

EVANGELINE D. IMANI, PETITIONER, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.

G.R. No. 187023. November 17, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal is the July 3, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93061, setting aside the November 22, 2005 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 64, as well as its subsequent Resolution dated March 3, 2009,[3] denying petitioner's motion for reconsideration.

On August 28, 1981, Evangeline D. Imani (petitioner) signed a Continuing Suretyship Agreement in favor of respondent Metropolitan Bank & Trust Company (Metrobank), with Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Cynthia C. Dazo, Doroteo Fundales, Jr., and Nicolas Ponce as her co-sureties. As sureties, they bound themselves to pay Metrobank whatever indebtedness C.P. Dazo Tannery, Inc. (CPDTI) incurs, but not exceeding Six Million Pesos (P6,000,000.00).

Later, CPDTI obtained loans of P100,000.00 and P63,825.45, respectively. The loans were evidenced by promissory notes signed by Cesar and Nieves Dazo. CPDTI defaulted in the payment of its loans. Metrobank made several demands for payment upon CPDTI, but to no avail. This prompted Metrobank to file a collection suit against CPDTI and its sureties, including herein petitioner. The case was docketed as Civil Case No. 15717.

After due proceedings, the RTC rendered a decision[4] in favor of Metrobank. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Court renders a judgment in favor of [Metrobank] ordering defendants, C.P. Dazo Tannery, Inc., Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Evangelina D. Imani, Cynthia C. Dazo, Doroteo Fundales, Jr., and Nicolas Ponce to pay [respondent] Metropolitan Bank and Trust Company:

- Under the First Cause of Action, the sum of P175,451.48 plus the stipulated interest, penalty charges and bank charges from March 1, 1984 and until the whole amount is fully paid;
- Under the Second Cause of Action, the sum of P92,158.85 plus the stipulated interest, penalty charges and bank charges from February 24, 1985, and until the whole amount is fully paid;
- The sum equivalent to ten percent (10%) of the total amount due under the First and Second Cause of Action; and
- Ordering the defendants to pay the costs of suit and expenses of litigation.

SO ORDERED.[5]

Therein defendants appealed to the CA. On September 29, 1997, the CA issued a Resolution dismissing the appeal.[6] Consequently, on October 22, 1997, the CA issued an Entry of Judgment.[7]

Metrobank then filed with the RTC a motion for execution,[8] which was granted on December 7, 1999.[9] A writ of execution[10] was issued against CPDTI and its co-defendants. The sheriff levied on a property covered by Transfer Certificate of Title (TCT) No. T-27957 P(M) and registered in the name of petitioner. A public auction was conducted and the property was awarded to Metrobank, as the highest bidder.

Metrobank undertook to consolidate the title covering the subject property in its name, and filed a Manifestation and Motion,[11] praying that spouses Sina and Evangeline Imani be directed to surrender the owner's copy of TCT No. T-27957 P(M) for cancellation. Petitioner opposed the motion and filed her Comment with Urgent Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale Over TCT No. T-27957 P(M).[12] She argued that the subject property belongs to the conjugal partnership; as such, it cannot be held answerable for the liabilities incurred by CPDTI to Metrobank. Neither can it be subject of levy on execution or public auction. Hence, petitioner prayed for the nullification of the levy on execution and the auction sale, as well as the certificate of sale in favor of Metrobank.

On June 20, 2005, the RTC issued an Order[13] denying Metrobank's motion, explaining that:

[Petitioner] Evangelina D. Imani incurred the obligation to [Metrobank] by the mere fact that she executed the Continuing Suretyship Agreement in favor of [Metrobank]. The loan proceeds were not intended for [petitioner] Evangelina D. Imani. It cannot therefore be presumed that the loan proceeds had redounded to the benefit of her family. It is also worth stressing that the records of this case is bereft of any showing that at the time of the signing of the Suretyship Agreement and even at the time of execution and sale at public auction of the subject property, [petitioner] Evangelina D. Imani has the authority to dispose of or encumber their conjugal partnership properties. Neither was she conferred the power of administration over the said properties. Hence, when she executed the Suretyship Agreement, she had placed the Conjugal Partnership in danger of being dissipated. The law could have not allowed this in keeping with the mandate of protecting and safeguarding the conjugal partnership. This is also the reason why the husband or the wife cannot dispose of the conjugal partnership properties even onerously, if without the consent of the other, or gratuitously, as by way of donation.[14]

The RTC decreed that:

WHEREFORE, in view of the foregoing, [Metrobank's] motion for issuance of an Order directing Spouses Sina Imani and Evangeline Dazo-Imani to surrender the owner's copy of TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation, is DENIED.

On the other hand, [petitioner's] Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is GRANTED.

