

**SPOUSES ARACELI OLIVA-DE MESA AND ERNESTO S. DE MESA,
PETITIONER, VS. SPOUSES CLAUDIO D. ACERO, JR. AND MA. RUFINA
D. ACERO, SHERIFF FELIXBERTO L. SAMONTE AND REGISTRAR
ALFREDO ...**

G.R. No. 185064. January 16, 2012

Ponente: REYES, J.

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REYES, J.:

Nature of the Petition

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by the Spouses Araceli Oliva-De Mesa (Araceli) and Ernesto S. De Mesa (Ernesto), assailing the Court of Appeals' (CA) Decision[1] dated June 6, 2008 and Resolution[2] dated October 23, 2008 in CA-G.R. CV No. 79391 entitled "Spouses Araceli Oliva-De Mesa and Ernesto De Mesa v. Spouses Claudio Acero, Jr., et al."

The Antecedent Facts

This involves a parcel of land situated at No. 3 Forbes Street, Mount Carmel Homes Subdivision, Iba, Meycauayan, Bulacan, which was formerly covered by Transfer Certificate of Title (TCT) No. T-76.725 (M) issued by the Register of Deeds of Meycauayan, Bulacan and registered under Araceli's name. The petitioners jointly purchased the subject property on April 17, 1984 while they were still merely cohabiting before their marriage. A house was later constructed on the subject property, which the petitioners thereafter occupied as their family home after they got married sometime in January 1987.

Sometime in September 1988, Araceli obtained a loan from Claudio D. Acero, Jr. (Claudio) in the amount of P100,000.00, which was secured by a mortgage over the subject property. As payment, Araceli issued a check drawn against China Banking Corporation payable to Claudio.

When the check was presented for payment, it was dishonored as the account from which it was drawn had already been closed. The petitioners failed to heed Claudio's subsequent demand for payment.

Thus, on April 26, 1990, Claudio filed with the Prosecutor's Office of Malolos, Bulacan a complaint for violation of Batas Pambansa Blg. 22 (B.P. 22) against the petitioners. After preliminary investigation, an information for violation of B.P. 22 was filed against the petitioners with the Regional Trial Court (RTC) of Malolos, Bulacan.

On October 21, 1992, the RTC rendered a Decision[3] acquitting the petitioners but ordering them to pay Claudio the amount of P100,000.00 with legal interest from date of demand until fully paid.

On March 15, 1993, a writ of execution was issued and Sheriff Felixberto L. Samonte (Sheriff Samonte) levied upon the subject property. On March 9, 1994, the subject property was sold on public auction; Claudio was the highest bidder and the corresponding certificate of sale was issued to him.

Sometime in February 1995, Claudio leased the subject property to the petitioners and a certain Juanito Oliva

(Juanito) for a monthly rent of P5,500.00. However, the petitioners and Juanito defaulted in the payment of the rent and as of October 3, 1998, their total accountabilities to Claudio amounted to P170,500.00.

Meanwhile, on March 24, 1995, a Final Deed of Sale[4] over the subject property was issued to Claudio and on April 4, 1995, the Register of Deeds of Meycauayan, Bulacan cancelled TCT No. T-76.725 (M) and issued TCT No. T-221755 (M)[5] in his favor.

Unable to collect the aforementioned rentals due, Claudio and his wife Ma. Rufina Acero (Rufina) (collectively referred to as Spouses Acero) filed a complaint for ejectment with the Municipal Trial Court (MTC) of Meycauayan, Bulacan against the petitioners and Juanito. In their defense, the petitioners claimed that Spouses Acero have no right over the subject property. The petitioners deny that they are mere lessors; on the contrary, they are the lawful owners of the subject property and, thus cannot be evicted therefrom.

On July 22, 1999, the MTC rendered a Decision,[6] giving due course to Spouses Acero's complaint and ordering the petitioners and Juanito to vacate the subject property. Finding merit in Spouses Acero's claims, the MTC dismissed the petitioners' claim of ownership over the subject property. According to the MTC, title to the subject property belongs to Claudio as shown by TCT No. T-221755 (M).

The MTC also stated that from the time a Torrens title over the subject property was issued in Claudio's name up to the time the complaint for ejectment was filed, the petitioners never assailed the validity of the levy made by Sheriff Samonte, the regularity of the public sale that was conducted thereafter and the legitimacy of Claudio's Torrens title that was resultantly issued.

