

**SATURNINO SALERA, JR., SARAH SALERA, SAMUEL SALERA, AND
SUSAN SALERA, PETITIONERS, VS. A-1 INVESTORS, INC.,
RESPONDENT.**

G.R. No. 141238. February 15, 2002

Ponente: PUNO, J.

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PUNO, J.:

Petitioners owe the courts candor and must call a spade a spade. They seek to permanently enjoin the satisfaction of a final judgment through a mere complaint for injunction which, in hindsight, they claim is an action for annulment of judgment. We cannot allow their wily ways to make a mockery of the justice system and render a final judgment empty. They should avail of remedies for their grievances in accordance with law.

The petitioners filed this petition for review on certiorari to annul the Court of Appeals' Decision dated December 15, 1998 prohibiting the Regional Trial Court of Cebu City, Branch 16, from proceeding further with Civil Case No. CEB-20550 and Resolution dated December 21, 1999 denying their motion for reconsideration of the December 15, 1998 decision.

The following facts spurred the present controversy:

It is undisputed that on August 27, 1992, Teodora Salera, mother of the petitioners, contracted a P50,000.00 loan and issued a promissory note to respondent A-1 Investors, Inc. payable one month after or on September 27, 1992, with interest of six percent (6%) per month. The promissory note also stated that she would pay liquidated damages of two percent (2%) per month of any unpaid amount due and that in case legal services are necessary for collection of payment, she would be liable for attorney's fees equivalent to 25% of the amount due, but in no case less than P500.00.[1]

As the loan remained unpaid long after it had fallen due, respondent A-1 Investors, Inc. filed a complaint for collection of a sum of money on August 15, 1996, docketed as Civil Case No. 15996 in the Metropolitan Trial Court of Quezon City, Branch 36, against Teodora Salera and impleaded her husband, Saturnino Salera, Sr., pursuant to Section 4, Rule 3 of the then Rules of Court.[2] The summons for said case was received from the sheriff by the couple's son, petitioner Samuel Salera, at their family's residential address at 35-J Amon Court, Lahug, Cebu City in September 1996, but Samuel refused to sign receipt of a copy thereof.[3]

Saturnino, Sr. claims that from 1993 to 1997, he lived in Clarin, Bohol as he ran for and was elected mayor of that town in the 1995 local elections. He and his wife, Teodora, did not receive the summons that was sent to the Salera residence in Cebu, and were not able to file an Answer to the Complaint in Civil Case No. 15996. Consequently, they were held in default and a decision was rendered on November 27, 1996, viz:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Spouses Saturnino Salera and Teodora Salera, as follows:

- Ordering said defendants to pay the sum of FIFTY (P50,000.00) PESOS with interest at the rate of 6% per

month from September 27, 1992 until fully paid;

- Ordering said defendants to pay liquidated damages in amount equivalent to 2% per month from September 27, 1992 until fully paid;
- Ordering the defendants to pay an amount equivalent to 25% of the total amount due, as and for, attorney's fees; and,
- Ordering the defendants to pay the costs of suit.”[4]

A copy of the decision was sent again to the family's residential address in Cebu and was received by a certain Joel Ariño on December 23, 1996, but Saturnino, Sr. was then still residing in Bohol. The Salera spouses did not appeal and the decision became final and executory upon expiration of the appeal period. On April 23, 1997, Saturnino, Sr.'s daughter, Sarah Salera, received a Writ of Execution[5] and a Notice of Levy Upon Realty Pursuant to Writ of Execution[6] in connection with Civil Case No. 15996. Although Sarah was already 28 years old and a college graduate, she simply received these documents from the sheriff without reading them, placed them in her drawer without informing her parents about them, and forgot about them. It was only a week after that she showed the documents to her parents.[7]

Saturnino, Sr. claims to have been practically unaware of the proceedings in Civil Case No. 15996 and was aghast when on July 10, 1997, his son informed him that he (the son) received a Notice to Parties of Public Auction dated June 23, 1997. The notice stated that Sheriff Jessie Belarmino would sell the Salera spouses' property on July 17, 1997 pursuant to a Writ of Execution issued in Civil Case No. 15996. The property consisted of a parcel of land in Cebu covered by TCT No. 66400 with an area of 405 square meters.[8]