The Levy on Execution and the Sale by Public Auction of the property covered by TCT No. T-27957 P(M) are nullified and the Certificate of Sale over the same property is hereby Cancelled.

SO ORDERED.[15]

Metrobank filed a motion for reconsideration. Petitioner opposed the motion, asserting that the property belongs to the conjugal partnership.[16] Attached to her opposition were an Affidavit[17] executed by Crisanto Origen, the former owner of the property, attesting that spouses Sina and Evangeline Imani were the vendees of the subject property; and the photocopies of the checks[18] allegedly issued by Sina Imani as payment for the subject property.

However, despite petitioner's opposition, the RTC issued an Order dated August 15, 2005, setting aside its June 20, 2005 Order. Thus:

WHEREFORE, premises considered, the Motion for Reconsideration is GRANTED. The Order dated June 20,

2005 is set aside. Evangelina Dazo-Imani is hereby ordered to surrender TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation.

The effectivity of the Levy on Execution, the Auction Sale and the Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is reinstated.

SO ORDERED.[19]

But on petitioner's motion for reconsideration, the RTC issued an Order dated November 22, 2005,[20] reinstating its June 20, 2005 Order. In so ruling, the RTC relied on the affidavit of Crisanto Origen, and declared the property levied upon as conjugal, which cannot be held answerable for petitioner's personal liability.

Metrobank assailed the November 22, 2005 Order via a petition for certiorari in the CA, ascribing grave abuse of discretion on the part of the RTC for annulling the levy on execution and the auction sale, and for canceling the certificate of sale.

On July 3, 2008, the CA rendered the now challenged Decision reversing the RTC, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby GRANTED. ACCORDINGLY, the Order dated November 22, 2005 of the Regional Trial Court of Makati City, Branch 64, is hereby REVERSED and new one is entered declaring the Levy on Execution, Sale by Public Auction of the property covered by Transfer Certificate of Title T-27957 [P](M) and the Certificate of Sale over said property as valid and legal.

SO ORDERED.[21]

Petitioner filed a motion for reconsideration, but the CA denied it on March 3, 2009.[22]

Hence, this recourse by petitioner, arguing that:

I

THE HONORABLE COURT OF APPEALS ERRS (sic) IN REVERSING THE FINDING OF FACT OF THE TRIAL COURT THAT THE PROPERTY IS CONJUGAL IN NATURE BASED ON MERE SPECULATIONS AND CONJECTURES.[23]

II

THE UNSUPPORTED TEMPORARY RULING THAT THE PROPERTY IS NOT CONJUGAL AND THE SUGGESTION TO VINDICATE THE RIGHTS OF SINA IMANI AND THE CONJUGAL PARTNERSHIP IN A SEPARATE ACTION UNDER SEC. 16, RULE 39 ENCOURAGE MULTIPLICITY OF SUITS AND VIOLATE THE POLICY OF THE RULES FOR EXPEDIENT AND INEXPENSIVE DISPOSITION OF ACTIONS.

III

THE PROPERTY IN QUESTION, BEING A ROAD RIGHT OF WAY, IS NOT SUBJECT TO EXECUTION UNDER SEC. 50, 2[ND] PARAGRAPH, OF PD [NO.] 1529.[24]

First, the procedural issue on the propriety of the course of action taken by petitioner in the RTC in vindication of her claim over the subject property.

Petitioner takes exception to the CA ruling that she committed a procedural gaffe in seeking the annulment of the writ of execution, the auction sale, and the certificate of sale. The issue on the conjugal nature of the property, she insists, can be adjudicated by the executing court; thus, the RTC correctly gave due course to her motion. She

asserts that it was error for the CA to propose the filing of a separate case to vindicate her claim.

We agree with petitioner.

The CA explained the faux pas committed by petitioner in this wise:

Under [Section 16, Rule 39], a third-party claimant or a stranger to the foreclosure suit, can opt to file a remedy known as *terceria* against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor. By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent "separate action," the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other. Availment of the *terceria* is not a condition *sine qua non* to the institution of a "separate action."

It is worthy of note that Sina Imani should have availed of the remedy of "*terceria*" authorized under Section 16 of Rule 39 which is the proper remedy considering that he is not a party to the case against [petitioner]. Instead, the trial court allowed [petitioner] to file an urgent motion to cancel and nullify the levy of execution the auction sale and certificate of sale over TCT No. T27957 [P](M). [Petitioner] then argue[s] that it is the ministerial duty of the levying officer to release the property the moment a third-party claim is filed.

It is true that once a third-party files an affidavit of his title or right to the possession of the property levied upon, the sheriff is bound to release the property of the third-party claimant unless the judgment creditor files a bond approved by the court. Admittedly, [petitioner's] motion was already pending in court at the time that they filed the Affidavit of Crisanto Origen, the former owner, dated July 27, 2005.

