence the present petition for certiorari.

The issue before us is whether the judgment credit of Concha Apacible which was assigned to petitioner is preferred over the judgment credit in favor of Jacinta Abella, and if so, whether the former may be executed in preference to the latter contrary to what was decreed by respondent Judge.

Petitioner contends that his judgment credit is preferred over that of Jacinta Abella for the following reasons:

"(a) the credit of petitioner matured and became due way back in 1951, and the judgment thereon became final and executory in June, 1952; while the judgment of respondent Abella became final and executory only last March, 1957, and the same is for rentals which fell due only from January, 1953 up to January, 1955;

"(b) the judgment credit of petitioner is secured by a mortgage on the building in receivership from which the funds in the hands of the receiver were derived, which mortgage operates directly and immediately upon the said building and its income; while the claim of Abella is only for some months' back rentals on the land for which there is no lien whatsoever on the building or on the income therefrom in the hands of the receiver;

"(c) the judgment credit of petitioner is on a loan which was used by the debtor Co Bun Kim for the repair, improvement and preservation of the building in receivership; and

"(d) the funds in the hands of the receiver, from which petitioner seeks payment, were collected and preserved because of the institution of the receivership at the instance of Natalio Enriquez, assignor of the petitioner, for the payment of his (now petitioner's mortgage credits, and not for the payment of the claim of Abella."

There is merit in this contention. Under Article 2244 of the new Civil Code, re classification of credits, it is provided that, with reference to real and personal properties of the debtor, a credit which appears in a final judgment, which was the subject of litigation, is considered preferred, and the preference is determined by considering the priority of the dates of the judgment. Again, under Article 2242, it is also provided that, with reference to specific immovable property and real rights of the debtor, a mortgage credit recorded in the registry of property is deemed preferred in so far as the property mortgaged is concerned, over other unsecured credits. Under these legal provisions, there can be no question that the judgment credit rendered in favor of Concha Apacible which was assigned to petitioner is preferred over that of Jacinta Abella for back rentals because the same is not only prior in time but secured by a real estate mortgage. Thus, it appears that the judgment in favor of Apacible was rendered on April 23, 1952 and became final and executory on July 7, 1952, whereas the judgment credit in favor of appellee became final and executory only in March, 1957. On the other hand, the judgment credit of Abella is unsecured, whereas the credit of Apacible is secured by real estate mortgage which was duly recorded in the registry of property. There is therefore no plausible reason why the judgment credit of petitioner should not be executed in preference to that of Jacinta Abella.

It is true that the properties on which the judgment is sought to be executed are under receivership, but it is for this reason that petitioner filed a motion in the receivership case praying for authority for the payment of his judgment credit by the receiver as required by law. But even this step was thwarted because of the refusal of respondent Judge to grant the motion. Respondent-Judge seems to have adopted the attitude that the judgment

credit of Jacinta Abella is entitled to preference and should first be executed. Obviously, respondent Judge acted on the matter with grave abuse of discretion.

Wherefore, petition is granted. The orders subject of the petition are hereby set aside, the writ of preliminary injunction issued by this Court is declared permanent. Costs against respondent Jacinta Abella.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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