As Saturnino, Sr. felt aggrieved and denied of due process in Civil Case No. 15996, he filed on July 14, 1997, a complaint for "Injunction with Damages" against respondent A-1 Investors, Inc. docketed as Civil Case No. CEB-20550 before the Regional Trial Court (RTC) of Cebu City, and prayed that the court award damages in his favor and issue a temporary restraining order, followed by a preliminary injunction, and that the injunction be made permanent after trial.[9] The RTC of Cebu issued a TRO, and subsequently a preliminary injunction enjoining the sale of the levied property. It gave due consideration to Saturnino Sr.'s allegation that he was unaware of the proceedings in Civil Case No. 15996 and he had no relation with respondent A-1 Investors, Inc. as it was his wife, and not him, who signed the loan agreement; that the levied property is his exclusive property and not answerable to the debt of his wife; and that assuming he was liable to pay respondent, the levied property was exempt from execution as it was their family home.[10] Respondent A-1 Investors, Inc. filed a Motion for Summary Judgment and a Supplemental Motion for Summary Judgment with Urgent Motion to Quash Writ of Preliminary Injunction. In an Order dated October 1, 1997, the court denied the motions and ordered the respondent to answer. Respondent filed a motion for reconsideration of the October 1 Order and an Answer. On October 28, 1997, Saturnino, Sr. died and all his children, the petitioners herein, replaced him as plaintiffs in the injunction case. His wife, Teodora Salera, executed an affidavit stating that the levied property was the exclusive property of her husband and that she was waiving in favor of her children her one-fifth share of the levied property which she was to inherit.[11] Respondent's motion for reconsideration was denied. The case was then set for pre-trial conference and both petitioners and respondent filed their pre-trial briefs. On January 12, 1998, respondent filed a Petition for Certiorari and Prohibition with the Court of Appeals.[12] The appellate court granted the petition in the assailed Decision dated December 15, 1998, viz:

“Though not specifically raised, the petition for prohibition is an indirect attack on the jurisdiction of the court to take cognizance of the complaint for injunction, while invoking at the same time the jurisdiction of the same court to render a summary judgment in his favor. Be that as it may, ‘(i)t is hornbook doctrine that in order (t)o ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.’ (Ignacio

vs. Court of Appeals, G.R. No. 113947, 11 December 95, First Division, Minute Resolution) Furthermore, ‘the jurisdiction of the court must appear clearly from the statute law or it will not be held to exist.’ (Azarcon vs. Sandiganbayan, 268 SCRA 747, 757). Clearly, from the provision of law abovesited, the RTC must be prohibited from further proceeding with the case. In the same case, it was held that ‘(j)urisdiction cannot be conferred by xxx erroneous belief of the court that it had jurisdiction.’ (Azarcon vs. Sandiganbayan, supra, p. 763) Clearly, Civil Case CEB-20550 is but a mere brazen attempt by Salera to substitute for a lost appeal of the MeTC-QC decision which had already attained finality. Even if the case had been brought before the RTC-QC, the same would have been dismissed anyway, execution having been issued as a matter of right in favor of petitioner for failure of Salera to appeal.

WHEREFORE, above premises considered, RTC-Cebu City is prohibited from further proceeding with Civil Case CEB-20550.”[13]

Petitioners filed a motion for reconsideration which was denied in the assailed Resolution dated December 21, 1999.

Hence this appeal with the following assignment of errors:

“I. WHETHER OR NOT REGIONAL TRIAL COURTS HAVE JURISDICTION OVER INJUNCTION CASES;

II. WHETHER OR NOT RESPONDENT IS ESTOPPED FROM RAISING THE ISSUE OF LACK OF JURISDICTION;

III. WHETHER OR NOT THE COMPLAINT IN CIVIL CASE NO. CEB-20550 SHOULD HAVE BEEN TREATED AS A PETITION TO ANNUL THE DECISION IN CIVIL CASE NO. 15996 OF THE METROPOLITAN TRIAL COURT OF QUEZON CITY.”

