

JAIME B. BIANA, PETITIONER, VS. GEORGE GIMENEZ, RESPONDENT.

G.R. NO. 132768. September 09, 2005

Ponente: GARCIA, J.

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GARCIA, J.

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in CA-G.R. SP No. 40208, to wit:

- Decision dated 9 July 1977,[1] affirming in toto an earlier decision of the Regional Trial Court at Naga City in a special civil action for mandamus with damages, thereat commenced by the herein respondent against the Provincial Sheriff of Camarines Sur and petitioner's predecessor-in-interest, a certain Santos B. Mendones; and
- Resolution dated 30 January 1998,[2] denying, for lack of merit, petitioner's motion for reconsideration.

The facts:

In a labor case filed before the Naga City District Office of the Department of Labor and Employment, entitled Santos B. Mendones vs. Gimenez Park Subdivision and George Gimenez, thereat docketed as Term Case No. R05-D-008-78, the defendants therein, which included herein respondent George Gimenez, were ordered to pay Mendones the sum of P1,520.00 plus P8.00/day starting 1 August 1978 up to the time of Mendones' reinstatement, as well as P3,168.00 as sheriff's fees and expenses of execution. Deputy Sheriff Renato Madera computed the judgment obligation at P5,248.50 and demanded its immediate payment from said defendants.

For defendants' failure to pay the judgment obligation in that case, Sheriff Madera proceeded to levy and attach four (4) parcels of urban land situated in Naga City with an aggregate area of more than 74 hectares and registered, per Transfer Certificate of Title No. 10249, in the names of Jose F. Gimenez, Tessa F. Gimenez, Maricel G. Gimenez and herein respondent George Gimenez.

On 6 December 1978, a public auction was conducted by Sheriff Madera for the sale of the subject parcels of land. Mendones, as sole bidder, won in the execution sale with his bid of P8,908.50, representing the judgment obligation plus expenses of execution. Thus, a Provisional Certificate of Sale was issued and registered in the name of Mendones on 7 December 1978.

According to respondent Gimenez, he was not duly informed or notified of the execution sale conducted by Sheriff Madera. He added that the sale came to his knowledge only when a representative of the sheriff asked him to pay the publication fee of the execution sale in the amount of P3,510.00. Immediately, he paid the full publication fee by issuing checks. For this payment, he was issued O.R. No. 161 on 27 January 1979, or 10 months and 20 days before the expiration of the one-year redemption period.

For the purpose of paying the redemption price of the parcels of land sold at the execution sale, respondent Gimenez approached Provincial Sheriff Manuel Garchitorena since he failed to locate Sheriff Madera. As per computation, Provincial Sheriff Garchitorena informed respondent Gimenez that the balance of the redemption price including interest and sheriff's fee amounted to P6,615.89. To facilitate redemption, respondent Gimenez

issued four (4) checks in the name of Provincial Sheriff Garchitorena, which checks bear the following particulars:

Check No. Date Amount

272377 18 July 1979 P1,500.00

272384 03 August 1979 P1,500.00

272385 18 August 1979 P1,500.00

272386 01 September 1979 P1,115.89[3]

For his part, Provincial Sheriff Garchitorena issued a receipt[4] dated 19 July 1979, or 4 months and 18 days before the expiration of the 1-year redemption period, therein acknowledging that he "received from the Gimenez Park Subdivision and George F. Gimenez the sum of FIVE THOUSAND SIX HUNDRED FIFTEEN & 89/100 in full payment and satisfaction of the judgment xxx".

After some time, or more specifically on 3 December 1979, Sheriff Madera wrote a letter[5] addressed to the counsel of respondent Gimenez informing counsel that the 1-year redemption period will soon expire on 7 December 1979 and that his client still has an unpaid balance of P4,367.81. Replying thereto, respondent's counsel asked for the details of said account. To this, Deputy Sheriff Madera submitted an itemization[6] which includes the sum of P3,510.00 as publication fee due to Bicol Star. Respondent disagreed with this itemization contending that he had paid the full cost of publication to the publisher of Bicol Star. Nonetheless, Deputy Sheriff Madera executed in favor of Mendones a Definite Deed of Sale[7] dated 8 December 1979.

