

NOVERNIA P. NAGUIT, PETITIONER, VS. THE COURT OF APPEALS, OSLER U. PADUA AND NORBERTO B. MAGSAJO, RESPONDENTS.

G.R. No. 137675. December 05, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In a decision rendered on 15 October 1991, the Regional Trial Court (RTC) of Makati, Branch 133, found Rolando Naguit liable for violation of Batas Pambansa Blg. 22, and ordered him to indemnify private respondent Osler U. Padua in the amount of P260,000.00 and to pay the costs of the action (Criminal Case No. 90-2645). A writ of execution was issued by said court on 23 June 1992 and pursuant thereto, respondent Sheriff Norberto B. Magsajo levied upon a condominium unit covered by Condominium Certificate of Title No. 7362 of the Registry of Deeds for the City of Makati, which notice of levy was annotated at the back of the title. Consequently, the property was sold at a public auction for P318,050.00 in favor of private respondent, as the highest bidder. The certificate of sale was issued in the name of private respondent and registered with the Registry of Deeds on 25 August 1994.

On 8 August 1995, petitioner filed a complaint with the RTC of Makati against private respondent Padua and respondent Sheriff Magsajo for the annulment of sale and for damages, with a prayer for the issuance of a writ of preliminary injunction in order to enjoin the final conveyance of title over the condominium unit to private respondent (Civil Case No. 95-1182). Petitioner claimed that the debt contracted by her husband did not redound to the benefit of the family, nor was it made with her consent, and therefore, should not be charged to the conjugal partnership of gains or to her exclusive property; that the condominium unit levied upon and sold to private respondent is her exclusive property, not the judgment obligor's; and that consequently, the levy and sale of the condominium unit are void.[1]

On 20 September 1995, Branch 136 of the RTC of Makati denied petitioner's prayer for the issuance of preliminary injunction, explaining that -

The perceived anomaly in the auction sale of the property subject of this case, which [is] claimed to be owned by the petitioner is a matter within the competence of the Court which authorized the levy on execution of judgment, of property of plaintiff in this case.

If plaintiff believes that there were irregularities in the auction sale of the property subject of this case which [is] claimed to be owned by the petitioner, the problems should have been threshed out before [the] RTC Makati, Branch 133, which court authorized the levy on execution of judgment of property of plaintiff in this case. Besides, the petitioner should have elevated the matter to the higher tribunal, and seek proper injunctive relief, and not to refer to this Court which does not exercise an appellate authority over the court that issued the aforesaid writ of execution.

The Court agrees with the argument of the defendant that the present action of the plaintiff in seeking relief with this Court is legally misplaced.

It is an elementary rule of procedure, which is too well settled to be ignored, that trial courts have no power to interfere by injunction and are enjoined from intervening with the proceedings of a co-equal, concurrent and coordinate court of the same jurisdiction.[2]

On 5 July 1996, the trial court issued an order denying petitioner's motion for reconsideration and dismissing the case on the ground of lack of jurisdiction.[3] The Court of Appeals upheld the trial court's decision to dismiss the case. In its decision promulgated on 18 November 1998, the appellate court explained that since petitioner is the spouse of the judgment debtor she cannot be considered a stranger to the case wherein the writ of execution was issued and thus, she should have presented her third-party claim therein. In the event that her claim is denied, only then should petitioner bring the matter before the appellate court.[4] Petitioner filed a motion for reconsideration, which was denied by the Court of Appeals on 9 February 1999.

Hence, the present petition, wherein petitioner asks that the 18 November 1998 Decision and 9 February 1999 Resolution of the Court of Appeals be set aside and that the action for annulment of sale be tried on the merits.[5]

The petition is imbued with merit. A third-party claimant's right to bring an independent action to assert his claim of ownership over the properties seized is sanctioned by Section 17 of Rule 39 of the old Rules of Civil Procedure, which provides that -

Proceedings where property claimed by third person. - If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to the value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claims to the property by any proper action. [emphasis supplied][6]

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The "proper action" mentioned in Section 17 would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third party claim and it may be brought against the sheriff and such other parties as may be alleged to have colluded with him in the supposedly wrongful execution proceedings, such as the judgment creditor himself. If instituted by a stranger to the suit in which execution has issued, such "proper action" should be a totally separate and distinct action from the former suit.[7]

In addition to the filing of a "proper action," the third-party claimant may also avail of the remedy known as "terceria," by executing an affidavit of his title or right of possession over the property seized and serving the same upon the officer making the levy and the judgment creditor. Thereafter, the officer shall not be bound to keep the property, unless the judgment creditor or his agent indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the officer within one hundred twenty (120) days from the date of the filing of the bond.

These abovementioned remedies are cumulative and any one of them may be resorted to by a third-party claimant without availing of the others. Thus, the availing of the remedy of terceria is not a condition sine qua non to the

filing of a "proper action." An independent action may be resorted to even before or without need of filing a claim in the court which issued the writ.[8]

In the case at bar, petitioner filed an independent action for the annulment of the certificate of sale issued in favor of private respondent, contending that the property levied upon and sold to private respondent by virtue of the writ of execution issued in Criminal Case No. 90-2645 was her exclusive property, not that of the judgment obligor. Pursuant to our ruling in *Sy v. Discaya*,^[9] petitioner is deemed a stranger to the action wherein the writ of execution was issued and is therefore justified in bringing an independent action to vindicate her right of ownership over the subject property.

Contrary to the stand taken by the trial court, the filing of such an independent action cannot be considered an encroachment upon the jurisdiction of a co-equal and coordinate court. The court issuing the writ of execution may enforce its authority only over properties of the judgment debtor; thus, the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor. If the sheriff levies upon the assets of a third person in which the judgment debtor has no interest, then he is acting beyond the limits of his authority and is amenable to control and correction by a court of competent jurisdiction in a separate and independent action.^[10] This is in consonance with the well-established principle that no man shall be affected by any proceeding to which he is a stranger. Execution of a judgment can only be issued against a party to the action, and not against one who has not yet had his day in court.^[11]

WHEREFORE, the petition is GRANTED. The assailed decision and resolution of the Court of Appeals, promulgated on 18 November 1998 and 9 February 1999, respectively, are hereby SET ASIDE. This case is remanded to the trial court for further proceedings.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

[1] Rollo, 39-44.

[2] *Ibid.*, 73-74.

[3] *Ibid.*, 82.

[4] *Ibid.*, 35-36.

[5] *Ibid.*, 32.

[6] Under the 1997 Rules of Civil Procedure, Rule 39 provides -

SEC. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if

such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

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[7] *Estonina v. Court of Appeals*, 266 SCRA 627 (1997); *Consolidated Bank and Trust Corp. v. Court of Appeals*, 193 SCRA 159 (1991); *Sy v. Discaya*, 181 SCRA 378 (1990); *Ong v. Tating*, 149 SCRA 265 (1987).

[8] *Sy v. Discaya*, *id.*

[9] *Id.*

[10] *Co Tuan v. National Labor Relations Commission*, 289 SCRA 415 (1998); *Estonina v. Court of Appeals*, *supra*; *Sy v. Discaya*, *supra*; *Lorenzana v. Cayetano*, 78 SCRA 485 (1977).

[11] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 263 SCRA 490 (1996).

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