

**OFELIA J. VILLAVICENCIO, MA. ELIZABETH J. VILLAVICENCIO, MA.  
LUISA J. VILLAVICENCIO, ANTONIO J. VILLAVICENCIO AND MA.  
REGINA J. VILLAVICENCIO, PETITIONERS, VS. ALEJANDRO A.  
MOJA...**

*G.R. No. 142648. February 27, 2003*

Ponente: QUISUMBING, J.

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**QUISUMBING, J.:**

This petition for review seeks set aside the decision[1] of the Court of Appeals in CA-G.R. CV No. 48871 dated December 21, 1999, as well as its resolution[2] dated March 30, 2000 denying petitioners' motion for reconsideration. The Court of Appeals affirmed the decision of the Regional Trial Court of Quezon City, Branch 92, in Civil Case No. Q-92-11083, which dismissed petitioners' complaint for annulment of sheriff's sale and damages against herein respondents.

The facts of the case, as culled from the records, are as follows:

Petitioners are the legal heirs of the late Jose Villavicencio, who died intestate on October 7, 1991. They filed a complaint for annulment of sheriff's sale and damages affecting a house and lot at No. 21 Green Leaves St., Capitol Green Village, Tandang Sora Avenue, Quezon City and covered by Transfer Certificate of Title (TCT) No. 262376 of the Register of Deeds of Quezon City.

The disputed house and lot were owned by Spouses Carlito and Myrna Martell (the Martell spouses) and registered under TCT No. 262376 in the Register of Deeds of Quezon City. They mortgaged both to secure a loan of P418,000 from the Home Bankers Savings and Trust Company (HBSTC). The mortgage was registered and the owner's copy of the title was given to the mortgagee, HBSTC. Later on, the Martell spouses defaulted, the mortgage was foreclosed, and HBSTC acquired the subject house and lot at an auction held on January 16, 1991. Meantime, the Martell spouses, through their attorney-in-fact Marivic Martell, negotiated the sale of their hocked properties with Jose Villavicencio who paid earnest money on January 24, 1991. The parties executed a Deed of Sale with Assumption of Obligation dated February 12, 1991 and presented this to HBSTC.

Accordingly, HBSTC executed in favor of the Martell spouses a Certificate of Redemption dated June 27, 1991 upon redemption of the subject property and payment of P622,605 by the Martell spouses to HBSTC on April 22, 1991. Thus, the ownership of the petitioners seemed secured, with their son Antonio and his family residing in the premises.

But meanwhile Alejandro Mojares, who had previously sued the Martell spouses in Civil Case No. Q-52417, had secured a writ of attachment on the subject house and lot which was annotated on the said title on December 22, 1987. A decision dated October 8, 1990, was rendered in favor of Mojares, and having become final and executory a writ of execution dated April 16, 1991 was issued. Pursuant thereto, the house and lot were set to be sold on May 20, 1991, when Jose Villavicencio timely filed an Affidavit of Third Party Claim with supporting

papers. Nonetheless, the execution sale proceeded with Mojares as the highest and successful bidder. No redemption having been exercised, a Sheriff's Certificate of Sale was executed and was annotated on May 22, 1992.

The looming conflict became more intricate when the City Hall of Quezon City was gutted by fire on June 11, 1988. Among those razed was the Office of the Register of Deeds and with it the said TCT No. 262376. Expectedly, in its place were issued TCT No. 262376 (PR-13321), TCT No. 262376 (PR-18585), and TCT No. 65497. The latter, which was issued on August 26, 1992, and bears the entries of Notice of Levy on Attachment under Civil Case No. Q-52417 inscribed on December 22, 1987, and the Sheriff's Certificate of Sale inscribed on May 22, 1992, was already in the name of the spouses Jose and Ofelia Villavicencio.

On January 15, 1992, herein petitioners filed a Complaint for Annulment of the sheriff's sale with the Regional Trial Court of Quezon City, Branch 92, docketed as Civil Case No. Q-92-11083.

Named as defendants were Mojares, the purchaser-judgment creditor, Deputy Sheriff Rodolfo Payumo, Marivic Martell, the Martell spouses, HBSTC, and Samuel Cleofe of the Register of Deeds of Quezon City.

For failure to file a responsive pleading, the Martell spouses were declared in default by the RTC, while Cleofe was declared as in default for failure to attend the pre-trial conference. The complaint against HBSTC was dismissed for failure to state a cause of action.

The trial court rendered judgment on August 12, 1994 dismissing the case against respondents Mojares and Payumo after the latter filed a Demurrer to Evidence. The dispositive portion reads as follows:

In view of the foregoing, the Court is left with no recourse but to GRANT defendants' Demurrer to Evidence.