Meanwhile, for allegedly having paid the full redemption price, respondent Gimenez requested Provincial Sheriff Manuel Garchitorena to execute a deed of redemption in his favor. His request having been refused, respondent then filed with the Regional Trial Court at Naga City a special civil action for mandamus with damages to compel Provincial Sheriff Garchitorena and/or Deputy Sheriff Madera to execute the desired deed of redemption. In his petition, docketed in said court as Civil Case No. 860, Gimenez included an alternative prayer that if a definite deed of sale was already issued in favor of Mendones, the same be declared null and void.[8]

Later, Mendones asked for leave, and was permitted, to file an answer-in-intervention, thereunder contending that no valid redemption was effected within the 1-year redemption period.

During the pendency of the case, Mendones assigned his right over the 74-hectare land he acquired on auction to herein petitioner Jaime Biana in consideration of one million pesos (P1,000,000.00).[9]

After due proceedings, the trial court, in a decision[10] dated 20 January 1999, ruled in favor of respondent Gimenez. Dispositively, the decision reads.

WHEREFORE, by preponderant evidence, JUDGMENT is hereby rendered in favor of [Gimenez] as against [the Provincial Sheriff and herein petitioner as assignee of Mendones]. Accordingly, the Court hereby renders, judgment:

a)

Setting aside and declaring the Definite Deed of Sale dated December 8, 1979 null and void;

b)

Ordering the Provincial Sheriff of Camarines Sur to execute a Deed of Redemption reconveying the parcels of land covered by TCT No. 10249 to petitioner George G. Gimenez;

c)

Permanently enjoining the Register of Deeds of Naga City from registering the Definite Deed of Sale issued by the Provincial Sheriff of Camarines Sur over the above property subject of this case;

d)

Ordering intervenor Jaime B. Biana to pay [Gimenez] moral damages in the amount of One Hundred Fifty Thousand Pesos (P150,000.00);

e)

Ordering intervenor Jaime B. Biana to pay [Gimenez] attorney's fees and related expenses of litigation in the amount of Twenty Thousand (P20,000.00) Pesos;

f)

DISMISSING the counterclaim of respondent Provincial Sheriff and intervenor.

With costs against intervenor.

SO ORDERED.

Unable to accept the judgment, petitioner, joined by the Provincial Sheriff, went to the Court of Appeals via ordinary appeal, thereat docketed as CA-G.R. SP No. 40208.

As stated at the outset hereof, the Court of Appeals in a Decision dated 9 July 1997, affirmed in toto the appealed decision of the trial court. With his motion for reconsideration having been denied by the appellate court in its Resolution of 30 January 1998, petitioner is now with us via the present recourse on his submissions that the Court of Appeals erred -

I

XXX WHEN IT SUSTAINED THE ARBITRARY AND UNWARRANTED ACT OF THE TRIAL COURT OF CONVERTING THE SPECIAL CIVIL ACTION OF MANDAMUS INTO AN ORDINARY CIVIL ACTION WITH MULTIPLE RELIEFS.

II

XXX WHEN IT ACQUISCED TO THE OPEN DISREGARD BY THE TRIAL JUDGE OF THE JUDICIAL IMPARTIALITY AND UNBIASED STANCE REQUIRED OF HIM IN THE RENDITION OF HIS DECISION.

III

XXX WHEN IT ASSENTED TO THE ERRONEOUS CONCLUSION OF THE TRIAL JUDGE THAT THE RESPONDENT WAS ABLE TO MAKE A VALID REDEMPTION BY MEANS OF POSTDATED

CHECKS OF VARYING DATES.

IV

XXX WHEN IT FAILED TO APPRECIATE THE FACT THT MANDAMUS AS A SPECIAL CIVIL ACTION IS A REMEDY FOR OFFICIAL INACTION AND IS UNAVAILING AS A REMEDY FOR THE CORRECTION OF ACTS ALREADY PERFORMED.

V

XXX WHEN IT FAILED TO CONSIDER THAT THE TRIAL COURT WENT BEYOND ITS JURISDICTION AND ACTED ARBITRARILY WHEN IT IMPOSED MORAL DAMAGES AND ATTORNEY'S [sic] FEES UPON PETITIONER WHEN NO SUCH DEMAND WAS ASKED FOR IN THE COMPLAINT FOR MANDAMUS WHICH WAS DIRECTED ONLY AGAINST THE PROVINCIAL SHERIFF OF CAMARINES SUR.

VI

XXX WHEN IT OVERLOOKED THE FACT THAT THE ACT OF EXECUTING A DEED OF REDEMPTION IN FAVOR OF RESPONDENT INVOLVES THE EXERCISE OF DISCRETION BY THE PROVINCIAL SHERIFF OF CAMARINES SUR.

