CAGAYAN DE ORO COLISEUM, INC., PETITIONER, VS. COURT OF APPEALS, MAXIMIANO MABANAG, JR. AND RICHARD GO KING, RESPONDENTS.

G.R. No. 129713. December 15, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In this petition for review, petitioner Cagayan de Oro Coliseum, Inc. assails the decision of the Court of Appeals in CA-G.R. CV No. 43782[1] which reversed and set aside the decision dated August 5, 1993 of the Regional Trial Court, Branch 19, Cagayan de Oro City in two consolidated cases, Civil Case No. 89-098 and Special Civil Action No. 6811

Spanning a period of more than twenty (20) years, this case involves a long drawn-out struggle for ownership over a valuable piece of real property in Cagayan de Oro City.

In 1977, petitioner Cagayan de Oro Coliseum, Inc., a domestic corporation domiciled in Cagayan de Oro City, obtained from one Santiago Maceren a loan in the amount of P149,253.73.[2] As security for the loan, petitioner executed a promissory note and a mortgage over all its assets and properties, including a parcel of land situated in the poblacion of the City and registered in its name under Transfer Certificate of Title (TCT) No. T-3383. The land, which has an area of 4,025 square meters with two (2) commercial buildings thereon respectively measuring 1,606 and 379 square meters,[3] is more particularly described as follows:

> A parcel of land [Lot 845-B-2-B of the subdivision plan (LRC) Psd-19292, being a portion of Lot 845-B-2, described on (sic) plan Psd-34454, LRC (GLRO) Cad. Rec. No. 1562], situated in the Poblacion, City of Cagayan de Oro, Island of Mindanao. Bounded on the NE. and SE., points 3 to 4 and points 4 to 1 by Lot 845-B-2-F; on the SW., points 1 to 2 by Lot 845-B-2-C; and on the NW., points 2 to 3 by Lot 845-B-2-E all of the subdivision plan. x x x containing an area of FOUR THOUSAND AND TWENTY FIVE (4,025) SQUARE METERS more or less.[4]

The loan, together with the promissory note and the mortgage, were later assigned by Maceren to the Commercial Credit Corporation of Cagayan de Oro (Commercial Credit).[5] Petitioner failed to pay the loan when it became due, hence, the Commercial Credit commenced foreclosure proceedings on the said parcel of land.

On October 23, 1979, five stockholders of petitioner corporation instituted before the then Court of First Instance (CFI) of Misamis Oriental, Branch IV, a petition for injunction against Commercial Credit, the City Sheriff of Cagayan de Oro and herein petitioner corporation, entitled "Ralph Lou I. Willkom, Benber B. Apepe, Bernardo Roa, Marcos Balarias and Teresita Macale, Petitioners versus Rufo J. Waminal, City Sheriff of Cagayan de Oro, Commercial Credit Corporation and Cagayan de Oro Coliseum, Inc., Respondents," docketed as Special Civil Action No. 6811. The five stockholders sought to enjoin the public sale of the corporate property alleging that the loan was contracted by Diego Imperio, the president of the corporation, without authority from the stockholders; and that the creditor, Santiago Maceren, was corporate treasurer and a member of the Board of Directors of

petitioner corporation at the time the loan was obtained.[6]

Eventually, the parties, assisted by their respective counsel, entered into a compromise agreement which became the basis of a judgment rendered by the trial court on March 11, 1980, whereby the five stockholders ratified the loan of the corporation to Commercial Credit in the amount of P249,263.23, computed as of February 15, 1980; the corporation bound itself to pay the loan in equal monthly installments of P11,000.00 and agreed that failure to pay any of the installments shall render the judgment immediately executory, with penalty on overdue and unpaid installments at the rate of three per cent (3%) per month plus five per cent (5%) of the outstanding balance as additional attorney's fees. The Compromise Judgment reads as follows:

> The parties in the above-entitled case assisted by their respective counsel, submitted for approval the following Compromise Agreement, to wit:
>
> COMES NOW, Parties, Petitioners and Respondents, represented by their respective counsels, unto this Honorable Court, most respectfully submit for approval the following Compromise Agreement:
>
> - That, petitioners herein hereby state that they ratified and approved the loan and real estate mortgage entered into and assigned by the Cagayan de Oro Coliseum, Inc. to the Commercial Credit Corporation of Cagayan de Oro and as such therefore, the issue raised by the herein petitioners in the above entitled case has become moot and academic;
>
> - That, by virtue of the aforementioned, the Cagayan de Oro Coliseum, Inc., thru its Board of Directors and represented by its President, Mr. Johnny Wilson, hereby admits its total outstanding obligation to herein Respondent Commercial Credit Corporation of Cagayan de Oro in the amount of TWO HUNDRED FORTY NINE THOUSAND TWO HUNDRED SIXTY THREE & 23/100 PESOS (P249,263.23), as of February 15, 1980, including therein the sum of P10,000.00 representing attorney's fees for Respondent Commercial Credit Corporation of Cagayan de Oro;
>
> - That, the Cagayan de Oro Coliseum, Inc. has agreed to pay the above obligation plus interest on diminishing balance computed yearly at sixteen (16%) per cent per annum, thus:
>
> Total Account P249,263.23
>
> Total Interest 76,138.60
>
> ---
>
> Total Payable P325,401.83

- That, the Cagayan de Oro Coliseum, Inc. hereby agrees to pay the foregoing obligation in paragraph (3) hereof in equal monthly installments of P11,000.00, the first installment shall be payable in February 1980 and every month thereafter until the whole account payable as aforementioned is fully paid;

- That, failure on the part of Respondent Cagayan de Oro Coliseum, Inc. to pay any of the installments as they shall become due, the whole amount then outstanding and unpaid shall immediately become due and payable in its entirety and shall render the judgment herein to be immediately final, unappealable and executory; and the overdue and unpaid installments shall earn a three per cent (3%) per month penalty charge until fully paid, plus five per cent (5%) of the outstanding balance as additional attorney's fees;

- That, Respondent Commercial Credit Corporation of Cagayan de Oro hereby agrees to withdraw its application with Respondent City Sheriff of Cagayan de Oro for the extrajudicial foreclosure of the real estate mortgage subject of this complaint;

- That, the Parties herein waive in favor of each other any and all forms of damage arising out of, connected with

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and/or as a result of this action.