The petition must fail.

Petitioners anchor their position that the RTC of Cebu has jurisdiction over their injunction case on Section 19 (1) of Batas Pambansa Blg. 129, as amended by R.A. No. 7691, which states that Regional Trial Courts have jurisdiction over “civil actions in which the subject of the litigation is incapable of pecuniary estimation.” They assert that the complaint for injunction filed by Saturnino, Sr. falls within this category of civil actions as the subject of the action was the restraint of the public auction of property levied pursuant to a writ of execution issued in Civil Case No. 15996.

While petitioners are correct that a complaint for injunction is a recognized remedy to enjoin the performance of an act,[14] which action falls within the province of Regional Trial Courts,[15] it must be taken into account that Saturnino, Sr. sought to permanently enjoin the public auction of property levied pursuant to a writ of execution issued in Civil Case No. 15996 on the ground that he was not served with summons and was denied due process. In doing so, Saturnino, Sr. was actually seeking the annulment of the decision in Civil Case No. 15996 which was the basis of the writ of execution pursuant to which the public auction was to be held. The proper remedy for petitioners' predicament is therefore not an action for injunction, but for annulment of judgment.

It is thus understandable why petitioners are staunch in claiming, in hindsight, that although the complaint filed in the RTC of Cebu was captioned “Injunction with Damages,” the allegations therein suffice to constitute an action for annulment of the decision in Civil Case No. 15996 for lack of due process amounting to lack of jurisdiction and/or extrinsic fraud. The issue of whether or not the Metropolitan Trial Court of Quezon City did not acquire jurisdiction over the person of Saturnino, Sr. in Civil Case No. 15996 and his exclusion from the proceedings in said case amounted to extrinsic fraud which denied him of due process should be properly resolved in an action for annulment of judgment as mandated by Sections 1 and 2[16] in relation to Section 10 of Rule 47 of the 1997

Rules of Civil Procedure, viz:

“Sec. 1. Coverage.- This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Sec. 2. Grounds for annulment.- The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

x x x x x x x x

Sec. 10. Annulment of judgments or final orders of Municipal Trial Courts. - An action to annul a judgment or final order of a Municipal Trial Court shall be filed in the Regional Trial Court having jurisdiction over the former. It shall be treated as an ordinary civil action and sections 2, 3, 4, 7, 8 and 9 of this Rule shall be applicable thereto.”

Unfortunately for the petitioners, the complaint filed by Saturnino, Sr. in the RTC of Cebu was, without a shadow of doubt, not for annulment of the decision rendered in Civil Case No. 15996. Not only was the complaint captioned “Injunction with Damages,” but it likewise did not pray for annulment of judgment, viz:

“WHEREFORE, in view of the foregoing, it is respectfully prayed that:

- Upon the filing of this Complaint, a temporary restraining order be issued and to be followed by a preliminary injunction after a preliminary hearing upon putting by the plaintiff a bond in such amount that this Honorable Court may determine, directing defendants to immediately stop from proceeding with the auction sale on July 17, 1997 and after trial, to make said injunction permanent and perpetual;
- And on plaintiff's claim for damages, defendants be ordered jointly and solidarily to pay plaintiff the following sums of money:
- P500,000.00 or such amount as this Honorable Court may deem just, legal, and equitable under the premises by way of moral damages;
- P100,000.00 or such amount as this Honorable Court may deem just, legal and equitable under the premises by way of exemplary damages;
- P100,000.00 as attorney's fees;
- P50,000.00 as litigation expenses, and
- Triple costs of this suit.

Further, plaintiff prays for such other relief and remedies this Honorable Court may find just and equitable under the circumstances.”[17]

Section 4 in relation to the above-quoted Section 10, Rule 47 of the 1997 Rules of Civil Procedure on annulment of judgments or final orders provides, viz:

“Sec. 4. Filing and contents of petition.- The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

. . . A certified true copy of the judgment or final order or resolution shall be attached to the original copy of the petition intended for the court and indicated as such by the petitioner.