In the instant case, the one who availed of the remedy of *terceria* is the [petitioner], the party to the main case and not the third party contemplated by Section 16, Rule 39 of the Rules of Court.

Moreover, the one who made the affidavit is not the third-party referred to in said Rule but Crisanto Origen who was the former owner of the land in question.[25]

Apparently, the CA lost sight of our ruling in *Ong v. Tating*,[26] elucidating on the applicability of Section 16 of Rule 39 of the Rules of Court, thus:

When the sheriff thus seizes property of a third person in which the judgment debtor holds no right or interest, and so incurs in error, the supervisory power of the Court which has authorized execution may be invoked by the third person. Upon due application by the third person, and after summary hearing, the Court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What the Court can do in these instances however is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The Court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat the matter only in so far as may be necessary to decide if the Sheriff has acted correctly or not. x x x.

x x x x

Upon the other hand, if the claim of impropriety on the part of the sheriff in the execution proceedings is made by a party to the action, not a stranger thereto, any relief therefrom may only be applied with, and obtained from, only the executing court; and this is true even if a new party has been impleaded in the suit.[27]

The filing of the motion by petitioner to annul the execution, the auction sale, and the certificate of sale was, therefore, a proper remedy. As further held by this Court:

Certain it is that the Trial Court has plenary jurisdiction over the proceedings for the enforcement of its judgments. It has undeniable competence to act on motions for execution (whether execution be a matter of right or discretionary upon the Court), issue and quash writs, determine if property is exempt from execution, or fix the value of property claimed by third persons so that a bond equal to such value may be posted by a judgment creditor to indemnify the sheriff against liability for damages, resolve questions involving redemption, examine the judgment debtor and his debtors, and otherwise perform such other acts as may be necessary or incidental to the carrying out of its decisions. It may and should exercise control and supervision over the sheriff and other court officers and employees taking part in the execution proceedings, and correct them in the event that they should err in the discharge of their functions.[28]

Contrary to the CA's advice, the remedy of *terceria* or a separate action under Section 16, Rule 39 is no longer available to Sina Imani because he is not deemed a stranger to the case filed against petitioner:

[T]he husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife.[29]

Thus, it would have been inappropriate for him to institute a separate case for annulment of writ of execution.

In *Spouses Ching v. Court of Appeals*,[30] we explained:

Is a spouse, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?" In *Mariano v. Court of Appeals*, we answered this question in the negative. In that case, the CFI of Caloocan City declared the wife to be the judgment obligor and, consequently, a writ of execution was issued against her. Thereupon, the sheriff proceeded to levy upon the conjugal properties of the wife and her husband. The wife initially filed a petition for certiorari with the Court of Appeals praying for the annulment of the writ of execution. However, the petition was adjudged to be without merit and was accordingly dismissed. The husband then filed a complaint with the CFI of Quezon City for the annulment of the writ of execution, alleging therein that the conjugal properties cannot be made to answer for obligations exclusively contracted by the wife. The executing party moved to dismiss the annulment case, but the motion was denied. On appeal, the Court of Appeals, in *Mariano*, ruled that the CFI of Quezon City, in continuing to hear the annulment case, had not interfered with the executing court. We reversed the Court of Appeals' ruling and held that there was interference by the CFI of Quezon City with the execution of the CFI of Caloocan City. We ruled that the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife, which would allow the filing of a separate and independent action.

The facts of the *Mariano* case are similar to this case. Clearly, it was inappropriate for petitioners to institute a separate case for annulment when they could have easily questioned the execution of their conjugal property in the collection case. We note in fact that the trial court in the *Rizal* annulment case specifically informed petitioners that Encarnacion Ching's rights could be ventilated in the *Manila* collection case by the mere expedient of intervening therein. Apparently, petitioners ignored the trial court's advice, as Encarnacion Ching did not intervene therein and petitioners instituted another annulment case after their conjugal property was levied upon and sold on execution.

There have been instances where we ruled that a spouse may file a separate case against a wrongful execution. However, in those cases, we allowed the institution of a separate and independent action because what were executed upon were the paraphernal or exclusive property of a spouse who was not a party to the case. In those instances, said spouse can truly be deemed a "stranger." In the present case, the levy and sale on execution was made upon the conjugal property.

Ineluctably, the RTC cannot be considered whimsical for ruling on petitioner's motion. The CA, therefore, erred for declaring otherwise.

Now, on the merits of the case.

Petitioner asserts that the subject property belongs to the conjugal partnership. As such, it cannot be made to answer for her obligation with Metrobank. She faults the CA for sustaining the writ of execution, the public auction, and the certificate of sale.