WHEREFORE, the Parties respectfully pray of this Honorable Court that judgment in accordance with the Compromise Agreement be rendered.

Cagayan de Oro City, Philippines,

February 25, 1980.

COMMERCIAL CREDIT

CAGAYAN DE ORO

CORPORATION OF CAGAYAN COLISEUM, INC.

DE ORO

(Respondent)

(Respondent)

By:

By:

(SGD.) ROMEO V. ORENDAIN (SGD.) JOHNNY WILSONR

Resident Manager

President

(SGD.) RUFO J. WAMINAL
(SGD.) BENBER B. APEPE

Cagayan de Oro

(Petitioner)

City Sheriff

(Respondent)

(SGD.) PRIMITIVO S. BELLA, JR.

(SGD.) MARCOS BALARIA

Counsel for CCC-Cagayan

(Petitioner)

de Oro and City Sheriff of

Cagayan de Oro

(SGD.) TERESITA MACALE

(Petitioner)

(SGD.) ANGEL R. QUIMPO

Counsel for Petitioners

and Respondent Cagayan

de Oro Coliseum, Inc.'

WHEREFORE, finding the above-quoted compromise agreement not contrary to law, morals and public policy, the same is hereby approved, and judgment is rendered in accordance therewith. The parties are hereby enjoined to observe and comply strictly with the terms and conditions therein set forth, without special pronouncement as to costs.

SO ORDERED.[7]

On March 4, 1983, Commercial Credit filed with the court a quo, now the Regional Trial Court, Branch 19, Cagayan de Oro City, an "Ex-Parte Motion for the Issuance of a Writ of Execution." Commercial Credit alleged that petitioner corporation failed to pay several installments on its loan and left an outstanding balance of P70,152.68, excluding sheriff's expenses.[8] The trial court granted the motion on March 9, 1983.[9] The following day, the Branch Clerk of Court issued the writ of execution on the personal and real properties of petitioner corporation. On March 11, the deputy sheriff filed a notice of levy on petitioner's title with the Register of Deeds of Cagayan de Oro City.[10]

Petitioner forthwith filed a "Motion for Reconsideration of the Order of Execution" alleging that the issuance of the order of execution ex-parte violated petitioner's right to due process; that a hearing should have been conducted on the motion for execution because petitioner had already made payments in the total amount of P419,429.95, resulting in an overpayment of P94,028.12.[11]

In an order dated November 26, 1986, the trial court denied petitioner's motion for reconsideration. The trial court, however, reduced petitioner's principal obligation from P70,152.68 to P64,956.19 but ordered it to pay the three per cent (3%) monthly penalty charge until full payment and five per cent (5%) of the outstanding balance as additional attorney's fees. Accordingly, the court ordered the issuance of a writ of execution for the collection of said amount:

WHEREFORE, the motion for reconsideration filed by respondent Coliseum is DENIED. Let a writ of

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> execution be issued against said respondent for the collection of its outstanding obligation of P64,956.19 with the respondent CCC, including the "three per cent (3%) per month penalty charge until fully paid, plus five per cent (5%) of the outstanding balance as additional attorney's fees" as provided in paragraph 5 of the compromise agreement.[12]

On December 4, 1986, the Branch Clerk of Court of the trial court issued the writ of execution, which reads:

> You are hereby commanded that of the goods and chattels of respondent Coliseum, Cagayan de Oro City, you cause to be made the sum of P64,956.19 as principal plus 3% penalty per month, plus 5% of the outstanding balance as attorney's fees and all expenses incurred together with your lawful fees for the service of this execution, all in the Philippine currency, which the respondent CCC recovered in this Regional Trial Court of Misamis Oriental and that you render the said sums to the respondent CCC aside from your own fees on this execution and do likewise return this writ within SIXTY (60) DAYS from receipt hereof with your proceedings endorsed thereon. But if sufficient personal property/ies cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said respondent Coliseum you make the said sums of money in the manner required by the Rules of Court.[13]

Pursuant to this writ, Deputy Provincial Sheriff Maximiano Mabanag, Jr. published the notice of auction sale scheduled on January 23, 1987. The sale did not proceed on said date, however, due to some internal problems in the office of the sheriff.

Meanwhile, petitioner filed with the Court of Appeals an action for annulment of judgment of the trial court, docketed as CA-G.R. SP No. 10888, wherein it sought to set aside the compromise judgment on the ground of fraud and misrepresentation which it discovered only in 1983. Petitioner pleaded four causes of action, viz: (1) Of its total obligation of P325,401.83 to Commercial Credit, petitioner had already paid P303,758.15 and left a balance of only P21,647.79, not P70,152.68 as claimed by Commercial Credit. Respondent judge ordered execution of the compromise judgment without a hearing and petitioner's motion for reconsideration was decided three years and seven months later which gave Commercial Credit a longer period to impose the monthly 3% penalty and 5% additional attorney's fees on the increased balance; (2) Two stipulations in the compromise judgment violated the provisions of Presidential Decree No. 116 amending the Usury Law, and Central Bank Circular No. 721 issued on February 25, 1980, prior to the promulgation of the compromise judgment by the trial court on March 11, 1980; (3) Respondent judge gravely abused his discretion in applying portions of the installment payments as past due charges instead of fully applying them to the principal debt; and (4) The Branch Clerk of Court issued a writ of execution and the Deputy Provincial Sheriff issued a notice of auction sale before petitioner received a copy of the order denying its motion for reconsideration.[14] Petitioner thus prayed:

> WHEREFORE, herein petitioner prays that judgment be rendered for the following:
>
> - Immediately enjoining respondents Branch Clerk of Court Augusto Neri, Jr. and Deputy Provincial Sheriff Maximiano Mabanag, Jr. from proceeding with the execution and sale of the property of herein petitioner, and after trial and/or appropriate proceedings, making the injunction abovementioned permanent;
>
> - Ordering that the provisions in the Judgment by Compromise, particularly the provisions therefor on interests, penalties, and additional attorney's fees, null and void, and such judgment consequently modified in accordance therewith;
>
> - Ordering that the obligation of the herein petitioner in the Judgment by Compromise has been fully settled, and to execute such documents and surrender the Certificate of Title and other papers in order that the title shall be cleared of such encumbrance;
>
> - Ordering respondent Commercial Credit Corporation to return to herein petitioner its overpayment in the amount of P45,049.55;

