

THE PHILIPPINE BANK OF COMMERCE, PETITIONER, VS. HIGINIO B. MACADAEG, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.

G.R. No. 14174. October 31, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari to annul three orders of the Court of First Instance of Manila in Civil Case No. 29752:

- (1) Of October 17, 1957 setting aside the sheriff's sale of respondents' interests, rights, and participation in a certain certificate of public convenience to execute the judgment in favor of the petitioner Philippine Bank of Commerce;
- (2) Dated February 20, 1958 holding in abeyance the resolution of the petitioner bank's motion to reconsider said order of October 17, 1957, until other properties of respondents could be levied upon to satisfy the aforesaid judgment; and
- (3) Dated August 1, 1958 denying petitioner bank's motion for the reconsideration of said order of October 17, 1957.

The facts appearing on record may be summarized as follows:

On September 30, 1950, respondents Pedro B. Bautista, Dativa Gorrales Bautista, Innocencio C. Campos, and the Flash Taxi Company jointly and severally applied for and obtained a credit accommodation from the petitioner bank in the sum of P100,000.00, and as security therefor executed in favor of the bank, in one single document, a real estate mortgage over four parcels of land, and a chattel mortgage on some movie equipment and thirty taxicabs. Respondents having failed to pay the total amount of P128,902.42 due on the credit accommodation referred to, the petitioner bank procured the extra-judicial foreclosure of the real estate mortgage in accordance with Act No. 3135, as amended, and at the foreclosure sale on January 9, 1956, the bank acquired the properties mortgaged as the highest bidder for the sum of P68,365.60.

Claiming a balance of P62,749.72 still due from respondents on their credit accommodation, the petitioner bank, instead of foreclosing respondents' chattel mortgage, filed against them on May 22, 1956, Civil Case No. 29752 for the collection of said balance. On June 29, 1956, respondents confessed judgment and accordingly, the lower court, on June 30, 1956, rendered judgment ordering defendants to pay the plaintiff bank, jointly and severally, the sum of P62,749.72, with interest thereon at the rate of 7% per annum from May 22, 1956 until the said amount is fully paid. On September 18, 1956, the court issued an order to execute said judgment; it does not appear, though, that plaintiff sought the enforcement of the writ of execution. On April 24, 1957, the court issued another order for the execution of the judgment, pursuant to which the sheriff of Manila published a "Notice of Sale," setting for sale at public auction on May 13, 1957 the rights, interests or participation of respondents on the certificate of public convenience registered in the name of the Flash Taxi Co. in Cases Nos. 32577 and 33278 of

the Public Service Commission. Copy of this notice of sale was served and received by respondents by registered mail on May 9, 1957.

On May 13, 1957, the sheriff sold the rights, interests, or participation of respondents in the certificate of public convenience in question to the plaintiff bank as the highest bidder for the amount of P60,371.25, and two days later, on May 15, the sheriff issued to plaintiff the corresponding certificate of sale. On June 13, 1957, the plaintiff bank filed with the court a petition praying for the confirmation of the sale, which petition respondents did not oppose at the hearing thereof. On June 8, 1957 the court below issued an order confirming said sale.

Sometime thereafter, plaintiff bank sold all its rights, interests, or participation in the certificate of public convenience in question to Alberto Cruz for the sum of P66,000. On June 18, 1957, the Public Service Commission provisionally approved the sale of said certificate from the respondents to the plaintiff bank, and from the bank to Alberto Cruz, and pursuant to the provisional authority granted him by the Commission to operate said certificate, Alberto Cruz acquired and purchased twenty taxicabs and has since then been operating said franchise.

