SPOUSES EDUARDO AND ELSA VERSOLA, PETITIONERS, VS. HON. COURT OF APPEALS, SHERIFF REYNALDO B. MADOLARIA, JUDGE LYDIA QUERUBIN LAYOSA, BOTH OF THE REGIONAL TRIAL COURT OF QUEZON ...

G.R. NO. 164740. July 31, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review under Rule 45 of the Rules of Court, filed by petitioners spouses Eduardo and Elsa Versola, seeks to nullify and set aside the 28 April 2004 Decision[1] and 28 July 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 79300, which affirmed the Orders dated 6 January 2003 and 14 July 2003 of the Regional Trial Court (RTC) of Quezon City, Branch 217, in Civil Case No. Q-93-16003.

This case has its genesis from a loan transaction entered into by private respondent Dr. Victoria T. Ong Oh and a certain Dolores Ledesma, wherein the former granted a P1,000,000.00 loan to the latter. As a security for said loan, Ledesma issued to private respondent a check for the same amount dated 10 February 1993 and promised to execute a deed of real estate mortgage over her house and lot located at Tandang Sora, Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-51142. The execution of the deed of real estate mortgage did not materialize, but Ledesma delivered the owner's duplicate copy of the TCT No. RT-51142 to private respondent.

Thereafter, Ledesma sold the said house and lot to petitioners for P2,500,000.00. Petitioners paid Ledesma P1,000,000.00 as downpayment, with the remaining balance of P1,500,000.00 to be paid in monthly installments of P75,000.00[2] starting 15 March 1993. Even before the monthly installments became due, Ledesma already asked petitioners to pay the remaining balance of P1,500,000.00. Petitioners, however, were only able to pay the amount of P50,000.00 to Ledesma. To raise the full amount that Ledesma demanded, petitioners applied for a loan with Asiatrust Bank, Inc. (Asiatrust) in the amount of P2,000,000.00. In the course of the application for said loan, petitioners, private respondent, and Ledesma convened with Asiatrust to arrive at a scheme to settle the obligation of Ledesma to private respondent and the obligation of petitioners to Ledesma. After the meeting, the following agreement[3] was arrived at: (1) private respondent would grant Ledesma an additional loan of P450,000.00, making the latter's loan from the former amount to P1,450,000.00 (the amount of P1,450,000.00 would then be credited to petitioners as full settlement of the purchase price of the property); (2) Ledesma would execute a Deed of Sale transferring ownership over her house and lot, covered by TCT No. RT-51142, to petitioners; (3) private respondent would then deliver the duplicate copy of TCT No. RT-51142 to Asiatrust; (4) once petitioners had secured a title to the said house and lot in their names, they would execute a real estate mortgage over it in favor of Asiatrust to secure their loan of P2,000,000.00; and (5) Asiatrust would then grant a loan of P2,000,000.00 to petitioners with a written guarantee that the P1,500,000.00 would be given directly by Asiatrust to private respondent after the mortgage lien of Asiatrust would have been annotated on the title of the said property.

In keeping with the foregoing agreement, private respondent granted Ledesma an additional loan of P450,000.00. Ledesma, in turn, executed a Deed of Sale transferring the title of the subject property to petitioners. Private respondent then delivered the title of the said property to Asiatrust. The Deed of Sale was registered and TCT No. RT-51142 in the name of Ledesma was cancelled and a new one, TCT No. 83104, was issued in the names of petitioners. Thereafter, Asiatrust approved the loan application of petitioners, after which the latter issued a check in the amount of P1,500,000.00 to private respondent. However, when Asiatrust tried to register the Real Estate Mortgage covering the subject property executed in its favor by petitioners, it discovered a notice of levy on execution was annotated on the title in connection with Ledesma's obligation to a certain Miladay's Jewels, Inc., in the amount of P214,284.00. Because of this annotated encumbrance, Asiatrust did not register said Real Estate Mortgage and refused to release the P2,000,000.00 loan of petitioners. When private respondent presented Ledesma's check for payment, the same was dishonored for the reason that the account was already closed. Subsequently, when private respondent presented for payment the check issued by petitioners, the said check was likewise dishonored because there was a stop payment order. With the dishonor of the checks and with Asiatrust's refusal to release the P2,000,000.00 loan of petitioners, private respondent came away empty-handed as she did not receive payment for the P1,500,000.00 loan she granted to Ledesma that was assumed by petitioners. As a result, private respondent filed a Complaint for Sum of Money against Ledesma, petitioners, and Asiatrust before the RTC, Branch 217, Quezon City, docketed as Civil Case No. Q-93-16003.