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- Ordering respondents Deputy Clerk of Court Augusto Neri, Jr., Deputy Provincial Sheriff Maximiano Mabanag, Jr. and the Commercial Credit Corporation, to pay damages, jointly and severally, the amount of P50,000.00 and attorney's fees of P10,000.00;

- Ordering further that respondent Commercial Credit Corporation pay the additional damages for the amount of P50,000.00;

- For such other orders and remedies proper under the circumstances.[15]

On February 13, 1987, the Court of Appeals rendered a decision holding that since petitioner had made payments totalling P303,758.15, it equitably reduced the penalty of three per cent (3%) per month to only one-half per cent (1/2%) per month on the overdue and unpaid installments, and the five per cent (5%) additional attorney's fees to only two per cent (2%) of the outstanding balance. The Court of Appeals declared:

x x x x x x x x x
The Court noted that in the "Summary of Payments" dated March 18, 1983, petitioner had made total payments in the amount of P303,758.15 itemized as follows:

x x x x x x x x x
Upon consideration of such total payments made by petitioner, this Court finds it equitable as provided for in Article 1229 of the Civil Code of the Philippines to reduce the penalty of 3% per month to only ½% per month on the overdue and unpaid installments until fully paid, and the 5% to only 2% of the outstanding balance as additional attorney's fees, both effective March 16, 1983 when petitioner filed the motion for reconsideration of the order for execution.

As regards the alleged irregularity and haste in the performance of the respondent court personnel, suffice it to state as pointed out by private respondents that they merely executed their ministerial duties to follow the lawful orders of the court. As of now, the auction sale has not yet been implemented.

WHEREFORE, the present petition is DENIED Due Course and is hereby DISMISSED. Effective March 16, 1983, the overdue and unpaid installments shall earn one-half per cent (1/2%) per month penalty charge until fully paid, plus two per cent (2%) of the outstanding balance as additional attorney's fees.[16]

Meanwhile, on January 19, 1987, herein respondent Sheriff Mabanag issued an Amended Sheriff's notice of sale setting the sale of the property at public auction on February 13, 1987, or on the same day the Court of Appeals promulgated its decision. At the Auction Sale the property was sold to the highest bidder, herein respondent Richard Go King, for the sum of P170,000.00.

Both parties moved for reconsideration of the decision of the Court of Appeals. Petitioner argued that: (1) the penalty or past due charges on the obligation be applied only after the payment of the principal and interest, and that the reduced penalty be applied from the time it was to be imposed, instead of from the date the trial court denied the motion for reconsideration; (2) that Commercial Credit, to its advantage, concealed from petitioner the promulgation of C.B. Circular No. 721 before rendition of the compromise judgment, and as a result of the non-application of said Circular, petitioner's obligation ballooned to P170,000.00; (3) that the auction sale was conducted on February 13, 1987,[17] the day of promulgation of the Court of Appeals' decision substantially amending the amount of judgment debt.[18] Petitioner thus prayed:

WHEREFORE, it is most respectfully prayed that:

A. The Decision of this Honorable Court dated February 13, 1987 be reconsidered, and the prayer, remedies and reliefs in the Petition be granted, and/or

B. For the following orders, to wit:

- Ordering the Judgment, as well as the Order for the issuance of the Writ of Execution dated November 26, 1987, as modified pursuant to the ruling and the dispositive portion of the Decision of the Honorable Court of Appeals, on the penalty or past due charges and attorney's fees;

- Ordering as not in accord and excessive with the modified judgment and the modified order of the trial court dated November 26, 1987, the Writ of Execution issued by respondent Deputy Clerk of Court, the Sheriff's Notice of Sale, the Public respondent Deputy Provincial Sheriff, and consequently null and void; and

C. For such other orders, reliefs and remedies proper and just under the circumstances.[19]

In a Resolution dated May 19, 1987, the Court of Appeals denied the petitioner's motion. It, however, granted the motion for reconsideration with respect to the public auction sale conducted during the pendency of the case. The Court of Appeals declared the writ of execution, the sheriff's notice of sale, the public auction sale and the certificate of sale null and void insofar as they were in excess of the judgment as modified by its decision. Thus:

Acting on the said first part of the petitioner's motion for reconsideration as well as the private respondent's comment thereon, the aforestated grounds for said motion having already been taken up by this Court in reaching the said February 13, 1987 decision, and finding no reason to disturb the same, the said motion as to its said first part, is DENIED for lack of merit.

As to the said second part of petitioner's motion for reconsideration, for clarity, the dispositive portion of the February 13, 1987 decision is re-worded to read as follows:
WHEREFORE, the present petition is GRANTED in the sense that effective March 16, 1983, the overdue and unpaid installments shall earn one half per cent (1/2%) per month penalty charge until fully paid, plus two per cent (2%) of the outstanding balance as additional attorney's fees.

And in view of such disposition,

-) THE JUDGMENT DATED MARCH 11, 1980 AND THE ORDER DATED NOVEMBER 26, 1986 OF RESPONDENT COURT ARE HEREBY DECLARED MODIFIED CONFORMABLY WITH THE FEBRUARY 13, 1987 DECISION OF THIS COURT; and

-) THE WRIT OF EXECUTION ISSUED BY RESPONDENT CLERK OF COURT, AND THE SHERIFF'S NOTICE OF SALE, THE PUBLIC AUCTION SALE AND THE CERTIFICATE OF SALE ARE DECLARED NULL AND VOID IN SO FAR AS THEY ARE NOT IN ACCORDANCE WITH AND IN EXCESS OF THE NOW MODIFIED JUDGMENT AND MODIFIED ORDER OF THE RESPONDENT COURT DATED MARCH 11, 1980 AND NOVEMBER 26, 1986, RESPECTIVELY.

SO ORDERED.