The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense and a sworn certification that he has not theretofore commenced any other action

involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency thereof within five (5) days therefrom.”

It is clear from the contents of the complaint filed by the petitioners that the action is not for annulment of the decision in Civil Case No. 15996. It does not allege “with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action” which petitioners now claim are extrinsic fraud and lack of jurisdiction. Neither is a certified true copy of the decision in Civil Case No. 15996 attached to the original copy of the petition intended for the court and indicated as such by the petitioner. Nor were affidavits of witnesses or documents supporting the cause of action, i.e., annulment of judgment on the ground of lack of jurisdiction and extrinsic fraud, submitted together with the complaint. Petitioners cannot now mislead the court into treating the complaint for injunction as an action for annulment of judgment with the ancillary remedy of injunction.

More importantly, even assuming arguendo that the action was for annulment of judgment, the RTC of Cebu did not have jurisdiction over the subject matter of the complaint as Section 10, Rule 47 of the 1997 Rules of Civil Procedure provides:

“Sec. 10. Annulment of judgments or final orders of Municipal Trial Courts.- An action to annul a judgment or final order of a Municipal Trial Court shall be filed in the Regional Trial Court having jurisdiction over the former. . .”

It is therefore the RTC of Quezon City which has jurisdiction over a case seeking annulment of the final decision of the Metropolitan Trial Court of Quezon City, Branch 36, which is similar in rank as the above-mentioned Municipal Trial Court.

Petitioners claim that respondent A-1 Investors, Inc. is now estopped from assailing the jurisdiction of the RTC of Cebu over the subject matter of the action for two reasons. First, respondent did not raise this issue of jurisdiction in their Petition for Certiorari and Prohibition in the Court of Appeals. Thus, petitioners argue that it was error for the appellate court to have granted the petition on the ground of lack of jurisdiction over the subject matter. Second, according to petitioners, while it is established doctrine that lack of jurisdiction over the subject matter can be raised at any time during the proceedings even for the first time on appeal, this rule admits of an exception as when the defendant actively participated in the proceedings and invoked the jurisdiction of the court in seeking affirmative remedies such as respondent's Motion for Summary Judgment, Supplemental Motion for Summary Judgment with Urgent Motion to Quash Writ of Execution, and Answer. In such cases, the defendant is estopped from assailing the jurisdiction of the court pursuant to the policy that “it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.”[18]

A careful perusal of the records would, however, show that respondent A-1 Investors, Inc. questioned the jurisdiction of the RTC of Cebu over the subject matter of the action, i.e., to issue a preliminary injunction to enjoin the public auction of property levied pursuant to a writ of execution issued in Civil Case No. 15996 of the Metropolitan Trial Court of Quezon City. In its motion for reconsideration of the October 1, 1997 Order of the RTC of Cebu that denied respondent's motion for summary judgment, respondent stated, viz:

“4. Even assuming arguendo that the lot subject of the execution is an exclusive property of the plaintiff, this Court still has no authority to issue an injunction based on said ground because in doing so, this Court will in effect be varying the mandate of the Writ of Execution issued by the Quezon City Metropolitan Trial Court,

Branch 36, in Civil Case No. 15996 (See Annex “D”, Complaint) which enjoins the properties of herein plaintiffs and his spouse to satisfy the money judgment in the said case.

5. With due respect, it is well to remind this Honorable Court that it is beyond its authority to deviate from the mandate of a lawful, valid, and enforceable Writ of Execution issued by a court outside of its jurisdiction.”[19] (emphasis supplied)

In its Answer, respondent A-1 Investors, Inc. similarly stated in its affirmative defenses, viz:

“5. Assuming arguendo that the subject house and lot are exclusive properties of the plaintiff (sic), still this Honorable Court has no authority to issue an injunction based on said ground for the reason that it has no authority to deviate from the mandate of the Writ of Execution issued by the Quezon City Metropolitan Trial Court in Civil Case No. 15996 (See Annex D, Complaint) which enjoins the properties of plaintiff herein and his spouse to satisfy the money judgment in said case.”[20] (emphasis supplied)