It appears further that, also on June 18, 1957, respondents Pedro B. Bautista, et al., filed in the court below a "Petition To Set Aside Order dated June 8, 1957, Confirming Sheriffs Sale of May 15, 1957 and to Declare its Nullity," claiming, as grounds for the petitions, that they had other properties which they had pointed out to the plaintiff bank with which the judgment could be satisfied that the law grants to the judgment debtor the right to direct which of his properties should be sold in execution of a judgment; that the sale of the certificate of public convenience in question would mean irreparable damage to them and would deprive of work about forty drivers employed in their taxicab business; and that defendants had no objection to bearing the expenses of the sale sought to be revoked and of any subsequent execution sales in satisfaction of the judgment. Plaintiff bank opposed the petition, contending that there was no showing that the sheriff's sale in question was irregular or not in accordance-with law; that the subject of the execution sale being personal property, and a certificate of sale having already been delivered to it by the sheriff, the court could no longer set aside said sale; that the movie equipment being offered by the respondents upon which to execute the judgment are in Cebu and/or Davao, while the real property offered is registered in the name of another person not a party to the case; and that respondents were estopped from contesting the sale because it was only several days after the sheriff's sale and the execution of a certificate of sale in favor of plaintiff bank that respondents offered other properties to satisfy the judgment.

Holding that the properties offered by respondents were more than sufficient to satisfy the judgment, and that the sale of the certificate of public convenience in question would cause them and their drivers in their taxicab business grave and irreparable damage, the lower court, on October 17, 1957, issued an order setting aside the sheriff's sale in question, which order was followed by the two other orders of February 20, and August 1, 1958, mentioned in the first part of this opinion. It is to have these orders set aside and annulled that the plaintiff bank, as earlier stated, presented this petition for certiorari before this Court.

First, respondents claim that the petition, not being verified, is fatally defective. We do not think so. It is true that Rule 67, sec. 1, of the Rules of Court, requires that the petition for certiorari be verified, the apparent object thereof being to insure good faith in the averments of the petition. Where, however, the material facts alleged are a matter of record in the court below, consisting in pleadings filed or proceedings taken therein, and the questions raised are mainly of law, a verification as to the truth of said facts is not an absolute necessity and may be waived (42 Am. Jur., sec. 42, p. 177), as this Court has done in this case when we gave due course to the present petition. In fact, many authorities consider the absence of verification a mere formal, not jurisdictional, defect, the absence of which does not of itself justify a court in refusing to allow and act in the case (71 C.J.S., 744-745).

Going now to the consideration of the issues raised by the present petition, petitioner's major argument is that the lower court could no longer set aside on execution sale consummated by the delivery of a certificate of sale to the purchaser in execution, not upon any ground of illegality or irregularity therein but only on grounds of equity, to save respondents from financial damage resulting from the sale of the properties in question, and to give them a chance to satisfy the judgment with other properties. Respondents, upon the other hand, seek to justify the action of the court below on several grounds, to wit: (1) that the judgment in Civil Case No. 29752 is void, so that the writ of execution to enforce the same as well as the execution sale are also void; (2) that the execution sale is also void for lack of a valid levy; (3) that the execution sale was made in fraud of respondents' rights and is also void for this reason; and (4) that petitioner has not shown any substantial injury that had been caused to it by the orders sought to be annulled.

The first contention of respondents, i.e., that the judgment in Civil Case No. 29752 is void, is completely untenable. The alleged nullity is claimed to arise from the fact that the real estate and chattel mortgage executed by respondents to secure their credit accommodation with the petitioner bank was indivisible, and that consequently; the bank had no legal right to extrajudicially foreclose only the real estate mortgage and leave out the chattel mortgage, and then sue respondents for a supposed deficiency judgment; and for this reason, respondents assert that the judgment in the bank's favor for such deficiency in Civil Case No. 29752 is a nullity. The argument is fallacious because the mere embodiment of the real estate mortgage and the chattel mortgage in one document does not fuse both securities into an indivisible whole. Both remain distinct agreements, differing not only in the subject-matter of the contract but in the governing legal provisions. Petitioner bank, therefore, had every right to foreclose the real estate mortgage and waive the chattel mortgage, and maintain instead a personal action for the recovery of the unpaid balance of its credit (*De la Rama vs. Sajo*, 45 Phil., 703; *Salomon vs. Dantes*, 63 Phil., 522; *Bachrach Motor Co. vs. Icarangal, et al.* 68 Phil., 287, 290). This petitioner did by filing Civil Case No. 29752 for the collection of the unpaid balance of respondents' indebtedness; and the validity and correctness of the action was admitted by respondents themselves when they confessed judgment thereto. The court in fact rendered decision pursuant to such confession of judgment, and the decision has long since been final and executory.