After trial, the RTC, in a Decision dated 31 May 1996, rendered a verdict in favor of private respondent and against petitioners, the dispositive portion of which reads:

> Wherefore, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff Dr. Victoria Ong Oh and against defendant-spouses Eduardo and Elsa Versola. The appellants Versolas are hereby ordered to pay to Dr. Victoria Ong Oh the following:
>
> a) the sum of one million five hundred thousand pesos (P1,500,000.00) plus legal interest to be computed from the time of judicial demand;
>
> b) one hundred thousand pesos (P100,000.00) as moral damages and fifty thousand pesos (P50,000.00) as exemplary damages; and,
>
> c) attorney's fees of one hundred thousand pesos (P100,000.00).[4]

Undaunted, petitioners appealed the trial court's Decision to the Court of Appeals, with the appeal docketed as CA-G.R. CV No. 54399.

In a Decision dated 30 August 1999, the Court of Appeals rendered a judgment affirming the Decision of the trial court, but modifying the award of moral, exemplary damages and attorney's fees by deleting the same, to wit:

> WHEREFORE, the appealed Decision is hereby MODIFIED in this wise: the Court orders appellants spouses Eduardo and Elsa Versola to pay appellee Victoria T. Ong Oh One Million Five Hundred Thousand (P1,500,000.00) Pesos with legal interest from March 24, 1993.[5]

No appeal having been filed, the foregoing Decision attained finality.

On 3 April 2000, private respondent filed a Motion for Execution with the trial court, the latter granted the same in an Order dated 14 April 2000. On 23 June 2000, the property covered by TCT No. 83104, in the names of petitioners, was levied upon. The sheriff set the sale of the property at public auction on 19 September 2000. Petitioners were served a copy of the notice of the sale. On 18 September 2000, petitioners filed with the sheriff an "Objection/Exception to the Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home Pending Court Order or Clearance." Despite petitioners" objections, however, the property was still sold at public

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auction on 19 September 2000 and was awarded to private respondent at the bid price of P2,835,000.00.

For failure of petitioners to redeem the property during the redemption period, a Sheriff's Final Deed of Sale was issued in favor of private respondent on 19 March 2002.

On 5 August 2002, private respondent filed with the trial court an Ex-parte Motion for Issuance of Confirmation of Judicial Sale of Real Property of Sps. Eduardo and Elsa Versola. Petitioners opposed the said motion on the following grounds: (1) the property sold at the public auction is the family home of petitioners which is exempt from execution pursuant to Article 155 of the Family Code; (2) no application was made by private respondent for the determination of the value of their family home to be subjected to execution, as required under Article 160 of the Family Code; and (3) there were serious defects in the conduct of the execution sale.

In an Order dated 6 January 2003, the trial court debunked petitioners' arguments, and granted private respondent's Ex-parte Motion and confirmed the Sheriff's Final Deed of Sale.

In an Order dated 14 July 2003, the trial court denied the Motion for Reconsideration filed by petitioners.

Petitioners then filed a Petition for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 79300, alleging grave abuse of discretion on the part of the trial court Judge in confirming the judicial sale of their family home.

In a Decision dated 28 April 2004, the Court of Appeals dismissed the Petition for lack of merit. A Motion for Reconsideration thereof was filed, but was denied by the Court of Appeals in a Resolution dated 28 July 2004.

Hence, the instant Petition.