While the respondent invoked the jurisdiction of the court and sought affirmative remedies such as the Motion for Summary Judgment and the Supplemental Motion for Summary Judgment with Urgent Motion to Quash Writ of Execution, it also questioned the jurisdiction of the court over the subject matter in its Motion for Reconsideration and Answer. Respondent A-1 Investors, Inc. is not estopped from assailing the jurisdiction of the RTC of Cebu over the subject matter because it properly raised this lack of jurisdiction as one of its defenses in its Answer. It was thus proper for the Court of Appeals to grant the petition filed by respondent A-1 Investors, Inc. on the ground that the RTC of Cebu did not have jurisdiction over the subject matter of the complaint even though respondent did not raise the issue of jurisdiction on appeal. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides, viz:

“Section 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.” (emphasis supplied)

Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or *motu proprio* considered by the Court.[21]

WHEREFORE, the petition is DENIED and the impugned decision and resolution of the Court of Appeals are AFFIRMED. The preliminary injunction issued by the RTC of Cebu, Branch 16 in Civil Case No. CEB-20550 is lifted and said court is prohibited from further proceeding with Civil Case No. CEB-20550. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan and Ynares-Santiago, JJ., concur.

[1] Original Records, p. 163; Plaintiff's Pre-trial Brief in Civil Case No. CEB-20550 in the RTC of Cebu City, Branch 16, p. 1; Rollo, pp. 38-39, Complaint in Civil Case No. 15996 in the Metropolitan Trial Court of Quezon City, Branch 36.

[2] Sec. 4, Rule 3 of the Rules of Court provides, viz:

“Sec. 4. Married woman. - A married woman may not sue or be sued alone without joining her husband, except in the following instances:

(a) When they are judicially separated;

- (b) If they have in fact been separated for at least one year;
- (c) When there is a separation of property agreed upon in the marriage settlements;
- (d) If the administration of all the property in the marriage has been transferred to her, in accordance with Articles 196 and 197 of the Civil Code;
- (e) When the litigation is between the husband and the wife;
- (f) If the suit concerns her paraphernal property;
- (g) When the action is upon the civil liability arising from a criminal offense;
- (h) If the litigation is incidental to the profession, occupation or business in which she is engaged;
- (i) In any civil action referred to in Articles 25 to 35 of the Civil Code; and
- (j) In an action upon a quasi-delict.

In the cases mentioned in paragraphs (g) to (j), the husband must be joined as a party defendant if the third paragraph of Article 163 of the Civil Code is applicable.”

- [3] Original Records, p. 47.
- [4] Id., p. 50; Decision, p. 2.
- [5] Id., p. 8.
- [6] Id., p. 7.
- [7] TSN, Sarah Salera, July 28, 1997, pp. 16-21.
- [8] Original Records, p. 1; Complaint, p. 1.
- [9] Original Records, p. 3.
- [10] Id., pp. 63-64.
- [11] Id., pp. 152-153.
- [12] Rollo, pp. 3-7; Petition, pp. 1-5.
- [13] Rollo, p. 31; Decision, p. 7.
- [14] Manila Banking Corp., et al. v. Court of Appeals, et al., 187 SCRA 138 (1990).
- [15] Notre Dame de Lourdes Hospital v. Mallare-Phillips, 197 SCRA 187 (1991).
- [16] See also Gacutana-Fraile v. Domingo, et al., G.R. No. 138518, December 15, 2000.
- [17] Original Records, p. 3; Complaint, p. 3.
- [18] Rollo, p. 8; Petition, p. 7, citing Tijam v. Sibonghanoy, 23 SCRA 29 (1968).
- [19] Original Records, p. 137; Motion for Reconsideration, p. 3.
- [20] Original Records, p. 144; Answer, p. 2.
- [21] Namuhe v. Ombudsman, 298 SCRA 298 (1998), citing Section 1, Rule 9, 1997 Rules of Civil Procedure (formerly Section 2, Rule 9); Fabian v. Desierto, 295 SCRA 470 (1998).

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