

JUANITA TRINIDAD RAMOS, ALMA RAMOS WORAK, MANUEL T. RAMOS, JOSEFINA R. ROTHMAN, SONIA R. POST, ELVIRA P. MUNAR, AND OFELIA R. LIM, PETITIONERS, VS. DANILO PANGILINAN, RODOLFO SU...

G.R. No. 185920. July 20, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Respondents filed in 2003 a complaint[1] for illegal dismissal against E.M. Ramos Electric, Inc., a company owned by Ernesto M. Ramos (Ramos), the patriarch of herein petitioners. By Decision[2] of April 15, 2005, the Labor Arbiter ruled in favor of respondents and ordered Ramos and the company to pay the aggregate amount of P1,661,490.30 representing their backwages, separation pay, 13[th] month pay & service incentive leave pay.

The Decision having become final and executory and no settlement having been forged by the parties, the Labor Arbiter issued on September 8, 2005 a writ of execution[3] which the Deputy Sheriff of the National Labor Relations Commission (NLRC) implemented by levying a property in Ramos' name covered by TCT No. 38978, situated in Pandacan, Manila (Pandacan property).

Alleging that the Pandacan property was the family home, hence, exempt from execution to satisfy the judgment award, Ramos and the company moved to quash the writ of execution.[4] Respondents, however, averred that the Pandacan property is not the Ramos family home, as it has another in Antipolo, and the Pandacan property in fact served as the company's business address as borne by the company's letterhead. Respondents added that, assuming that the Pandacan property was indeed the family home, only the value equivalent to P300,000 was exempt from execution.

By Order[5] of August 2, 2006, the Labor Arbiter denied the motion to quash, hence, Ramos and the company appealed to the NLRC which affirmed the Labor Arbiter's Order.

Ramos and the company appealed to the Court of Appeals during the pendency of which Ramos died and was substituted by herein petitioners. Petitioners also filed before the NLRC, as third-party claimants, a Manifestation questioning the Notice to Vacate issued by the Sheriff, alleging that assuming that the Pandacan property may be levied upon, the family home straddled two (2) lots, including the lot covered by TCT No. 38978, hence, they cannot be asked to vacate the house. The Labor Arbiter was later to deny, by Decision of May 7, 2009, the third-party claim, holding

that Ramos' death and petitioners' substitution as his compulsory heirs would not nullify the sale at auction of the Pandacan property. And the NLRC[6] would later affirm the Labor Arbiter's ruling, noting that petitioners failed to exercise their right to redeem the Pandacan property within the one 1 year period or until January 16, 2009. The NLRC brushed aside petitioners' contention that they should have been given a fresh period of 1 year from the time of Ramos' death on July 29, 2008 or until July 30, 2009 to redeem the property, holding that to do so would

give petitioners, as mere heirs, a better right than the Ramos'.

As to petitioners' claim that the property was covered by the regime of conjugal partnership of gains and as such only Ramos' share can be levied upon, the NLRC ruled that petitioners failed to substantiate such claim and that the phrase in the TCT indicating the registered owner as "Ernesto Ramos, married to Juanita Trinidad, Filipinos," did not mean that both owned the property, the phrase having merely described Ramos' civil status.

Before the appellate court, petitioners alleged that the NLRC erred in ruling that the market value of the property was P2,177,000 as assessed by the City Assessor of Manila and appearing in the documents submitted before the Labor Arbiter, claiming that at the time the Pandacan property was constituted as the family home in 1944, its value was way below P300,000; and that Art. 153 of the Family Code was applicable, hence, they no longer had to resort to judicial or extrajudicial constitution.

In the assailed Decision[7] of September 24, 2008, the appellate court, in denying petitioners' appeal, held that the Pandacan property was not exempted from execution, for while "Article 153[8] of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied as a family residence, [it] did not mean that the article has a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code."

The appellate court went on to hold that what was applicable law were Articles 224 to 251 of the Civil Code, hence, there was still a need to either judicially or extrajudicially constitute the Pandacan property as petitioners' family home before it can be exempted; and as petitioners failed to comply therewith, there was no error in denying the motion to quash the writ of execution.

