

LINCOLN L. YAO, PETITIONER, VS. HONORABLE NORMA C. PERELLO, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 276, MUNTINLUPA CITY, THE EX-OFICIO SHERIFF, R...

G.R. No. 153828. October 24, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for certiorari filed by Lincoln L. Yao, assailing the resolution dated March 22, 2002 and Order dated May 10, 2002, of the Regional Trial Court of Parañaque City, Branch 274,[1] which respectively granted private respondent Bernadine D. Villarin's petition for prohibition and denied petitioner's motion for intervention.

The present controversy stemmed from a complaint filed by petitioner before the Housing and Land Use Regulatory Board (HLURB) against a certain corporation, PR Builders, Inc. and its managers, Enrico Baluyot and Pablito Villarin, private respondent's husband.

On September 17, 1999, the HLURB rendered a decision rescinding the contract to sell between petitioner and PR Builders, and ordering PR Builders to refund petitioner the amount of P2,116,103.31, as well as to pay damages in the amount of P250,000.

Thereafter, the HLURB issued a writ of execution against PR Builders and its managers, and referred the writ to the office of the Clerk of Court of Muntinlupa for enforcement.

Pursuant to the writ, the deputy sheriff levied on a parcel of land in Canlubang, Calamba, Laguna, registered in the names of spouses Pablito Villarin and private respondent, Bernadine Villarin. The property was scheduled for public auction on March 20, 2002.

On March 19, 2002, private respondent filed before the RTC of Parañaque City, a petition for prohibition with prayer for temporary restraining order and/or writ of preliminary injunction, seeking to enjoin Sheriff Melvin T. Bagabaldo from proceeding with the public auction. Private respondent alleged that she co-owned the property subject of the execution sale; that the property regime between private respondent and her husband was complete separation of property, and that she was not a party in the HLURB case, hence, the subject property could not be levied on to answer for the separate liability of her husband.

On even date, public respondent Judge Norma C. Perrello issued a 72-hour temporary restraining order and set the case for raffle and conference on March 22, 2002.

The case was eventually raffled to RTC, Branch 276, presided by public respondent judge. A conference was then conducted, after which public respondent judge issued the assailed resolution of March 22, 2002 granting private respondent's petition for prohibition and declaring the subject property exempt from execution. Hence, the

scheduled auction sale did not materialize.

On April 25, 2002, or more than a month after public respondent judge issued the resolution of March 22, 2002, petitioner filed a motion for intervention. However, public respondent judge denied the motion in her assailed order of May 10, 2002:

O R D E R

The MOTION FOR INTERVENTION is denied, considering that this case has long been decided, hence the intervention is too late. There is no case for them to intervene.

Let the decision be executed to satisfy the judgment debt.

SO ORDERED in open Court.[2]

Aggrieved, petitioner filed the instant petition for certiorari imputing grave abuse of discretion to public respondent judge in: (a) declaring the subject property exempt from execution and therefore could not be sold to satisfy the obligation of private respondent's husband, and (b) denying petitioner's motion for intervention on the ground that the same was filed late.

It is a basic precept that the power of the court in the execution of judgments extends only to properties unquestionably belonging to the judgment debtor. The levy by the sheriff on property by virtue of a writ of attachment may be considered as made under the authority of the court only vis-a-vis property belonging to the defendant. For indeed, "one man's goods shall not be sold for another man's debts." [3] In the case at bar, the property levied on by the sheriff was clearly not exclusively owned by Pablito Villarin. It was co-owned by herein private respondent who was a stranger in the HLURB case. The property relation of spouses Villarin was governed by the regime of complete separation of property as decreed in the order [4] dated November 10, 1998 of the Regional Trial Court, Branch 27, Parañaque City.

Articles 145 and 146 of the Family Code governing the regime of complete separation of property provide:

Art. 145. Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during his marriage from his or her separate property. (214a)

Art. 146. Both spouses shall bear the family expenses in proportion to their income, or, in case of insufficiency or default thereof, to the current market value of their separate properties.

The liability of the spouses to creditors for family expenses shall, however, be solidary. (215a)

It is clear from the foregoing that the only time the separate properties of the spouses can be made to answer for liabilities to creditors is when those liabilities are incurred for family expenses. This has not been shown in the case at bar.

Accordingly, private respondent acted well within her rights in filing a petition for prohibition against the deputy sheriff because the latter went beyond his authority in attaching the subject property. This right is specifically reserved by Section 17, Rule 39 of the Rules of Court.

Petitioner insists that, in a petition for prohibition, it is essential that the party who is interested in sustaining the act or acts sought to be prohibited or enjoined be impleaded as private respondent. Thus, as the judgment creditor in the HLURB case, petitioner claims that he was an indispensable party in the petition for prohibition and should have been allowed to intervene in the said case. He was not allowed to do so.

Section 2, Rule 65 of the Rules of Court provides:

SEC. 2 Petition for prohibition. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the last paragraph of Section 3, Rule 46. (2a)

Consequently, petitioner's claim that he had the right to intervene is without basis. Nothing in the said provision requires the inclusion of a private party as respondent in petitions for prohibition. On the other hand, to allow intervention, it must be shown that (a) the movant has a legal interest in the matter in litigation or otherwise qualified, and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur as the first is not more important than the second.[5]

In the case at bar, it cannot be said that petitioner's right as a judgment creditor was adversely affected by the lifting of the levy on the subject real property. Records reveal that there are other pieces of property exclusively owned by the defendants in the HLURB case that can be levied upon.

Moreover, even granting for the sake of argument that petitioner indeed had the right to intervene, he must exercise said right in accordance with the rules and within the period prescribed therefor.

As provided in the Rules of Court, the motion for intervention may be filed at any time before rendition of judgment by the trial court.[6] Petitioner filed his motion only on April 25, 2002, way beyond the period set forth in the rules. The court resolution granting private respondent's petition for prohibition and lifting the levy on the subject property was issued on March 22, 2002. By April 6, 2002, after the lapse of 15 days, the said resolution had already become final and executory.

Besides, the mere fact that petitioner failed to move for the reconsideration of the trial court's resolution is sufficient cause for the outright dismissal of the instant petition. Certiorari as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent court to allow it an opportunity to correct its errors, if any.

Finally, grave abuse of discretion is committed when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The Court fails to find grave abuse of discretion committed by public respondent judge in rendering the assailed resolution and order.

WHEREFORE, the petition is hereby dismissed for lack of merit.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Presided by Judge Norma C. Perello.

[2] Rollo, p. 19.

[3] *Spouses Estonia v. Court of Appeals et al.*, 266 SCRA 627 [1997] citing *Ong v. Tating*, 149 SCRA 267 [1987].

[4] Issued by then Presiding Judge Amelita Tolentino, now a Justice of the Court of Appeals. Rollo, pp. 70-71.

[5] *Magsaysay-Labrador v. Court of Appeals*, 180 SCRA 266 [1989].

[6] Section 2, Rule 19.

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