As we see it, petitioner's assigned errors crystallize to one pivotal question: Can the Provincial Sheriff of Camarines Sur be legally compelled to execute a deed of redemption in favor of respondent Gimenez?

Petitioner contends that there is yet no redemption in this case because what were tendered by the respondent by way of exercising of his right of redemption are postdated checks. To petitioner, the tender did not operate as payment of the redemption price, hence respondent is not entitled to a deed of redemption. To buttress his argument, petitioner invokes the ruling in *Philippine Airlines, Inc. vs. Hon. Court of Appeals, et al.*, [11] where this Court ruled that payment in check issued in the name of an absconding sheriff did not operate as payment of the judgment obligation.

On surface, petitioner's posture appears to hold water. However, a close scrutiny of the facts obtaining in PAL reveals that petitioner's reliance on the ruling thereon is misplaced. First and foremost, what is involved in PAL is the payment of a judgment obligation and thus, the Civil Code provisions on payment of obligations, particularly Article 1249[12] thereof, are applicable. In glaring contrast, the instant case involves not the payment of an obligation but the exercise of a right, i.e., the right of redemption. Accordingly, the Civil Code provisions on payment of obligations may not be applied here. What applies is the settled rule that a mere tender of a check is sufficient to compel redemption. In the words of this Court in *Fortunado, et al. vs. Court of Appeals, et al.*: [13]

We are not, by this decision, sanctioning the use of a check for the payment of obligations over the objection of the creditor. What we are saying is that a check may be used for the exercise of the right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price. In other words, while we hold that the private respondents properly exercise their right of redemption, they remain liable, of course, for the payment of the redemption price. (Emphasis supplied).

Moreover, PAL is casts against a factual backdrop entirely different from the present case. There, the sheriff in whose name the checks were made payable absconded or disappeared, making it impossible for the judgment oblige and the court to collect from him the amount of the judgment obligation. In fact, this Court made it clear in PAL that the pronouncement therein made was arrived at "under the peculiar circumstances surrounding [that] case", which, to stress, do not obtain herein.

The records before us are bereft of any evidence indicating that Sheriff Garchitorena absconded or disappeared with the checks of respondent. Quite the contrary, in the letter[14] of Deputy Sheriff Madera addressed to Santos B. Mendones, the former even stated that "in this connection, please come to our office on Monday December 10, 1979 to withrow [sic] the above-mentioned amount, because at present Atty. Manuel Garchitorena is still on vacation leave". Clearly, therefore, it is not impossible for the judgment oblige or the court to collect the amount of the judgment obligation from Sheriff Garchitorena who even issued a receipt bearing date 19 July 1979 acknowledging that he "received from the Gimenez Park Subdivision and George G. Gimenez the sum of FIVE THOUSAND SIX HUNDRED FIFTEEN & 89/100 in full payment and satisfaction of the judgment xxx".

Besides, Sheriff Madera himself deducted the aggregate amount of the four (4) checks (P5,615.89) from respondent Gimenez' liability when he submitted the itemization[15] requested by the latter's counsel, Atty. Augusto A. Pardalis.

Petitioner argues strongly that it was error for both the trial and appellate courts to have entertained respondent's suit for mandamus considering that a Deed of Definite Sale dated 8 December 1979 had already been executed by Deputy Sheriff Madera, and, therefore, unless that deed is nullified, there was no longer a duty compellable by mandamus that has yet to be performed. Petitioner adds that respondent's resort to mandamus is improper since the latter's speedy and adequate remedy was to file an independent action to nullify the same deed and thereafter ask for the issuance in his favor of a deed of redemption. On this premise, petitioner faults both courts for nullifying in the same proceedings the subject Definite Deed of Sale and ordering the Provincial Sheriff to execute a deed of redemption in respondent's favor.

We are not persuaded.

For, as correctly observed by the Court of Appeals in its challenged decision of 9 July 1997, to which we are in full accord:

From a reading of the petition for mandamus with damages, the petitioner prayed, among others, that:

"b) in the event that a final confirmation of sale was in fact executed by respondent Renato Madera, the same be declared null and void ab initio."