The second claim of respondents-that the execution sale in question is void for lack of a valid levy-is also untenable. "Levy" includes a constructive as well as an actual taking into possession of property under execution process (*Iturralde vs. Velasquez and Babasa*, 41 Phil., 221); and in the present case, respondents admit that on May 9, 1959, three days prior to the scheduled execution sale on May 13, 1957, they received copy of the sheriff's notice of sale (Answer, par. 5, p. 4), which notice informed them that by virtue of an order of execution issued by the court below in Civil Case No. 29752,

"levy was made upon the property/ies of the said defendants Flash Taxi Co. et al. described as follows:

The rights, interest, or participation of the defendant Flash Taxi Co., et al., on

The certificate of Public Convenience registered in the name of the FLASH TAXI CO., in cases Nos. 32527 and 33278."

and that the sheriff would sell said rights, interests, or participation on May 13, 1957. This notice, while not a literal compliance with section 14, Rule 39, in relation to section 7, paragraph (3), of Rule 59, which requires the sheriff to send the debtor a formal notice of levy (apart from the notice of sale), is, however, a substantial compliance therewith. What is important is that respondents, prior to the sale, had been given notice that their interests on the certificate of public convenience in question had been levied upon and would be sold in

satisfaction of the judgment. They had the opportunity either to pay off the judgment before the execution sale, or to designate to the sheriff other properties that might be levied upon. Not only did respondents fail to do so, but they made no objection to the holding of the sale on the ground that no proper or valid levy was made. Their inaction was a waiver of such requirement.

Respondents' third charge is that the execution sale in question is void as made in fraud of their rights, and allegedly pursuant to an illicit scheme on the part of petitioner bank to acquire the certificate of public convenience in question for speculative purposes and not merely for the satisfaction of its credit. This charge of fraud is made to rest on the allegation that petitioner, through counsel, led respondents to believe, before and after said execution sale, either that said sale would be postponed, or that the bank would waive its rights thereunder, and would give respondents instead additional extensions of time to pay or satisfy the judgment with other properties.

Again, no weight can be given such a charge. The same had already been made by respondents in the court below, yet the lower court found "that both parties acted in good faith in defending what they respectively believe to be their right," adding that "perhaps for reasons of expediency plaintiff preferred to execute the franchise in question" (see Order of February 20, 1958, p. 1, Exhibit "K", Petition). Such findings of the court below, belying the charge of fraud, are conclusive upon us, since the present petition is one for certiorari, wherein only jurisdictional questions may be entertained.

Finally, respondents never raised the question of the supposed fraud committed by petitioner bank at any time before the execution sale in question or even during the proceedings for its confirmation. It was only after the petitioner bank had already sold the franchise in question to a third person that respondent debtors for the first time filed in court a petition to annul the execution sale, and also for the first time raised objections thereto, from the supposed nullity of the judgment in the case to the alleged fraud committed by petitioner bank in procuring said execution. Needless to say, the delay in the assertion of such claims on the part of respondents is indicative of their lack of merit.

The last question, and the most important one in this case, is whether or not the lower court acted without jurisdiction and/or in grave abuse of discretion in setting aside the execution sale in question after it had been consummated and confirmed, on equitable grounds. A careful study of the facts leading to the annulment of the execution sale in question and the law on the matter constrains us to conclude that the lower Court no longer had jurisdiction to grant relief to respondent debtors at the stage when such relief was applied for and given. It appears that three days before the execution sale, respondents received notice thereof. Had they wanted to avoid the sale of their franchise, respondents should then and there have filed their objection to the sale with the sheriff and indicated to the latter other properties that they wanted to be levied upon; and if the sheriff had refused, they could have applied to the lower court for relief. While the rules give the judgment debtor the right to point out which of his properties should be levied upon, such right is required to be exercised at the time of the sale by being present thereat and directing the order of sale to the sheriff (Sec. 19, Rule 39). The authorities even require that the debtor not only indicate such properties but also place them at the sheriff's disposal (see *People vs. Hernandez*, 59 Phil., 343) so as to enable him to make delivery to the purchaser (33 C. J. S. 240). And the debtor can not defeat a levy by neglect to exercise this statutory right, which is personal to him and may be waived (C.J.S., loc. cit.).