The only question raised in the present petition for review on certiorari is the propriety of the Court of Appeals Decision holding that the levy upon the Pandacan property was valid.

The petition is devoid of merit.

Indeed, the general rule is that the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases.[9]

Kelley, Jr. v. Planters Products, Inc.[10] lays down the rules relative to the levy on execution over the family home, viz:

No doubt, a family home is generally exempt from execution provided it was duly constituted as such. There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family. The actual value of the family home shall not exceed, at the time of its constitution, the amount of P300,000 in urban areas and P200,000 in rural areas.

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.

The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein. Moreover, the debts for which the family home is made answerable

must have been incurred after August 3, 1988. Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code. (emphasis supplied)

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.[11] 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[12] 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[13] 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[14] for which the family home is made answerable must have been incurred after August 3, 1988.

And in both cases, whether under the Civil Code or the Family Code, 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.[15]

In the present case, since petitioners claim that the family home was constituted prior to August 3, 1988, or as early as 1944, they must comply with the procedure mandated by the Civil Code. There being absolutely no proof that the Pandacan property was judicially or extrajudicially constituted as the Ramos' family home, the law's protective mantle cannot be availed of by petitioners. Parenthetically, the records show that the sheriff exhausted all means to execute the judgment but failed because Ramos' bank accounts[16] were already closed while other properties in his or the company's name had already been transferred,[17] and the only property left was the Pandacan property.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

[1] NLRC records, Vol. I, p. 2.

[2] Id. at 78-86. Penned by Labor Arbiter Joel S. Lustria.

[3] Id. at 96-96-98.

[4] Id. at 99-100.

[5] Id. at 138-141.

[6] NLRC records, pp. 278-286. Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr.

[7] Rollo, pp. 7-19. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr.

[8] Art. 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually 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.

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

[10] G.R. No. 172263, July 9, 2008, 557 SCRA 499, 501-502.

[11] Art. 225. The family home may be constituted by a verified petition to the Court of First Instance by the owner of the property, and by approval thereof by the court.

Art. 229. The petition shall contain the following particulars:

- (1) Description of the property;
- (2) An estimate of its actual value;
- (3) A statement that the petitioner is actually residing in the premises;
- (4) The encumbrances thereon;
- (5) The names and addresses of all the creditors of the petitioner and of all mortgagees and other persons who have an interest in the property;
- (6) The names of the other beneficiaries specified in Article 226.

Art. 230. Creditors, mortgagees and all other persons who have an interest in the estate shall be notified of the petition, and given an opportunity to present their objections thereto. The petition shall, moreover, be published once a week for three consecutive weeks in a newspaper of general circulation.

Art. 231. If the court finds that the actual value of the proposed family home does not exceed twenty thousand pesos, or thirty thousand pesos in chartered cities, and that no third person is prejudiced, the petition shall be approved. Should any creditor whose claim is unsecured, oppose the establishment of the family home, the court shall grant the petition if the debtor gives sufficient security for the debt.

Art. 233. The order of the court approving the establishment of the family home shall be recorded in the Registry of Property.

[12] Art. 240. The family home may be extrajudicially constituted by recording in the Registry of Property a public instrument wherein a person declares that he thereby establishes a family home out of a dwelling place with the land on which it is situated.

Art. 241. The declaration setting up the family home shall be under oath and shall contain:

- (1) A statement that the claimant is the owner of, and is actually residing in the premises;
- (2) A description of the property;
- (3) An estimate of its actual value; and

(4) The names of the claimant's spouse and the other beneficiaries mentioned in Article 226.

Art. 242. The recording in the Registry of Property of the declaration referred to in the two preceding articles is the operative act which creates the family home.

[13] Art. 154. The beneficiaries of a family home are:

- (1) The husband and wife, or an unmarried person who is the head of a family; and
- (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

[14] Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For nonpayment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

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

[16] See certification from Prudential Bank Assistant Manager Victorino B. Lazaro, Jr., dated October 3, 2005, NLRC records, Vol. I, p. 105.

[17] See Deed of Donation of Antipolo lot executed by Ernesto Ramos in favor of Philippine Rehabilitation Foundation, *id.* at 196-198.

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