[20]

Commercial Credit moved for reconsideration, but its motion was denied on March 23, 1987.[21]

Both parties filed separate petitions for review before us. In its petition in G.R. No. 79100, petitioner prayed:

WHEREFORE, IT IS MOST RESPECTFULLY PRAYED:

I - That the foregoing petition be given due course;

AND AFTER PROPER PROCEEDINGS, an order be issued:

II - Modifying the Decision dated February 13, 1987, and the Resolution on the Motion for Reconsideration dated May 19, 1987 of the Honorable Court of Appeals, to wit:
(a) Ordering that the part of the Judgment by Compromise of the then Court of First Instance of Misamis Oriental, particularly the provisions therefor on interests, penalties, and additional attorney's fees, null and

> void, and such Judgment consequently modified in accordance therewith;
>
> (b) Ordering that the obligation of herein petitioner in the Judgment by Compromise as fully settled, and private respondent to execute such documents and surrender the Certificate of Title and other papers in order that the title be cleared of such encumbrance;
>
> (c) Ordering respondent Commercial Credit Corporation of Cagayan de Oro to return to herein petitioner the overpayment in the amount of P54,494.92, plus interest therefor computed from September 1982;
>
> (d) Ordering respondent Commercial Credit Corporation of Cagayan de Oro to pay damages in the total amount of P50,000.00 and costs;
>
> (e) Ordering respondents Branch Clerk of Court Augusto Neri, Jr., Deputy Provincial Sheriff Maximiano Mabanag, Jr. and the Commercial Credit Corporation to pay damages jointly and severally in the amount of P50,000.00 and attorney's fees; and
>
> (f) For such other orders and remedies proper under the circumstances.[22]

This petition was denied in the Resolution of August 31, 1987 for having been filed late. In the same Resolution, the Third Division of this Court also declared:

> Furthermore, considering the petition, the allegations and arguments adduced and the Court of Appeals' decision as modified, this Court finds that the Court of Appeals committed no reversible error.
>
> WHEREFORE, the Court Resolved to DENY the petition.[23]

On the other hand, the petition of Commercial Credit in G.R. No. 78315 was granted.[24] In a decision dated January 2, 1989, the First Division of this Court set aside the decision and resolution of the Court of Appeals and affirmed the compromise judgment of the trial court, to wit:

> WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals dated February 13, 1987 and its resolutions dated March 23, 1987 and May 19, 1987 are hereby SET ASIDE and another judgment is hereby rendered affirming in toto the compromise judgment of the trial court dated March 11, 1980, with costs against private respondent. This decision is immediately executory.[25]

Petitioner filed a "Motion to Consider and Resolve En Banc Herein Motion for Reconsideration" in view of the Resolution in G.R. No. 79100. On March 15, 1989, the motion was denied.

Judgment in G.R. No. 78315 was entered on April 3, 1989.

Meanwhile, during the pendency of G.R. No. 78315, on August 17, 1988, respondent Sheriff issued to respondent Go King a Final Deed of Conveyance over the subject property. TCT No. T-3383 of petitioner was cancelled and TCT No. T-51704 was issued in the name of respondent Go King.

On April 11, 1989, after finality of the decision of the Supreme Court in G.R. No. 78315, petitioner instituted Civil Case No. 89-098 against herein respondents Sheriff Mabanag and Richard Go King for "Remedies from Falsification and Damages." The case was filed before Branch 24 of the Regional Trial Court, Cagayan de Oro. In its amended complaint, petitioner alleged that (1) the execution proceedings were null and void for failure to comply with the requirements of the Rules of Court; (2) the cancellation of petitioner's title and the issuance of another in the name of respondent Go King was made in violation of the Court of Appeals' Resolution in CA-G.R. SP No. 10888; and (3) assuming that the auction sale was valid, petitioner was exercising his right of redemption by consigning with the court the purchase price of P170,000.00 plus interest in accordance with the Rules of Court. Petitioner prayed that judgment be rendered:

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"1. Ordering and/or declaring the Sheriff's Final Deed of Conveyance dated August 17, 1988, as well as Transfer Certificate of Title No. T-51704 in the name of defendant Richard Go King as null and void;

2. Ordering that the validity and legal effectiveness of Certificate of Title No. T-3383 in the name of plaintiff be fully restored in the records of the Register of Deeds of Cagayan de Oro;

3. Ordering the Provincial Sheriff of Misamis Oriental or his deputy to perform such acts or proceedings so as to carry into effect the fact of redemption, and/or satisfaction of judgment;

4. Ordering the defendants, Mabanag and Go King, jointly and severally, to pay plaintiff actual, compensatory and exemplary damages, including attorney's fees in the total amount of SIX HUNDRED FIFTY THOUSAND PESOS (P650,000.00), and

5. For such other just and equitable reliefs and remedies proper under the circumstances."[26]

The following day, April 12, 1989, petitioner filed before Branch 19 of the Regional Trial Court, the same Branch where Special Civil Action No. 6811 was instituted in 1979, an "Omnibus Motion to Declare the Judgment Satisfied, Reimburse Bidder or Pay as in Redemption, Etc.", praying that the auction sale of the subject property be declared null and void and that the title over the property in the name of Richard Go King be cancelled and petitioner's title fully restored. In the same pleading, petitioner manifested that on the assumption that the execution proceedings were valid, it was exercising its right to redeem the property by consigning redemption money in court.[27]

On June 19, 1999, the Omnibus Motion was denied in view of the pendency of the complaint in Civil Case No. 89-098 before Branch 24.[28] Petitioner moved for reconsideration.

On July 11, 1989, the order of denial was lifted and the Omnibus Motion was instituted. The court declared that the resolution of the said motion shall await the outcome of Civil Case No. 89-098 before Branch 24, unless the parties shall have decided to consolidate the two cases.[29]

Civil Case No. 89-098 with Special Civil Action No. 6811 were ordered consolidated by the court on July 14, 1989.[30]

On February 26, 1991, respondent Go King filed a "Motion for the Issuance of a Writ of Possession." On November 13, 1991, he also filed a "Petition for the Appointment of a Receiver." Both were opposed by petitioner.

On August 5, 1993, the trial court rendered a decision declaring the deed of sale, the final deed of conveyance, and TCT No. T-51704 in the name of respondent Go King as null and void, and denying respondent Go King's motion for writ of possession and petition for receiver, after finding that the property subject of execution was not levied upon, that notices of sale were not posted and that there was no return of the writ of execution of March 10, 1983.[31]

On appeal by respondents, the Court of Appeals reversed the trial court and dismissed Civil Case No. 89-098. The appellate court found that the case was a relitigation of the issues raised in CA-G.R. SP No. 10888 and that the notice requirements for the execution sale were validly complied with.