WHEREFORE, premises considered, the case in caption is hereby dismissed as to defendants Alejandro A. Mojares and Rodolfo Payumo. Let the reception of evidence for defendant Marivic Martell be set on September 21, 1994 at 8:30 o'clock in the morning.

SO ORDERED.[3]

Petitioners filed a Motion for Reconsideration, which was denied by the trial court on December 13, 1994.

Petitioners appealed before the Court of Appeals, which rendered judgment on December 21, 1999, affirming the decision of the trial court.[4] They filed a Motion for Reconsideration, which was denied by the Court of Appeals on March 30, 2000.

Hence, this petition where petitioners raise the following issues:

- Whether the sheriff's sale was valid although there was no written notice of sale to the judgment debtor as required by Section 18, Rule 39 of the Rules of Court, as amended by Supreme Court Circular No. 8 dated May 15, 1987 [now Sec. 15(d), Rule 39 of the 1997 Rules of Civil Procedure];
- Whether the sheriff's sale was valid although the purchaser-judgment creditor did not pay the amount of his bid in cash as required by Section 23, Rule 39 of the Rules of Court [now Sec. 21, Rule 39 of the 1997 Rules of Civil Procedure];
- Whether the alleged levy/attachment was binding on the petitioners although it was not annotated on the copy of the title that was on file with the Register of Deeds;
- Whether the levy/attachment was binding on petitioners although the record was not reconstituted in accordance with law; and

- Whether the levy/attachment was valid with respect to the whole property although the judgment debtor had only one-half interest therein.[5]

After a careful consideration of the controversy, we find that the issues for resolution may be delimited as follows:

- Whether the sheriff's execution sale is invalid; and
- Whether the attachment/levy on the subject property is binding on petitioners.

On the first issue, petitioners argue that the sheriff's execution sale was null and void for lack of written notice of sale to the judgment debtor as required by Sec. 18, Rule 39 (now Sec. 15 (d), Sec. 39) of the Revised Rules of Court[6] and for failure of the purchaser-judgment creditor to pay his bid in cash.[7] In support of their argument regarding the lack of notice of sale, petitioners quoted verbatim the Sheriff's Return, which enumerated in detail the proceedings undertaken.[8]

Respondents, in response, contend that the execution sale was valid as there was personal service of the notice of sale and publication in the Metro Profile prior to the sale. In support of this contention, they rely on the testimony on cross-examination of Sheriff Payumo, one of the witnesses for petitioners.[9]

At the outset, it bears stressing that this issue involves determination of facts, which is not proper in a petition for review on certiorari. The Court has ruled that findings that concern compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale involve a factual issue binding on the Supreme Court.[10] It is axiomatic that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court.[11] The Court is not a trier of facts, and we need not delve into the records to determine the probative value of the evidence supporting the trial court's finding.[12]

Besides, it is well settled that in extrajudicial foreclosure sale, personal notice to the mortgagor is not necessary as publication of notice in newspaper is more than sufficient compliance.[13]

The Court of Appeals has found that petitioners' arguments are mere unsubstantiated allegations not borne out by the evidence.[14] Foreclosure proceedings have in their favor the presumption of regularity and the burden of the evidence to rebut the same is on the petitioners.[15] In this case, petitioners have failed to prove the lack of service of notice of sale. The Sheriff's return in itself does not establish the non-compliance with the service of written notice of sale. At most, it only shows the detailed proceedings of the service of the writ of execution. The fact that no service of the written notice of sale is mentioned therein would not negate actual service of written notice of sale to the judgment debtor.

Still on the first issue, petitioners contend that the execution sale was not valid for failure of the purchaser-judgment creditor to pay his bid in cash. They invoke Section 23, Rule 39 (now Section 21, Rule 39) of the Rules of Court which provides that:

Sec. 21. Judgment obligee as purchaser - When the purchaser is the judgment obligee, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess.

A closer examination of Section 21, Rule 39, would reveal that there is no requirement to pay the bid in cash. What the Rule emphasizes is that in the absence of a third party claim, the purchaser in an execution sale need not pay his bid if it does not exceed the amount of the judgment, otherwise, he shall only pay the excess. By implication, if there is a third party claim, the purchaser should pay the amount of his bid without, however,

requiring that it be made in cash.

Petitioners' reliance in the case of *Sy vs. Catajan*, 164 SCRA 299, is misplaced. The cited case does not state that any execution sale shall be null and void if the purchaser did not pay his bid in cash.

