

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ESTEBAN R. CHAVES, DEFENDANT AND APPELLANT.

G.R. No. 19521. October 30, 1964

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Appeal from an order of the Court of First Instance of Oriental Misamis, dated December 1, 1961, issued in its Criminal Case No. 1601, declaring a family home extra judicially constituted not exempt from the execution levy issued at the instance of the offended party.

The accused, Esteban Chaves, had been found by the Court of First Instance (Crim. Case No. 1601) and by the Court of Appeals (CA-G.R. No. 00053-R) guilty of a violation of Republic Act No. 145, in that he had collected in January, 1948, a claim of Marcela Rambuyon for death benefits in the sum of P4,252.20 due her for the demise of her son, USAFFE veteran Santos Echaure; the corresponding check was cashed by Chaves, who later delivered only P3,202.20 to the claimant, and retained P5,362.20 for himself. Chaves was sentenced to undergo one year's imprisonment, indemnify the offended party in the sum of P5,362.20, and to pay the costs. The conviction and sentence became final on April 16, 1961.

The indemnity not having been paid, the offended party obtained a writ of execution in May, 1961, and the Sheriff accordingly levied on a residential lot and building of the accused, but desisted from proceeding further when the accused exhibited proof that the property had been extra judicially constituted and recorded as a family home, in accordance with the provisions of the Civil Code, on December 5, 1953, after the filing of the information but before conviction. Upon petition by the complainant, the Court issued the contested order declaring that the family home was not exempt from the levy made by the Sheriff because the accused's obligation to pay the amount wrongfully retained by him was anterior to the constitution of the family home. The motion of accused Chaves for reconsideration of the order having been denied, he resorted to this Court on Appeal.

The issue is whether the family home extrajudicially constituted is entitled to exemption, considering that Article 243 of the Civil Code of the Philippines is to the following effect:

"Art. 243. The Family Home Extrajudicially Formed Shall Be Exempt From Execution, Forced Sale or Attachment, Except:

- (1) For non-payment of debts;
- (2), For debts incurred before the declaration was recorded in the Registry of Property;
- (3) For debts secured by mortgages on the premises before or after such record of the declaration;
- (4) For debts due to laborers, mechanics, architects, builders, material-men and others who have rendered service or furnished material for the construction of the building."

Appellant takes the position that the indemnity due to the complainant became a "debt" within the purview of this

Article only from the date of the judgment ordering indemnification, years after the family home in question was established.

We see no merit in the appeal. The word "debt", as used in subdivision (2) of Article 243, "is not qualified, and must, therefore, be taken in its generic sense" (*Montoya vs. Ignacio*, 94 Phil., 182; 54 Off. Gaz., 978-979) i.e., of "obligations" in general. The duty of Chaves to reimburse the amount of the veteran's benefits improperly retained by him certainly arose and came into existence from date of his misappropriation (January, 1948), and the judgment of 1961 merely established the fact of the misappropriation beyond controversy and reasonable doubt. The judgment sentencing Chaves to indemnify was not the source of his duty to return, any more than a judgment on a promissory note would be the origin of the promissor's duty to pay.

That a judgment is not necessary to clothe a preexisting debt with the privileged character of being enforceable against the family home extrajudicially established at a later date is apparent by comparison with Article 247 of the Civil Code.

"Art. 247. When a creditor whose claim is not mentioned in Article 243 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home of the judgment debtor is worth more than the amount mentioned in Article 231, he may apply to the Court of First Instance for an order directing the sale of the property under execution."

Note that under this article it is only claims not mentioned in Article 243 that must be reduced to judgment before being enforced against a family home. Certainly, the "humane consideration", for which the law surrounded the family home with immunities from levy, did not include the intent to enable a debtor to thwart the just claims of his creditors. If in the case of a judicially established family home the law requires that the petitioning debtor should first give sufficient security for his unsecured debts before the family home is authorized (Art. 231), there is no reason why in the case of the extra judicial constitution, that creditors have no opportunity to oppose or protest, the constituting debtor should be enabled to escape payment of his just debts, and leave the creditors holding an empty bag.

The order appealed from is affirmed. Costs against appellant. .

Bengzon, C. J., Bantista Angelo, Concepcion, Barrera, Paredes, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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