Petitioner's motion for reconsideration was denied in the Resolution of July 4, 1997. Hence, this petition where it is alleged that:

I. Respondent Court's assailed Decision and Resolution are not in accord with applicable law, rules and jurisprudence because:
1. The order of November 26, 1986 amending the March 10, 1983 order reducing the principal judgment debt

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to P64,956.18 and adding 3% monthly penalty and 5% attorney's fees of the principal obligation and authorizing issuance of a writ of execution for its satisfaction and the auction sale held pursuant thereto were null and void because said order, which was appealable, was prematurely executed before petitioner Coliseum was served with copy thereof and in disregard of the requirements of Sec. 2, Rule 39 of the Rules of Court.

2. Assuming, arguendo, that the execution of the order of November 26, 1986 could proceed, the public auction sale conducted by the sheriff on February 13, 1987 to satisfy the judgment debt was null and void because there was no prior levy as supported by public records and judicial admissions.

II. Respondent Court also ignored the equity of the case and the doctrine against unjust enrichment when it upheld the validity of the auction sale in question notwithstanding that the bid price of only P170,000.00 as against the property's value of P100 million is so unconscionable and so shocking to the conscience of impartial men as to invalidate the sale.

III. Assuming, further, that there was a valid auction sale on February 13, 1987, the proceedings in CA-G.R. SP No. 10888, in G.R. No. 79100, and in G.R. No. 78315 suspended the period of redemption; and the consignation of the redemption amount on April 11, 1989, well within the redemption period, discharged the judgment debt and rendered the auction sale without force and effect.[32]

In its first assigned error, petitioner claims that the trial court's execution order of November 26, 1986 amending the March 9, 1983 order was null and void for lack of due process.

It is too late in the day for petitioner to assail the validity of the order of November 26, 1986. This order became final for petitioner's failure to appeal therefrom. The institution of CA-G.R. SP No. 10888, the petition for annulment of judgment of the trial court, did not stay the proceedings before the court a quo. CA-G.R. CV No. 1088 was an original action in the Court of Appeals in the exercise of its exclusive original jurisdiction.[33] Since the said court did not issue any restraining order or injunction, the trial court's order of execution lapsed into finality.[34]

The issue of whether a hearing should have been conducted by the trial court to determine petitioner's overpayment of its debt has been raised in CA-G.R. SP No. 10888.[35] Respondent Court of Appeals denied this claim in its decision of February 13, 1987, which was affirmed by this Court in G.R. No. 79100.

The present petition hinges on the procedural issue of whether petitioner is barred by res judicata from assailing the validity of the execution proceedings over the subject property. Private respondent argues that Civil Case No. 89-098, the second action, is barred by the first action, i.e., CA-G.R. SP No. 10888, which we disposed of with finality in G.R. Nos. 79100 and 78315.[36]

For res judicata to be an absolute bar to a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.[37]

The judgment in the first case, CA-G.R. SP No. 10888, which we reviewed in G.R. Nos. 78315 and 79100 was a final judgment. It was on the merits and rendered by this Court having jurisdiction over the subject matter and the parties. Whether there is identity of parties, of subject matter and causes of action, between CA-G.R. SP No. 10888 and this case, is the crux of the controversy.

There is identity of parties where the parties in both actions are the same, or there is privity between them, or they are "successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity."[38] Respondent Sheriff Mabanag was a respondent in

CA-G.R. SP No. 10888 all the way to the Supreme Court. Private respondent Richard Goking, however, was not a party in the previous cases. He was impleaded only in Civil Case No. 89-098 after finality of the decisions in G.R. Nos. 79100 and 78315. Although he obtained his title to the property "subsequent to the commencement of the action," his rights to the property arose as buyer at the said sale, not as a creditor from any direct transaction with or title obtained from Commercial Credit, the judgment creditor. As the highest bidder, respondent Go King was issued a certificate of sale, and subsequently a final deed of conveyance for which TCT No. T-3383 of petitioner was cancelled and TCT No. T-51704 was issued in his name. The second case, Civil Case No. 89-098, was brought against him for the cancellation of his title over the subject property due to irregularities in the execution sale, not from the merits of the compromise judgment. There is therefore no identity of parties in CA-G.R. SP No. 10888 and Civil Case No. 89-098.

Neither is there identity of subject matter. CA-G.R. SP No. 10888 did not directly involve the property subject matter of this case. It was concerned with the provisions of the compromise judgment and the claim that petitioner was denied due process by the trial court in granting execution. On the other hand, Civil Case No. 89-098 dealt with the validity of the execution proceedings after the validity of the compromise judgment was upheld.[39]

The two cases do not have the same causes of action. The test of identity of causes of action lies not in the form of action but on whether the same facts or evidence would support and establish the former and present causes of action.[40] The doctrine of res judicata extends to facts and conditions as they existed at the time judgment was rendered and to the legal rights and relations of the parties fixed by the facts so determined.[41] The mere fact that the same relief is sought in the subsequent action will not render the judgment in the prior action operative as res judicata, such as when the two actions are brought on different statutes and rules as in the case at bar.[42]

From the pleadings, the causes of action in CA-G.R. SP No. 10888 involved the lack of due process, the invalidity of the compromise judgment itself, particularly the provisions on the rates of interest and penalties vis-a-vis the Usury Law and C.B. Circular No. 721, as well as the application of payments under the Civil Code. On the other hand, the cause of action in Civil Case No. 89-098 is anchored on the validity of the execution proceedings and the debtor's exercise of the right of redemption under Rule 39 of the Rules of Court.

In its motion for reconsideration of the Court of Appeals' decision in CA-G.R. SP No. 10888, petitioner assailed the validity of the writ of execution, the sheriff's notice of sale, the public auction sale of February 13, 1987 and the certificate of sale. A careful examination of said motion for reconsideration reveals that the validity of these documents of execution was assailed with respect to the computation of the amount of petitioner's debt subject of execution for not being in accordance with the decision of the Court of Appeals. In other words, it was the amount subject of execution that was questioned insofar as it did not conform with the reduced rates of interest and penalty charges imposed by the Court of Appeals. In fact, the Court of Appeals nullified the writ of execution, sheriff's notice of sale, the public auction sale and the certificate of sale insofar as they were in excess of the modified judgment. The computation of petitioner's outstanding balance goes into the substantive provisions of the compromise judgment. Petitioner did not squarely and directly challenge the procedural infirmity of the execution proceedings but pursued the merits of the compromise judgment itself.

