

SIARI VALLEY ESTATES, INC., PETITIONER, VS. FILEMON LUCASAN, ET AL., RESPONDENTS.*G.R. No. 13281. August 31, 1960*

Ponente: BAUTISTA ANGELO, J.

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On January 30, 1952, the Court of First Instance of Zamboanga del Norte rendered decision ordering Filemon Lucasan to deliver to the Siari Valley Estates, Inc. the cattle inside the former's pasture or pay its value amounting to P40,000.00 and damages in another sum of P40,000.00. This decision was affirmed in toto by the Supreme Court, and when the same became final and executory, a writ of execution was issued. In carrying out this writ, the sheriff proceeded to levy on certain parcels of lands belonging to defendant. These lands were sold by the sheriff at public auction to the corporation as the highest bidder on January 14, 1956. The judgment debtor having failed to redeem the land within the period of one year, on January 26, 1957, the sheriff issued in favor of the purchaser the final certificate of sale, copy of which was registered in the Office of the Register of Deeds of Zamboanga. On February 16, 1957, upon petition of the corporation, a writ of possession was issued directing the sheriff to place said corporation in possession thereof. Notwithstanding said writ, however, the corporation failed to take possession of the lands, hence it filed a motion reiterating its petition that it be placed in their possession.

This time judgment debtor Filemon Lucasan filed an opposition alleging that he was in possession of one of the parcels of land sold at public auction on which he has erected a house and which he has extra judicially constituted as a family home, the rest being in possession of third parties. On April 30, 1957, the court, overruling the opposition, issued an order directing the sheriff to place the corporation in possession of the lands sold to it. On August 7, 1957, debtor Lucasan filed a motion for reconsideration which was denied, the court reiterating its previous order with little amendment, but on a second motion for reconsideration, the court on August 23, 1957 issued another order allowing the corporation to take possession of all the lands sold, with the exception of parcel 1 on which the family home was constituted, holding that the levy and sale made by the sheriff with regard to said parcel were not made in accordance with law and so are null, and void. Having failed to have this last order reconsidered, the corporation interposed the present petition for certiorari.

It appears that parcel 1 is a registered land covered by Certificate of Title No. OCT-2492, Patent No. 50967, duly registered in the Office of the Register of Deeds of Zamboanga del Norte in the name of Filemon Lucasan. On this land stands a big house of mixed materials which is assessed in the amount of P23,270.00 as evidenced by Tax Declaration No. 7653. It also appears that Filemon Lucasan and his wife constituted this house and the lot on which it stands into a family home, the pertinent document having been registered in the office of the register of deeds on June 21, 1955. In opposing the petition of the corporation for a writ of possession insofar as this property is concerned, Lucasan contended that said lot and house having been constituted as a family home are beyond the reach of judicial execution. He contended that the levy made by the sheriff on said property is legally ineffective because it, was not effected in accordance with what is prescribed in Section 14, Rule 39, in relation to Section 7, Rule 59, of the Rules of Court.

There is merit in this contention. The evidence shows that when this property was levied on execution by the sheriff to satisfy the judgment rendered against Filemon Lucasan in favor of petitioner corporation the notice of levy merely described the property as unregistered land and the same was registered under Act 3344 in the office of the register of deeds. It also appears that in the notice of sale the property was merely described according to the boundaries and area appearing in the tax declaration and not according to what appears in the certificate of title. On the other hand, the rule provides that real property shall "be levied on in like manner and with like effect as under an order of attachment" (Section 14, Rule 39), and the provision regarding attachment of real property postulates that the attachment shall be made "by filing with the register of deeds a copy of the order, together with the description of the property attached, and a notice that it is attached, and by leaving a copy of said order, description, and notice with the occupant of the property, if any there be," and that "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" (Section 7 [a], Rule 59).

These provisions should be strictly construed if their purpose has to be accomplished. The requirement that the notice of levy should 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 is made in order that the debtor as well as a third person may be properly informed of the particular land or property that is under the custody of the court. This can only be accomplished by making a reference to the certificate of title covering the property. The situation differs if the land is unregistered in which case it is enough that the notice be registered under Act 3344. This conclusion finds support in the following authorities:

"An attachment levied on real estate not duly recorded in the registry of property is not an incumbrance on the attached property, nor can such attachment, unrecorded in the registry, serve as a ground for decreeing the annulment of the sale of the property, at the request of another creditor." (Gonzales Diez vs. Delgado and Imperial, 37 Phil., 389)

"* * * In conformity with the provisions of section 71 of the Land Registration Act, the sheriff of the City of Manila filed a notice of the levy with the register of deeds, which notice was entered in the primary entry book of the register's office, but was afterwards, on May 20, 1920, returned to the sheriff with the information that the property was registered in the name of Buenaventura Dizon, having been conveyed to the latter by the defendant in execution, Celerino Arellario, and that, therefore, no memorandum of the notice had been entered upon the outstanding certificate of title. It may be noted that the notice contained no reference to the number of the certificate of title of the land to be effected and the volume and page in the registry book where the certificate is registered, and that to that extent, the notice did not meet the requirements of said section 71." (De Ocampo vs. Treasurer of the Philippine Islands, 50 Phil., 140, 141; Italics supplied)

Since the notice of levy made by the sheriff as regards parcel number 1 which is a registered land contains no reference to the number of its certificate of title and the volume and page in the registry book where the title is registered, it follows that said notice is legally ineffective and as such did not have the effect of binding the property for purposes of execution. Consequently, the sale carried out by virtue of said levy is also invalid and of no legal effect.

The second issue raised is: Is the family home extrajudicially established by respondent on the lot and house in question exempt from execution?

Respondent sustains the affirmative considering that the money judgment rendered against him was appealed to the Supreme Court in which event, he contends, the same could not be considered as a debt at the time the family home was constituted for it was still inchoate and as such cannot come under the provisions of Article 243 (2) of

the new Civil Code.

The article above referred to provides that "The family home extrajudicially formed shall be exempt from execution" except "for debts incurred before the declaration was recorded in the Registry of Property." What is the meaning of the word debt used in this article? Does it refer to a debt that is undisputed, or may it also refer to any pecuniary obligation even if the same has not yet been finally determined? In other words, can a judgment for a sum of money be considered a debt within the meaning of this provision even if said judgment is still pending appeal?

We are inclined to uphold the affirmative considering the real purpose of the law. The reason why a family home constituted after a debt had been incurred is not exempt from execution is to protect the creditor against a debtor who may act in bad faith by resorting to such declaration just to defeat the claim against him. If the purpose is to protect the creditor from fraud it would be immaterial if the debt incurred be undisputed or inchoate, for a debtor acting in good faith would prefer to wait until his case is definitely decided before constituting the family home. Indeed, it may result, as in this case, that the Supreme Court may affirm the judgment of the lower court. If the contention of respondent be sustained a debtor may be allowed to circumvent this provision of the law to the prejudice of the creditor. This the Court cannot countenance. Hence, we are persuaded to conclude that the money judgment in question comes within the purview of the word debt used in Article 243 (2) of the new Civil Code.

Wherefore, the order appealed from is hereby affirmed, without prejudice on the part of petitioner to file a new petition for execution following strictly the requirements of the rule on the matter. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.
Concepcion, J., concurs in the result.

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