The petitioners appealed the MTC's July 22, 1999 Decision to the RTC. This appeal was, however, dismissed in a Decision dated November 22, 1999 due to the petitioners' failure to submit their Memorandum. The petitioners sought reconsideration of the said decision but the same was denied in an Order dated January 31, 2000.

Consequently, the petitioners filed a petition for review[7] with the CA assailing the RTC's November 22, 1999 Decision and January 31, 2000 Order. In a December 21, 2006 Decision,[8] the CA denied the petitioner's petition for review. This became final on July 25, 2007.[9]

In the interregnum, on October 29, 1999, the petitioners filed against the respondents a complaint[10] to nullify TCT No. T-221755 (M) and other documents with damages with the RTC of Malolos, Bulacan. Therein, the petitioners asserted that the subject property is a family home, which is exempt from execution under the Family Code and, thus, could not have been validly levied upon for purposes of satisfying the March 15, 1993 writ of execution.

On September 3, 2002, the RTC rendered a Decision,[11] which dismissed the petitioners' complaint. Citing Article 155(3) of the Family Code, the RTC ruled that even assuming that the subject property is a family home, the exemption from execution does not apply. A mortgage was constituted over the subject property to secure the loan Araceli obtained from Claudio and it was levied upon as payment therefor.

The petitioners sought reconsideration of the RTC's September 3, 2002 Decision but this was denied in a Resolution[12] dated January 14, 2003.

On appeal, the CA affirmed the RTC's disposition in its Decision[13] dated June 6, 2008. The CA ratiocinated that the exemption of a family home from execution, attachment or forced sale under Article 153 of the Family Code is not automatic and should accordingly be raised and proved to the Sheriff prior to the execution, forced sale or attachment. The appellate court noted that at no time did the petitioners raise the supposed exemption of the subject property from execution on account of the same being a family home.

The petitioners then sought reconsideration of the said June 6, 2008 Decision but the same was denied by the CA in its Resolution[14] dated October 23, 2008.

Aggrieved, the petitioners filed the instant petition for review, praying for the cancellation of TCT No. T-221755 (M). They insist that the execution sale that was conducted is a nullity considering that the subject property is a family home. The petitioners assert that, contrary to the disposition of the CA, a prior demonstration that the subject property is a family home is not required before it can be exempted from execution.

In their Comment,[15] Spouses Acero claimed that this petition ought to be denied on the ground of forum-shopping as the issues raised had already been determined by the MTC in its July 22, 1999 Decision on the complaint for ejectment filed by them, which had already become final and executory following the petitioner's failure to appeal the CA's December 21, 2006 Decision affirming it.

Issues

The threshold issues for resolution are the following: (a) whether the petitioners are guilty of forum-shopping; and (b) whether the lower courts erred in refusing to cancel Claudio's Torrens title TCT No. T-221755 (M) over the subject property.

The Court's Ruling

First Issue: Forum-Shopping

On the first issue, we find that the petitioners are not guilty of forum-shopping.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or certiorari. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues.[16]

Forum-shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum-shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[17]

There is no identity of issues and reliefs prayed for in the ejectment case and in the action to cancel TCT No. T-221755 (M). Verily, the primordial issue in the ejectment case is who among the contending parties has a better right of possession over the subject property while ownership is the core issue in an action to cancel a Torrens title.

It is true that the petitioners raised the issue of ownership over the subject property in the ejectment case. However, the resolution thereof is only provisional as the same is solely for the purpose of determining who among the parties therein has a better right of possession over the subject property.

Accordingly, a judgment rendered in an ejectment case is not a bar to action between the same parties respecting title to the land or building. Neither shall it be conclusive as to the facts therein. This issue is far from being novel and there is no reason to depart from this Court's previous pronouncements. In *Malabanan v. Rural Bank of Cabuyao, Inc.*, [18] this Court had previously clarified that a decision in an ejectment case is not *res judicata* in an annulment of title case and vice-versa given the provisional and inconclusive nature of the determination of the issue of ownership in the former.

Forum-shopping exists where the elements of *litis pendentia* are present, namely: (a) identity of parties or at

least such as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amounts to res judicata in the other.