On the second issue, petitioners contend that the levy/attachment is not binding on them since it was not annotated in the copy of TCT No. 262376 which was on file with the Register of Deeds when the Villavicencios purchased the property.[16] Further, they contend that the levy/attachment was not reconstituted in accordance with law[17] and that it is void with respect to one-half of the litigated property because only the share of the judgment debtor could be lawfully levied/attached.[18]

Respondents, in reply, state that petitioners' contention is belied by their own Exhibit P-1, which showed that the levy on attachment was duly recorded in the Office of the Register of Deeds of Quezon City as Entry No. PE-262376 on December 22, 1987.

We agree with the findings of the Court of Appeals that TCT No. 65497 (Exhibit "P") unequivocally shows that the house and lot in issue were judicially attached. As stated by the Court of Appeals:

It stands undisputed that the subject premises were judicially attached. TCT No. 65497 (Exh. "P") shows that the attachment was annotated on December 22, 1987, and We put faith in this notwithstanding that the owner's copy of the erstwhile title does not bear the said entry. This is because an attachment is an adversarial and involuntary process not palatable to the registered owner nor to his mortgagee, and most likely they resisted or at least did not cooperate in having the writ entered in the owner's copy. But the fact is the house and lot were attached.[19]

Moreover, Antonio Vasquez, an officer of the Register of Deeds of Quezon City and a witness for petitioners, admitted that indeed, a notice of levy on attachment was received by their office on December 22, 1987.[20]

Since the attachment/levy in Civil Case No. Q-52417 preceded the sale made to petitioners, it necessarily follows that the attachment/levy is a superior lien imposed on the property and subsequent purchasers are subject to such lien. The priority enjoyed by the first levy on execution extended with full force and effect to the buyer at the auction sale conducted by virtue of such levy.[21]

Further, an auction or execution sale retroacts to the date of levy of the lien of attachment.[22] Thus, between petitioners and respondent Mojares, Mojares has a superior right as the purchaser-judgment creditor over the right of petitioners who bought the property subject to the levy/attachment. In fine, the levy/attachment is binding on petitioners as their right therein is subordinate to that of respondent Mojares.

On the matter of the improper reconstitution of TCT No. 262376, petitioners aver that the levy/attachment was not properly reconstituted in accordance with Section 56 of P.D. 1529, which provides as follows:

SEC. 56. Primary Entry Book; fees; certified copies - Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers

relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

In connection thereto, we took judicial notice of the fact that a fire did occur at the Quezon City Hall which razed the Office of the Register of Deeds in June, 1988. Under such unforeseen situation, some deviations from the normal standard procedure are not uncommon nor unexpected.

Finally, as to the issue of nullity of the sheriff's sale in regard to one-half of the disputed property, suffice it to state that petitioners' contention is unpersuasive and unmeritorious.

In the first place, it was not established by evidence that Myrna Martell has an interest in the property. Also, it bears stressing that Myrna Martell together with her husband, who are the most likely to be prejudiced with such matter and are expected to be vigilant over their rights, if any, were indifferent to the entire proceedings. Secondly, whether or not Myrna Martell has an interest in the subject property as a wife of Carlito is a question of fact not proper to be raised much less resolved in this petition. The case before us does not involve her rights in the cited property at all.

In sum, we find no cogent reason to reverse and set aside the decision of the Court of Appeals which affirmed that of the Regional Trial Court of Quezon City. Petitioners plea for reversal of the decision below could not be granted as we find therein no reversal errors of law.

WHEREFORE, the petition is DENIED for lack of merit. The decision and resolution of the Court of Appeals dated December 21, 1999, and March 30, 2000, respectively, are AFFIRMED. Costs against petitioners.

**SO ORDERED.**

Bellosillo (Chairman), Mendoza, Austria-Martinez and Callejo, Sr., JJ., concur.

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[1] Rollo, pp. 42-49.

[2] Id. at 50-51.

[3] CA Rollo, p. 73.

[4] Rollo, p. 49.

[5] Id. at 97-98.

[6] Id. at 98.

[7] Id. at 100.

[8] Id. at 98-99.

[9] Id. at 54.

- [10] Langkaan Realty Development, Inc. v. United Coconut Planters Bank, 347 SCRA 542, 550 (2000).
- [11] Tinio v. Manzano, 307 SCRA 460, 469 (1999).
- [12] Hervas v. Court of Appeals, 319 SCRA 776, 782 (1999).
- [13] PNB v. Rabat, 344 SCRA 706, 716 (2000).
- [14] Rollo, p. 48.
- [15] Cristobal v. Court of Appeals, 328 SCRA 256, 262 (2000).
- [16] Rollo, p. 102.
- [17] Id. at 105.
- [18] Id. at 107.
- [19] Id. at 47.
- [20] Id. at 55.
- [21] First Integrated Bonding & Insurance Co., Inc. v. Court of Appeals, 261 SCRA 203, 220 (1996).
- [22] Caviles, Jr. v. Bautista, 319 SCRA 24, 34 (1999).

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