Petitioners submit the following issues for the Court's consideration:

> - WHETHER OR NOT COMPLIANCE ON (sic) THE PROVISIONS OF THE FAMILY CODE SPECIFICALLY ARTICLES 152 TO 160 IN RELATION TO THE PROVISION OF ARTICLE III SECTION 1 OF THE CONSTITUTION, IS MANDATORY; and
>
> - WHETHER OR NOT THE PROVISION UNDER ARTICLE 160 REQUIRING AN APPLICATION TO THE COURT FOR AN ORDER DIRECTING THE AUCTION SALE OF A FAMILY HOME IS MANDATORY AND A CONDITION SINE QUA NON THAT MUST BE COMPLIED WITH PRIOR TO THE AUCTION SALE. [6]

Petitioners aver that prior to the auction sale of their family home, they registered their opposition and objection to the same by filing with the trial court an "Urgent Motion to Suspend Auction Sale on the Property of Defendants under TCT No. 83104 located at Sunville Subdivision, Quezon City," dated 12 September 2000 which was admittedly treated by the court as a "mere scrap of paper and is deemed not filed." They also claim that a day before the scheduled auction sale, they filed with the sheriff of the trial court an "Objection/Exception to the Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home Pending Court Order or Clearance" which the latter disregarded. Petitioners maintain that said objection to the sale was based on the fact that there was no order or clearance from the trial court for the sheriff to proceed with the auction sale, in clear violation of Article 160 of the Family Code, which requires an application by the creditor and a determination of the actual value of the family home by the court ordering the sale of property under execution.

It was likewise contended by petitioners that there were serious defects in the conduct of the execution sale, namely, the sheriff based the execution on the dispositive portion of the Decision of the RTC and not the modified Decision of the Court of Appeals, and that there were no documents proving the amount of execution sale and the determination of the proceeds.

On the other hand, the trial court found that the allegations of serious defects in the sheriff's conduct of the execution sale are unfounded. According to the trial court, although the sheriff inadvertently quoted the decision of the trial court in the "Sheriff's Final Deed of Sale" dated 19 March 2002, the "Statement of Accounts" submitted by private respondent, as well as the computation of the sheriff showed that the auction sale was based on the decision of the Court of Appeals. The bid price amounted to P2,835,000.00, P1,500,000.00 thereof representing the principal amount owed by petitioners to private respondent while the remaining P1,335,000.00 represented the legal interest of 12% counted from 24 March 1993 up to 24 August 2000.

As to the allegation that the sheriff failed to act on petitioners' Objection/Exception to Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home, the trial court ratiocinated that such inaction of the sheriff was justified since petitioners never filed any motion before the said court to hold in abeyance the impending auction sale. Accordingly, it held that it was correct for the sheriff to proceed with the auction sale as there will be no order forthcoming to suspend the sale absent any motion from petitioners.

Finally, the trial court criticized petitioner's claim that the subject property was their family home. The court opined that the claim was never substantiated by petitioners aside from the fact that they asserted this defense only after two years since the auction sale has transpired. It added that if not for the private respondent's Ex-parte Motion for Issuance of Confirmation of Judicial Sale of Real Property of Sps. Eduardo and Elsa Versola filed on 5 August 2002, petitioners would not have raised the issue of family home before the said court.

The issue in the main is whether or not petitioners timely raised and proved that their property is exempt from execution.

Article 153 of the Family Code provides:

> The family home is deemed constituted on a house and lot from the time it is occupied as the family residence. From the time of its constitution and so long as its beneficiaries resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

Under the cited provision, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence; there is no need to constitute the same judicially or extrajudicially.[7]

The settled rule is that the right to exemption or forced sale under Article 153 of the Family Code is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself before the sale of the property at public auction.[8] It is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved to the Sheriff.[9] Failure to do so would estop the party from later claiming the exception.[10]

In the case under consideration, petitioners allegedly filed with the trial court an "Urgent Motion to Suspend Auction Sale on the Property of Defendants under TCT No. 83104 located at Sunville Subdivision, Quezon City" which was dated 12 September 2000. The said motion was filed before 19 September 2000, the scheduled date for the sale of the subject property at public auction. The records of the case, however, do not disclose that petitioners in the said motion set up and proved that the property to be sold was their family home. In any event, said motion was treated by the trial court as a mere scrap of paper presumably on the ground that such motion did not contain a notice of hearing.[11] As we have repeatedly held, a motion that does not contain a notice of hearing is a mere scrap of paper, it presents no question which merits the attention of the court.[12] Being a mere scrap of paper, the trial court had no alternative but to disregard it.[13] Such being the case, it was as if no opposition to the auction sale was filed.