G.R. No. 79100 was dismissed by this Court for late filing and on the ground that the Court of Appeals committed no reversible error. G.R. No. 78315 reversed the decision of the Court of Appeals in CA-G.R. SP No. 10888 and sustained the compromise judgment. Our factual finding then was that the execution proceedings "did not take place as scheduled due to some internal problems in the office of the sheriff."[43] The facts in the instant case now deal with the execution proceedings themselves. The two cases are not the same for the simple reason that the cause of action in Civil Case No. 89-098 arose only after the merits of the compromise judgment were passed upon with finality by this Court. It was error for respondent Court of Appeals therefore to declare that Civil Case

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No. 89-098 was a "relitigation of issues" in CA-G.R. SP No. 10888.[44]

There being no res judicata, we now come to the merits of the instant petition. Petitioner corporation specifically alleges that the execution proceedings and the auction sale were null and void for failure to comply with the levy and notice requirements of the Rules of Court.

Execution under Rule 39 of the Revised Rules of Court is a remedy afforded by law for the enforcement of a judgment, its object being to obtain satisfaction of the judgment on which the writ is issued.[45] It issues by order of the court a quo, on motion of the judgment obligee, upon finality of a judgment or order sought to be enforced,[46] and is directed to an officer authorizing and requiring him to execute the judgment of the court.[47]

If the judgment is for money, the sheriff or other authorized officer must execute the same pursuant to the provisions of Section 15 of Rule 39 of the Rules of Court, viz:

> Sec. 15. Execution of money judgments. - - The officer must enforce an execution of a money judgment by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs.
>
> Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment.[48]

In executing a money judgment against the property of the judgment debtor, the sheriff shall levy on all property belonging to the judgment debtor as is amply sufficient to satisfy the judgment and costs, and sell the same paying to the judgment creditor so much of the proceeds as will satisfy the amount of the judgment debt and costs. Any excess in the proceeds shall be delivered to the judgment debtor unless otherwise directed by the judgment or order of the court.[49]

Levy means the essential act or acts by which an officer sets apart or appropriates a part or the whole of the property of the judgment debtor for purposes of the prospective execution sale.[50] The object of a levy is to take property into the custody of the law, and thereby renders it liable to the lien of the execution, and put it out of the power of the judgment debtor to divert it to any other use or purpose.[51] A valid levy on execution places the property subject of execution under the jurisdiction and authority of the court.[52] It also creates a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens and encumbrances then existing.[53]

The second paragraph of Section 15, Rule 39 as aforequoted provides that a levy is effected in the same manner as the levy under a writ of attachment. Rule 57 on Attachment provides:

> Sec. 7. Attachment of real and personal property; recording thereof. - - Properties shall be attached by the officer executing the order in the following manner:
> (a) Real property, or growing crops thereon, standing upon the records of the registrar of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, by filing with the registrar of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any there be. Where the property has been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The registrar must index attachments filed under this

> paragraph in the names of both of the applicant and the adverse party.
>
> x x x x x x x x x.[54]

To effect a levy upon a realty, the sheriff is required to do two specific things: (1) file with the register of deeds a copy of the order of attachment or execution, together with the description of the attached property and notice of attachment or execution; and (2) leave with the occupant of the property copy of the same order, description and notice.[55] These are prerequisites to a valid levy, non-compliance with any of which is fatal.[56]

In the instant case, the execution sale of the subject property was made pursuant to the order of execution of November 26, 1986 and the writ of execution of December 4, 1986. The November 26, 1986 execution order and the corresponding writ of execution were not filed with the Register of Deeds before the auction sale of February 13, 1987. The order of November 26, 1986 was filed and inscribed on petitioner's title only on December 7, 1988 - - exactly one (1) year and ten (10) months after the execution sale of February 13, 1987. This is clear from the annotation in TCT No. T-3383 of petitioner corporation. Thus:

> Entry No. 132984 - Order issued by the Hon. Judge Ricardo P. Galvez denying the motion for reconsideration filed by respondent Coliseum, and ordering that a writ of execution be issued against said respondent for the collection of its outstanding obligation of P64,956.19 with the respondent CCC, including the "three (3%) per cent per month penalty charge until fully paid, plus five per cent (5%) of the outstanding balance as additional attorney's fees" as provided in paragraph 5 of the compromise agreement. Date of Order November 26, 1986. Date of Inscription December 7, 1988 at 2:30 P.M.[57]

Clearly, the execution order of November 26, 1986 was filed with the Register of Deeds only after the execution sale of February 13, 1987. The belated filing came after the execution of the Sheriff's Certificate of Sale, after the issuance of the Sheriff's Certificate of Final Deed of conveyance;[58] and after cancellation of TCT No. T-3383 of petitioner and the issuance of TCT No. T-51704 in the name of respondent Goking on October 20, 1988.[59] Respondent Sheriff himself admitted on the witness stand that he did not file a copy of the November 26, 1986 order of execution with the Register of Deeds before the February 13, 1987 sale on the belief that the property had already been levied upon by Sheriff Acero.[60] An examination of TCT No. T-3383 shows that the court order and writ of execution filed by Sheriff Acero with the Register of Deeds before the auction sale was not the November 26, 1986 order but the March 9, 1983 order, viz:

> Entry No. 103724 - Notice of Attachment or Levy executed by Arturo B. Acero - Deputy Provincial Sheriff, that the Provincial Sheriff or any of his deputies is commanded to make out of the properties, personal and real, of the petitioner - Ralph T. Willkom, in the amount of P70,152.68 representing the outstanding obligation of petitioners by way of their compromise agreement, excluding sheriff's fees and expenses, all the titles, rights, interests, shares and participations of said petitioners Ralph Lou T. Willkom, et. al., petitioners v. Rufo J. Waminal, etc., Commercial Credit Corporation of Cagayan de Oro City, etc., "Special Civil Action No. 6811, For: Injunction." (Date of Instrument - March 11, 1983. Date of Inscription - March 11, 1983 at 1:30 P.M.)
>
> Entry No. 105125 - Writ of Execution executed by Segundo C. Royo - Deputy Clerk of Court of Ralph Lou T. Willkom, et. al., Petitioners, versus Rufo J. Waminal, etc. Commercial Credit Corporation of Cagayan de Oro, etc., Defendants of SP Civil Action No. 6811 for: Injunction. (Date of Instrument - March 10, 1983. Date of Inscription - March 11, 1983 at 1:30 P.M.)[61]

What was filed with the Register of Deeds before the execution sale of February 13, 1987 was not the order of November 26, 1986 but the March 9, 1983 order of execution. The writ of execution and notice of levy filed with the Register of Deeds on March 11, 1983 and inscribed on petitioner's title the same day were pursuant to the March 9, 1983 order of execution.