We sustain the CA ruling on this point.

Indeed, all property of the marriage is presumed to be conjugal. However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition sine qua non to the operation of the presumption in favor of the conjugal partnership.[31] Thus, the time when the property was acquired is material.[32]

Francisco v. CA[33] is instructive, viz.:

Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, the party who invokes this presumption must first prove that the property in controversy was acquired during the marriage. Proof of acquisition during the coverture is a condition sine qua non for the operation of the presumption in favor of the conjugal partnership. The party who asserts this presumption must first prove said time element. Needless to say, the presumption refers only to the property acquired during the marriage and does not operate when there is no showing as to when property alleged to be conjugal was acquired.[34]

To support her assertion that the property belongs to the conjugal partnership, petitioner submitted the Affidavit[35] of Crisanto Origen, attesting that petitioner and her husband were the vendees of the subject property, and the photocopies of the checks[36] allegedly issued by Sina Imani as payment for the subject property.

Unfortunately for petitioner, the said Affidavit can hardly be considered sufficient evidence to prove her claim that the property is conjugal. As correctly pointed out by Metrobank, the said Affidavit has no evidentiary weight because Crisanto Origen was not presented in the RTC to affirm the veracity of his Affidavit:

The basic rule of evidence is that unless the affiants themselves are placed on the witness stand to testify on their affidavits, such affidavits must be rejected for being hearsay. Stated differently, the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination. [37]

In the same vein, the photocopies of the checks cannot be given any probative value. In *Concepcion v. Atty. Fandiño, Jr.*[38] and *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals*,[39] we held that a photocopy of a document has no probative value and is inadmissible in evidence. Thus, the CA was correct in disregarding the said pieces of evidence.

Similarly, the certificate of title could not support petitioner's assertion. As aptly ruled by the CA, the fact that the land was registered in the name of Evangelina Dazo-Imani married to Sina Imani is no proof that the property was acquired during the spouses' coverture. Acquisition of title and registration thereof are two different acts. It is well settled that registration does not confer title but merely confirms one already existing.[40]

Indubitably, petitioner utterly failed to substantiate her claim that the property belongs to the conjugal partnership. Thus, it cannot be rightfully said that the CA reversed the RTC ruling without valid basis.

As a last ditch effort, petitioner asserts that the property is a road right of way; thus, it cannot be subject of a writ

of execution.

The argument must be rejected because it was raised for the first time in this petition. In the trial court and the CA, petitioner's arguments zeroed in on the alleged conjugal nature of the property. It is well settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice, and due process.[41]

WHEREFORE, the petition is DENIED. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 93061 sustaining the validity of the writ of execution, the auction sale, and the certificate of sale are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[*] Also referred to as Evangelina D. Imani in the records.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Edgardo F. Sundiam and Sixto C. Marella, Jr., concurring; rollo, pp. 37-53.

[2] CA rollo, pp. 45-47.

[3] Rollo, pp. 73-74.

[4] CA rollo, pp. 48-51.

[5] Id. at 51.

[6] Id. at 54.

[7] Id. at 55.

[8] Id. at 56-58.

[9] Id. at 59.

[10] Id. at 60-61.

[11] Id. at 64-67.

[12] Id. at 68-70.

[13] Id. at 80-85.

[14] Id. at 84.

[15] Id. at 84-85.

[16] Id. at 104-105.

[17] Id. at 106.

[18] Id. at 107.

- [19] Id. at 117.
- [20] Id. at 45-47.
- [21] Supra note 1, at 53.
- [22] Supra note 3.
- [23] Rollo, p. 30.
- [24] Id. at 32.
- [25] Id. at 50-51.
- [26] 233 Phil. 261 (1987).
- [27] Id. at 274-277. (Emphasis supplied.)
- [28] Id. at 273. (Emphasis supplied.)
- [29] Mariano v. Court of Appeals, 255 Phil. 766, 773 (1989).
- [30] 446 Phil. 121, 131-132 (2003). (Citations omitted.)
- [31] Pintiano-Anno v. Anno, G.R. No. 163743, January 27, 2006, 480 SCRA 419, 423-424.
- [32] See De Leon v. De Leon, G.R. No. 185063, July 23, 2009, 593 SCRA 768, 779.
- [33] 359 Phil. 519 (1998).
- [34] Id. at 526. (Citations omitted.)
- [35] Supra note 17.
- [36] Supra note 18.
- [37] Alba v. Court of Appeals, 503 Phil. 451, 463 (2005).
- [38] 389 Phil. 474 (2000).
- [39] 265 SCRA 733, 757 (1996).**
- [40] Francisco v. CA, supra note 35, at 529.
- [41] Madrid v. Mapoy, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

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