Instead of expressing to the sheriff or the court that they were objecting to the execution sale of their franchise and were offering other properties to be levied upon, respondents chose to make a personal, extrajudicial appeal to the petitioner bank to postpone the sale, promising to make substantial payment on the judgment not later than the end of the month, May, 1957 (See Answer, p. 5). Of course, the bank was not legally bound to grant such appeal, and so the execution sale proceeded as scheduled, and the bank acquired the franchise in question as the highest

bidder. Still respondents did not come to the court for relief, but merely reiterated their request to petitioner either to be given more time to pay or be allowed to pay the debt with other properties. The offer to substitute the franchise sold at the auction sale with other properties like the movie equipment previously mortgaged to petitioner and the parcel of land belonging to another person, however, came too late (Annexes "4" and "5", Answer), because the execution sale had already been consummated by the delivery of the certificate of sale to petitioner, and thereafter, it was optional for petitioner to grant or deny such request. Petitioner bank paid no heed to the debtors, because on June 5, 1957, it asked for the confirmation of the execution sale and accordingly, on June 8, 1957, the court below issued an order confirming the same. Respondent debtors admittedly did not oppose the petition for confirmation because they were still hoping that their request for additional time to pay would be granted by the bank, as shown by their admission that they-

"kept silent and presented no opposition to the said petition because they believed that to do so at the time would prejudice the personal appeal for allowance of a little more time to make payment which they had then raised up with plaintiff" (Respondents' Petition of June 18, 1957. Annex "9", Answer).

The execution sale and delivery by the sheriff to the petitioner bank of the certificate of sale over respondents' rights over the franchise in question made the bank the owner thereof from the time of such sale and delivery (Aldecoa & Co. vs. Navarro, 23 Phil., 203; Misut vs. West Coast San Francisco Life Ins. Co., 41 Phil., 258). There was actually no need for the confirmation of such sale, since in this jurisdiction, no confirmation of an ordinary execution sale is required (U.S. vs. Painaga, 27 Phil., 18). It is thus dear that after such sale and the satisfaction of the judgment, the jurisdiction of the lower court in the case had been exhausted (Alano & Alano vs. CFI of Bulacan & Campos, 106 Phil., 445; 57 Off. Gaz. [3] 468), and thereafter, it could no longer set aside said sale except for reasons of illegality or irregularity that would render it null and void, which in the present case do not exist. Especially is this so because the petitioner had already transferred its rights to the franchise in question to a third person, and the sale had already been provisionally approved by the Public Service Commission, with the result that the buyer from the bank has already made a substantial investment on said franchise when, upon order of the Commission, he bought and acquired new taxicabs to operate said franchise provisionally (see Annexes "C" and "F", Petitioner's Memo). Respondents accuse petitioners' buyer, Alberto Cruz, of being a buyer in bad faith, but there is no proof in the record to sustain such a charge. In fact, Cruz had no motive to invest heavily on the aforesaid franchise if he knew that the title of his vendor thereon was questionable and could be judicially annulled at any time.

If it were true that the debtors had properties of adequate value, aside from the franchise in question, with which to satisfy said judgment, they could have easily sold them in the open market and paid their indebtedness to the bank. But they neglected to meet their obligations, thus forcing the bank to ask for execution of the judgment one year after it was rendered. In spite of repeated promises, respondents failed to make any substantial payments on their indebtedness; and even after the execution sale, they made no attempt to satisfy the judgment with other properties, persisting in their request for additional graces of time to pay (Annexes "4", "5", "6", "8", Answer; Annex "B", Petitioner's Memo), which the bank could not be expected to grant after so many defaults. On the whole, therefore, respondents' financial distress is, to a large extent, of their own making, and can hardly be blamed upon petitioner bank, which did nothing more than exercise its legal rights to satisfy a valid claim on the only known property of respondents that appears to have sufficient value to pay for the same.

Wherefore, the orders of the lower court dated October 17, 1957, February 20, 1958, and August 1, 1958, are annulled and set aside. Costs Against respondents Pedro B. Bautista, et al.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Barrera, Gutierrez David, and Paredes, JJ., concur.

Orders annulled and set aside.

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