The March 9, 1983 order was rendered ex-parte. The trial court issued the order of execution for the amount prayed for by Commercial Credit, i.e., P70,152.68, excluding sheriff's fees and expenses in its motion for execution. On reconsideration by petitioner, the court, on November 26, 1986, reduced the amount of the principal debt to P64,956.19 but added the monthly penalty of 3% and additional attorney's fees of 5%. With these charges, the judgment debt increased to P167,367.40, which amount was more than double than that stated in the first execution order.[62]

The order of November 26, 1986 did not supplement the March 9, 1983 order. It amended the original. The substantial increase in the amount of debt necessarily affected the kind and number of property that was to be levied upon and sold, and the price the property was to command at the public auction sale. The amendment was of such proportion that it superseded that which it amended[63] and gave rise to an entirely new order.[64] The March 9, 1983 order was therefore extinguished and the one of November 26, 1986 became the new order of execution.[65]

It was on the basis of the November 26, 1986 order that the execution sale actually took place on February 13, 1987. Since this order was not filed with the Register of Deeds prior to the execution sale, it follows that the levy was not effected and the execution sale of February 13, 1987 proceeded without a levy.[66] A lawful levy on execution is indispensable to a valid sale on execution.[67] In other words, a sale, unless preceded by a valid levy, is void, and the purchaser acquires no title to the property sold.[68] Without a proper levy, the property is not placed under the authority of the court. The court does not acquire jurisdiction over the property subject of execution, hence, it could not transmit title thereto at the time of the sale.[69] Where in the instant case no jurisdiction was acquired over the subject property, the execution sale was void and of no legal effect.[70] And the trial court did not err in so ruling.[71]

It appears that petitioner has consigned redemption money to the court a quo as an alternative cause of action. Private respondent argues that redemption is inconsistent with the claim of invalidity of the levy and sale.[72] In the case at bar, however, petitioner has expressly averred that the redemption was made purely on the assumption, not admission, of the validity of the execution proceedings.[73] Petitioner has consistently questioned the validity of the execution proceedings. It would be unjust to deprive it of the opportunity to recover its one and only real property[74]by the simple expedient of estoppel despite the express condition attached to its redemption. After all, the Rules of Court provide that a party may in one pleading set forth two or more statements of a claim alternatively or hypothetically, either in one or in separate cause of action.[75]

Lastly, the nullity of the execution proceedings does not discharge petitioner's indebtedness to Commercial Credit. The execution order of November 26, 1986 subsists. Unless petitioner corporation pays the amount determined under said order, execution proceedings may issue accordingly.

In view of these findings, there is no necessity for us to pass upon petitioner's second assigned error.

WHEREFORE, the petition is GRANTED and the Decision and Resolution of respondent Court of Appeals in CA-G.R. CV No. 43782 are REVERSED and SET ASIDE. The Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City in Civil Case No. 89-098 and Special Civil Action No. 6811 is REINSTATED with the MODIFICATION that execution proceedings may henceforth issue, unless petitioner fully discharges its indebtedness under the execution order of November 26, 1986.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Penned by Justice N. de Pano, Jr. and concurred in by Justice Q. Abad-Santos, Jr. and D. Magtolis.

[2] Petition, pp. 1-2, Official Records I, pp. 2-3.

[3] Official Records I, p. 8.

[4] Exhibit "P", Official Records II, p. 243; also marked as Annex "D" to the Petition, Rollo, p. 181.

[5] "Opposition to the Issuance of Preliminary Injunction or Restraining Order", p. 3., Official Records I, p. 16.

[6] Petition in Special Civil Action No. 6811, p. 2, Official Records I, p. 3.

[7] Official Records I, pp. 56-58.

[8] Official Records I, pp. 60-61.

[9] Official Records I, p. 64.

[10] See Annotations in TCT No. T-3383, Exhibit "P", Official Records II, pp. 245-246.

[11] Official Records I, pp. 65-68; also marked as Annex "15" to Respondents' Memorandum, Rollo, pp. 612-616.

[12] Official Records I, p. 103.

[13] Exhibit "1", Folder of Exhibits for Defendants Mabanag and Go King; see also Official Records I, p. 104.

[14] Exhibit "14", Folder of Exhibits for Defendants; also marked as Annex "1" to Respondent's Memorandum, Rollo, pp. 485-502.

[15] Petition in CA-G.R. SP No. 10888, pp. 17-18; also marked as Annex "1" to Respondent's Memorandum Rollo, p. 501.

[16] CA Decision, pp. 8-9; Official Records I, pp. 120-121; also marked as Annex "8" to Respondents' Memorandum, Rollo, pp. 596-597.

[17] Official Records I, p. 126.

[18] CA Resolution dated May 19, 1987, pp. 1-2; Exhibit "23-A," Folder of Exhibits for Defendants, pp. 155-156.

[19] Motion for Reconsideration and Comment on Respondents' Motion for Reconsideration," pp. 18-19; also marked as Annex "S" to Respondents' Memorandum, Rollo, pp. 521-522.

[20] Exhibit "23," Folder of Defendants' Exhibits, pp. 155-157; also marked as Annex "3" to Respondents' Memorandum, Rollo, pp. 524-526.

[21] Exhibits "20-A" and "20-B," Folder of Defendants' Exhibits; also marked as Annex "4" to Respondents' Memorandum, Rollo, pp. 553-554.

[22] Id., p. 27, Rollo, p. 553.

[23] Exhibit "28," `Folder of Defendants' Exhibits, pp. 208-209.

[24] See Commercial Credit Corporation of Cagayan de Oro v. Court of Appeals, G.R. No. 78315, 169 SCRA 1 [1989].

[25] Ibid., at 8.

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[26] Amended Complaint, pp. 9-10, Official Records I, pp. 241-242.

[27] Official Records I, pp. 137-142.

[28] Official Records I, pp. 270-273.

[29] Official Records I, p. 290.

[30] Official Records II, p. 141.

[31] RTC Decision, p. 18; also marked as Annex "C" to the Petition, Rollo, p. 99.

[32] Petition, pp. 11-12; Rollo, pp. 13-14.

[33] Sec. 9 (2), B.P. 129.