Petitioner and respondent are the same parties in the annulment and ejectment cases. The issue of ownership was likewise being contended, with same set of evidence being presented in both cases. However, it cannot be inferred that a judgment in the ejectment case would amount to res judicata in the annulment case, and vice-versa.

This issue is hardly a novel one. It has been laid to rest by heaps of cases iterating the principle that a judgment rendered in an ejectment case shall not bar an action between the same parties respecting title to the land or building nor shall it be conclusive as to the facts therein found in a case between the same parties upon a different cause of action involving possession.

It bears emphasizing that in ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. However, the issue of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession de facto. Therefore, the provisional determination of ownership in the ejectment case cannot be clothed with finality.

Corollarily, the incidental issue of whether a pending action for annulment would abate an ejectment suit must be resolved in the negative.

A pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.[19] (citations omitted)

Second Issue: Nullification of TCT No. T-221755 (M)

Anent the second issue, this Court finds that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M).

The subject property is a family home.

The petitioners maintain that the subject property is a family home and, accordingly, the sale thereof on execution was a nullity. In *Ramos v. Pangilinan*,^[20] this Court laid down the rules relative to exemption of family homes from execution:

For the family home to be exempt from execution, distinction must be made as to what law applies based on when it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed before the effectivity of the Family Code or before August 3, 1988, then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code. Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242 of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.

On the other hand, for family homes constructed after the effectivity of the Family Code on August 3, 1988,

there is no need to constitute extrajudicially or judicially, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155 for which the family home is made answerable must have been incurred after August 3, 1988.[21] (citations omitted)

In the earlier case of *Kelley, Jr. v. Planters Products, Inc.*, [22] we stressed that:

Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code.[23] (emphasis supplied and citation omitted)

The foregoing rules on constitution of family homes, for purposes of exemption from execution, could be summarized as follows:

First, family residences constructed before the effectivity of the Family Code or before August 3, 1988 must be constituted as a family home either judicially or extrajudicially in accordance with the provisions of the Civil Code in order to be exempt from execution;

Second, family residences constructed after the effectivity of the Family Code on August 3, 1988 are automatically deemed to be family homes and thus exempt from execution from the time it was constituted and lasts as long as any of its beneficiaries actually resides therein;

Third, family residences which were not judicially or extrajudicially constituted as a family home prior to the effectivity of the Family Code, but were existing thereafter, are considered as family homes by operation of law and are prospectively entitled to the benefits accorded to a family home under the Family Code.

Here, the subject property became a family residence sometime in January 1987. There was no showing, however, that the same was judicially or extrajudicially constituted as a family home in accordance with the provisions of the Civil Code. Still, when the Family Code took effect on August 3, 1988, the subject property became a family home by operation of law and was thus prospectively exempt from execution. The petitioners were thus correct in asserting that the subject property was a family home.

The family home's exemption from execution must be set up and proved to the Sheriff before the sale of the property at public auction.

Despite the fact that the subject property is a family home and, thus, should have been exempt from execution, we nevertheless rule that the CA did not err in dismissing the petitioners' complaint for nullification of TCT No. T-221755 (M). We agree with the CA that the petitioners should have asserted the subject property being a family home and its being exempted from execution at the time it was levied or within a reasonable time thereafter. As the CA aptly pointed out:

In the light of the facts above summarized, it is evident that appellants did not assert their claim of exemption within a reasonable time. 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. x x x.[24]

The foregoing disposition is in accord with the Court's November 25, 2005 Decision in *Honrado v. Court of Appeals*,^[25] where it was categorically stated that at no other time can the status of a residential house as a family home can be set up and proved and its exemption from execution be claimed but before the sale thereof at public auction:

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. As this Court ruled in *Gomez v. Gealone*:

Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption 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 at the time of the levy or within a reasonable period thereafter;

"In the absence of express provision it has variously held that claim (for exemption) must be made at the time of the levy if the debtor is present, that it must be made within a reasonable time, or promptly, or before the creditor has taken any step involving further costs, or before advertisement of sale, or at any time before sale, or within a reasonable time before the sale, or before the sale has commenced, but as to the last there is contrary authority."