On the day immediately prior to the scheduled sale of the subject property, petitioners filed with the sheriff an Objection/Exception to Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home. Petitioners simply alleged there that the property subject of the intended auction sale was their family home. Instead of substantiating their claim, petitioners languidly presupposed that the sheriff had prior knowledge that the said property was constituted by them as their family home. Lamentably, in the said objection, petitioners did not set forth therein any evidence to substantiate their claim that the property to be sold at the execution sale was indeed exempt for having been constituted as a family home. The objection read:

> "Evidently, a court determination of the value of the family home is indispensable for the same to be subjected to execution sale, and more importantly, the judgment creditor has to apply for a court order direction (sic) auction sale of said judicial home.
>
> Your good office, thru you, has PRIOR knowledge of the fact that the real property subject of the intended auction sale is the family home being occupied by the Defendants Spouses Eduardo and Elsa Versola.
>
> Allow us to enter our objection/exception to the auction sale which is without the benefit of a court order. We accordingly ask that the sale be suspended/held in abeyance pending the court order directing the sale of the family home."[14] (Underscoring supplied.)

It was only after almost two years from the time of the execution sale and after the "Sheriff's Final Deed of Sale" was issued did petitioners rigorously claim in their Opposition to private respondent's Ex-parte Motion for Issuance of Confirmation of Judicial Sale of Real Property of Sps. Eduardo and Elsa Versola that the property in question is exempt from execution. Even then, there was no showing that petitioners adduced evidence to prove that it is indeed a family home.

In the case of Honrado v. Court of Appeals,[15] the family home of the petitioner therein was levied upon to answer for his judgment debt, and the sale of the said property was set. Petitioner was served with a copy of the notice of sale which he opposed. Petitioner, however, allowed the sale at the public auction to proceed and the Sheriff to execute a certificate of sale over the property in favor of the private respondent therein. The petitioner remained silent and failed to seek relief from the Sheriff or the court until after almost one year from the date of the auction sale when he filed his motion to declare the property exempt from execution. But even in the said motion, petitioner did not present evidence that the property was a family home. Finding that petitioner's claim of exemption was not substantiated and was filed belatedly, the Court therein ruled:

> While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption x x x.[16] (Emphasis supplied.)

In view of the facts obtaining in this case, and taking into consideration the applicable jurisprudence on the matter, the Court finds that petitioners' assertion for exemption is a mere afterthought, a sheer artifice to deprive private respondent of the fruits of the verdict of her case.

As the Court aptly inculcated:

> Certainly, reasonable time, for purposes of the law on exemption, does not mean a time after the expiration of the one-year period provided for in Section 30 of Rule 39 of the Rules of Court for judgment debtors to redeem the property sold on execution, otherwise it would render nugatory final bills of sale on execution and defeat the very purpose of execution - to put an end to litigation. We said before, and We repeat it now, that litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the

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fruits of the verdict. x x x .[17]

WHEREFORE, the petition is DENIED. The judgment of the Court of Appeals dismissing the petition in CA-G.R. SP No. 79300, for lack of merit, is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon , concurring; rollo, pp. 22-29.

[2] Records, p. 51.

[3] Id. at 109-110.

[4] Rollo, p. 67.

[5] Id. at 70.

[6] Rollo, p. 130.

[7] Manacop v. Court of Appeals, 342 Phil. 735, 741 (1997).

[8] Honrado v. Court of Appeals, G.R. No. 166333, 25 November 2005, 476 SCRA, 280, 288.

[9] Id. at 290.

[10] Id.

[11] The records of the case appear silent as to the reason why the "Urgent Motion to Suspend Auction Sale on the Property of Defendants under TCT No. 83104" was treated as a mere scrap of paper.

[12] Formaran III v. Trabajo-Daray, A.M. No. RTJ-04-1885, 17 November 2004, 442 SCRA 423, 435.

[13] Traders Royal Bank v. Court of Appeals, G.R. No. 60222, 22 April 1992, 208 SCRA 199, 205.

[14] Rollo, p. 132.

[15] Supra note 8.

[16] Id. at 290.

[17] Id. at 291.

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