[34] See Rule 47, 1997 Rules of Civil Procedure.

[35] Petition, p. 6, Annex "1" to Respondent's Memorandum, Rollo, p. 490.

[36] Respondents' Memorandum, pp. 34-40, Rollo, pp. 468-474.

[37] Traders Royal Bank v. Intermediate Appellate Court, 273 SCRA 521, 524 [1997]; Guevara v. Benito, 247 SCRA 570, 573 [1995]; Javier v. Veridiano, 237 SCRA 565, 570 [1994]; American Inter-Fashion Corp. v. Office of the President, 197 SCRA 409, 417 [1991]; Nabus v. Court of Appeals, 193 SCRA 732, 740 [1991].

[38] Section 49 (b), Rule 39, Revised Rules of Court, now Section 47 (b), Rule 39, 1997 Rules of Civil Procedure; Valencia v. RTC of Quezon City, Br. 90, 184 SCRA 80, 90 [1990]; Sunflower Umbrella Mfg. Co., Inc. v. de Leon, 237 SCRA 153, 165 [1994].

[39] See Ramos v. Pablo, 146 SCRA 24, 31 [1986].

[40] Carlet v. Court of Appeals, 275 SCRA 97, 107-108 [1997]; Mendiola v. Court of Appeals, 258 SCRA 492, 502 [1996]; Nabus v. Court of Appeals, 193 SCRA 732, 742-743 [1991]; Vda de Cruzo v. Cariaga, Jr., 174 SCRA 330, 343 [1989].

[41] Guevara v. Benito, 247 SCRA 570, 573 [1995]; Caina v. Court of Appeals, 239 SCRA 252, 263 [1994].

[42] Nabus v. Court of Appeals, supra, at 743.

[43] Commercial Credit Corporation of Cagayan de Oro v. Court of Appeals, G.R. No. 78315, 169 SCRA 1, 5 [1989].

[44] CA Decision, p. 20, also marked as Annex "A" to the Petition, Rollo, p. 71.

[45] 30 Am Jur 2d, "Executions," Sec. 43 [1994 ed.].

[46] Sec. 1, Rule 39, Rules of Court; see also Sec. 1, Rule 39, 1997 Rules of Civil Procedure.

[47] Sec. 8, Rule 39, Rules of Court; also Sec. 8, Rule 39, 1997 Rules of Civil Procedure.

[48] Now modified in Section 9, Rule 39 of the 1997 Rules of Civil Procedure.

[49] Moran, Comments on the Rules of Court. Vol. II, p. 297 [1980].

[50] Fiestan v. Court of Appeals, 185 SCRA 751, 757 [1990]; Del Rosario v. Yatco, 18 SCRA 1263, 1266 [1996]; Llenares v. Valdeavella, 46 Phil., 358, 360 [1924].

[51] Francisco, The Revised Rules of Court in the Philippines, Vol. II, p. 700 [1968] citing 33 C.J.S. 234; Del Rosario v. Yatco, supra, at 1266.

[52] Valenzuela v. De Aguilar, 8 SCRA 212, 216-217 [1963].

[53] Sec. 16, Rule 39; now Sec. 12, Rule 39, 1997 Rules on Civil Procedure.

[54] Section 7, Rule 57, Rules of Court; now modified in Section 7, Rule 57 in the 1997 Rules of Civil Procedure.

[55] Philippine Surety & Ins. Co., Inc. v. Zabal, 21 SCRA 682, 685 [1967]; see also Martin, Civil Procedure, Vol. I, p. 806 [1989].

[56] Ibid.

[57] Exhibit "P-3," Official Records II, p. 247; Emphasis supplied.

[58] See Exhibit "P", Official Records II, pp. 246-247 - Entry No. 121590 - Sheriff's Certificate of Sale dated February 13, 1987 and inscribed on February 16, 1987; and Entry No. 132265 - Sheriff's Certificate of Final Deed of Conveyance dated October 14, 1988 and inscribed on October 20, 1988.

[59] See TCT No. T-51704, Exhibit "Q," Official Records II, p. 247.

[60] TSN of June 19, 1991, pp. 22-36; see also Petition, pp. 27-28, Rollo, pp. 29-30.

[61] Exhibit "P," Official Records II, pp. 245-246; Emphasis supplied.

[62] Sheriff's Return of Service dated February 16, 1989 executed by Deputy Sheriff Mabanag, Exhibit "Y," Official Records II, p. 277.

[63] Section 8, Rule 10, 1997 Rules of Civil Procedure; see Aznar III vs. Bernad, 161 SCRA 276, 281 [1998].

[64] Esquivel v. Alegre, 172 SCRA 315, 325 [1989]; Sta. Romana v. Lacson, 104 SCRA 93 [1981]; Magdalena Estates, Inc. v. Caluag, 11 SCRA 333, 337 [1964].

[65] Esquivel v. Alegre, supra; see also Regaladao, Remedial Law Compendium, Vol. I, p. 370 [1997].

[66] Francisco, The Revised Rules of Court in the Philippines, Vol. II, p. 701 [1968].

[67] Llenares v. Valdeavella, 46 Phil. 358, 361 [1963]; Consolidated Bank & Trust Corp. v. Court of Appeals, 193 SCRA 158, 174 [1991].

[68] Llenares v. Valdeavella, supra, at 361.

[69] Valenzuela v. Aguilar, 8 SCRA 212, 217 [1963]; see also Martin, Civil Procedure, Vol. I, p. 804 [1989].

[70] Siari Valley Estates, Inc. v. Lucasan, 109 Phil. 294, 298 [1960].

[71] See RTC Decision, pp. 18-19; also marked as Annex "C" to the Petition, Rollo, pp. 99-100.

[72] Respondents' Memorandum, pp. 42-46, Rollo, pp. 476-480.

[73] See "Omnibus Motion to Declare Judgment Satisfied," Special Civil Action No. 6811, p. 3, Official Records I, p. 139' Amended Complaint, Civil Case No. 89-098, p. 6, Official Records I, p. 238.

[74] Amended Sheriff's Notice of Sale dated January 19, 1987, Folder of Exhibits for Defendants Mabanag and Goking, p. 34. This notice lists only one real property of petitioner corporation.

[75] Sec. 2, Rule 8, Rules of Court, also Sec. 2, Rule 8 of the 1997 Rules of Civil Procedure.

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