In the light of the facts above summarized, it is self-evident that appellants did not assert their claim of exemption within a reasonable time. 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 fruits of the verdict. We now rule that claims for exemption from execution of properties under Section 12 of Rule 39 of the Rules of Court must be presented before its sale on execution by the sheriff.^[26] (citations omitted)

Reiterating the foregoing in *Spouses Versola v. Court of Appeals*,^[27] this Court stated that:

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.

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. 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. x x x.^[28] (emphasis supplied and citations omitted)

Having failed to set up and prove to the sheriff the supposed exemption of the subject property before the sale thereof at public auction, the petitioners now are barred from raising the same. Failure to do so estop them from later claiming the said exemption.

Indeed, the family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.^[29] It is likewise without dispute that the family home, from the time of its constitution and so long as any of its beneficiaries actually resides therein, is generally exempt from execution, forced sale or attachment.^[30]

The family home is a real right, which is gratuitous, inalienable and free from attachment. It cannot be seized by creditors except in certain special cases.[31] However, this right can be waived or be barred by laches by the failure to set up and prove the status of the property as a family home at the time of the levy or a reasonable time thereafter.

In this case, it is undisputed that the petitioners allowed a considerable time to lapse before claiming that the subject property is a family home and its exemption from execution and forced sale under the Family Code. The petitioners allowed the subject property to be levied upon and the public sale to proceed. One (1) year lapsed from the time the subject property was sold until a Final Deed of Sale was issued to Claudio and, later, Araceli's Torrens title was cancelled and a new one issued under Claudio's name, still, the petitioner remained silent. In fact, it was only after the respondents filed a complaint for unlawful detainer, or approximately four (4) years from the time of the auction sale, that the petitioners claimed that the subject property is a family home, thus, exempt from execution.

For all intents and purposes, the petitioners' negligence or omission to assert their right within a reasonable time gives rise to the presumption that they have abandoned, waived or declined to assert it. Since the exemption under Article 153 of the Family Code is a personal right, it is incumbent upon the petitioners to invoke and prove the same within the prescribed period and it is not the sheriff's duty to presume or raise the status of the subject property as a family home.

The petitioners' negligence or omission renders their present assertion doubtful; it appears that it is a mere afterthought and artifice that cannot be countenanced without doing the respondents injustice and depriving the fruits of the judgment award in their favor. Simple justice and fairness and equitable considerations demand that Claudio's title to the property be respected. Equity dictates that the petitioners are made to suffer the consequences of their unexplained negligence.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is DENIED. The assailed Decision dated June 6, 2008 of the Court of Appeals in CA-G.R. CV No. 79391, which affirmed the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 22, in Civil Case No. 1058-M-99 and dismissed the complaint for declaration of nullity of TCT No. 221755 (M) and other documents, and the October 23, 2008 Resolution denying reconsideration, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Bernabe, JJ.[*] concur.

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Celia C. Librea-Leagogo and Agustin S. Dizon, concurring; rollo, pp. 28-41.

[2] Id. at 42-43.

[3] Id. at 65-68.

[4] Id. at 74-75.

[5] Id. at 76.

[6] Id. at 77-80.

[7] Id. at 293-313.

[8] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon, concurring; id. at 279-287.

[9] Id. at 288.

[10] Id. at 44-55.

[11] Id. at 156-163.

[12] Id. at 170-172.

[13] Supra note 1.

[14] Supra note 2.

[15] Rollo, pp. 253-278.

[16] Making Enterprises, Inc. v. Marfori, G.R. No. 152239, August 17, 2011.

[17] Cruz v. Caraos, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 522.

[18] G.R. No. 163495, May 8, 2009, 587 SCRA 442.

[19] Id. at 446-448.

[20] G.R. No. 185920, July 20, 2010, 625 SCRA 181.

[21] Id. at 186-189.

[22] G.R. No. 172263, July 9, 2008, 557 SCRA 499.

[23] Id. at 502.

[24] Rollo, pp. 38-39.

[25] 512 Phil 657 (2005).

[26] Id. at 666-667.

[27] 529 Phil 377 (2006).

[28] Id. at 386.

[29] Cabang v. Basay, G.R. No. 180587, March 20, 2009, 582 SCRA 172, 184, citing A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 1 (1990 ed.), p. 508.

[30] Family Code, Article 153.

[31] Josef v. Santos, G.R. No. 165060, November 27, 2008, 572 SCRA 57, 63.

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