Thus, it cannot be said that the trial court went beyond that which is being asked for in this case. To us, it is very much appropriate because in the first place, there was a prayer for such. And secondly, to give effect to the judgment ordering the Provincial Sheriff of Camarines Sur to execute a Deed of Redemption in favor of the appellee, it becomes necessary to annul the said Definite Deed of Sale. It is just in consonance with the finding that [respondent] had made a valid redemption within the reglementary period for redemption. Stated otherwise, the grant of the writ of mandamus (commanding the Provincial Sheriff of Camarines Sur to execute the Deed of Redemption) without annulling the Definite Deed of Sale would all be nothing but a mere farce. We cannot, even in our wildest imagination, allow this absurdity to defeat the purposes of the law, and more so to sanction actions of the parties which we found to be clearly in violation of the law and settled jurisprudence, on the basis merely of a technicality brought about by a strict application of the rules. This is far from the understanding of this court.

As ruled by the appellate court, since the issue of nullification of the aforementioned Definite Deed of Sale "had already been brought to the attention of the trial court for resolution in the same mandamus case", an independent action for the nullification thereof would only result in multiplicity of suit. In this connection, we note from the records before us that the mandamus case was filed by respondent way back on 25 February 1982,[16] or more than two (2) decades ago.

Given the above, we agree with the ruling of the two courts below that there has been a valid payment of the redemption price which would entitle respondent to the issuance of a Deed of Redemption in his favor.

This brings us to the propriety of the award of moral damages and attorney's fees in favor of respondent.

Petitioner contends that the Court of Appeals acted wrongly when it sustained the trial court's award of moral damages and attorney's fees even as no prayer therefor was made by respondent in the petition he filed with the trial court.

Again, we are not persuaded.

It must be stressed petitioner is the successor-in-interest of Santos Mendones. As such, he is bound by all the actions made by the latter. To emphasize, the original petition filed before the trial court is a special civil action for mandamus with damages to compel Provincial Sheriff Garchitorena and/or Deputy Sheriff Madera to execute in favor of respondent a deed of redemption. Originally, it was the two sheriffs who were made respondents in said case. However, during the pendency thereof, Mendones himself filed an answer-in-intervention after having obtained leave from the trial court. Hence, Mendones became one of the party-respondents in that mandamus case against whom Gimenez prays for the award of moral damages and attorney's fees.

Again, to quote from the assailed decision of the appellate court:

As to the award of moral damages and attorney's fees, we find the same to be appropriately supported with the trial court's findings of facts, and thus, we affirm the same. We quote with approval the trial court's findings on this point:

xxx However, moral damages may be granted in this case as [respondent] had expressly suffered mental anguish, extreme humiliation and social ridicule because of the patently void acts of [the sheriff] in collusion with intervenor in enforcing and implementing the writ of execution to satisfy a judgment for a paltry sum of money in the hope of unjustly enriching themselves had they succeed (sic) in obtaining title over [respondent's] P40,000,000.00 – property. To the Court, [respondent] had sufficiently established the factual basis for claiming moral damages which this Court – in exercising its discretion – hereby fixes at One Hundred Fifty Thousand Pesos (P150,000.00).

xxx xxx xxx

xxx In this case, the court finds that herein intervenor's successor-in-interest [referring to herein petitioner Biana] had insisted and prodded the continuation of this litigation despite full knowledge that the claim of original intervenor Mendones was only for something like P10,000.00 in the hope of reaping unjustly million therefor. In fact, knowing fully well that the value of the property of the [respondent] at the time of the commencement for this action was already P40,000,000.00, intervenor Biana still managed to convince or persuade original intervenor Santos Mendones to part with his claim for the sum of P1,000,000.00 (Annex "A", Deed of Sale, pp. 448-451, Records), for which reason, said intervenor must be called upon to answer for the moral damages suffered and attorney's fees and related expenses of litigation incurred by herein petitioner. (Words in bracket ours).

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Panganiban (chairman), Sandoval-Gutierrez, and Corona, Conchita, JJ., concur.
Carpio Morales, J. On Official Business

[1] Penned by then Associate Justice (now Presiding Justice) Romeo A. Brawner, with Associate Justices Antonio

M. Martinez (ret.) and Lourdes K. Tayao-Jaguros (ret.), concurring; Rollo, pp. 27-35.

[2] Rollo, p. 43.

[3] Records, p. 23.

[4] Records, p. 23.

[5] Records, Exhibit "C", p. 7.

[6] Records, Exhibit "C-2", p. 9.

[7] Records, pp. 81, et seq.

[8] Rollo, pp. 56 and 57.

[9] Rollo, p. 57.

[10] Records, pp. 510-529.

[11] 181 SCRA 557 [1990].

[12] Article 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

[13] 196 SCRA 269, 279 [1991].

[14] Records, p. 21.

[15] Supra.

[16] RTC Records, p. 1.

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