

**M. SINGH, PLAINTIFF AND APPELLEE, VS. JUAN SULSE ET AL.,
DEFENDANTS. BERNARDO ARTECHE, APPELLANT.**

G. R. No. 25445. November 12, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The plaintiff seeks to recover from the defendants the payment of P2,113.17, the amount of the writ of execution issued in his favor, which he could not enforce because the defendants unjustifiedly released the attached property of the judgment debtor Santa Singh, plus the amount of P1,000 for expenses incurred by the plaintiff by reason of his stay in Samar on the occasion of the enforcement of the execution which was not carried out.

The defendants—Provincial Sheriff Juan Sulse and Deputy Sheriff Bernardo Arteche—filed their answers praying, for the reasons stated, first, that the case be dismissed with costs against the plaintiff, and, second, that they be absolved from the complaint with the costs against the plaintiff.

The other defendant Francisco D. Colinares was declared in default for not having appeared, notwithstanding the fact that he was duly summoned.

The lower court rendered judgment ordering the defendant to pay the plaintiff M. Singh, jointly and severally, the sum of P4,467.24 by way of damages, with legal interest from the date of the judgment, October 31, 1925, and the costs.

Of the two defendants Juan Sulse and Bernardo Arteche, only the latter appealed, and his counsel now alleges that the lower court erred: (a) In not absolving the defendant Arteche from the complaint, he being not legally responsible for the due compliance with a writ of execution inasmuch as he is a mere deputy sheriff, but the provincial sheriff to whom the said orders were directed; (b) in not absolving the defendant Arteche inasmuch as: (1) His intervention in the proceeding in regard to the two executions was fully in accordance with the law and his sound discretion; (2) of the plaintiff's sureties named to indemnify the intervenors, some withdrew their bonds while others were delinquent and insolvent, and (c) in sentencing the defendant Arteche to pay, jointly and severally, the amount of P4,467.24 as damages.

The facts established by the evidence are stated by the Honorable Vicente Nepomuceno, who tried the case, in the following manner:

"On June 20, 1924, the Court of First Instance of Manila issued a writ of execution (Exhibit A) upon the judgment rendered in civil case No. 20222, entitled M. Singh vs. J. R. Sarda and Santa Singh, for the amount of P2,171.62 which writ of execution was delivered by M. Singh to D. Juan Sulse, provincial sheriff of Samar, to whom it was directed and which was later transmitted to his deputy in Bases, Mr. Francisco D. Colinares who, on July 9, 1924 complying with said writ, attached the property set forth in Exhibit B, which is the list of Santa Singh's property attached, issued, certified and signed by said Francisco Colinares. According to this list, some lumber and 25 carabaos were attached.

" "On July 12, 1924, it was announced (Exhibit C) that on the 17th of that month the property seized from Santa Singh, which is set forth in the list Exhibit B, would be sold at public auction.

"On July 12 and 16, 1924, Marcelo Abesamis, Luis Chapman, Buta Singh, Roman Echegurin, Bruno Echegurin and Miguel Salangue filed third party claims, asserting title to the lumber and carabaos attached by Colinares and set forth in Exhibit B. (See Exhibits F, G, H, I, J, K, L, and LL.) Marcelo Abesamis was the one who claimed the carabaos, alleging in his claim Exhibit H that the same had been transferred to him on January 29, 1924.

"Mr. Francisco Colinares, in his letters (Exhibits D and E) addressed to Mr. M. Singh on July 15 and 16, 1924, informed the latter of the third party claims of Abesamis and Chapman, advising him to file an indemnity bond in his favor, otherwise the property levied upon would be released and returned to the claimants. Due to these claims the sale at public auction announced in Exhibit C was postponed.

"As a result of Mr. Colinares' warning, Mr. M. Singh complied with the conditions required of him by having Mariano Cordero and, Antonio Abad execute a bond (Exhibit 10) in favor of deputy sheriff Francisco Colinares who, on July 17, 1924, in a letter (Exhibit M) addressed to Mr. M. Singh, stated that he had received and approved the bond which was sent to him.

"Notwithstanding the approval of the bond (Exhibit 10) by deputy sheriff Colinares, on July 18, 1924 he addressed a letter (Exhibit O) to M. Singh informing him that the sureties Mariano Cordero and Antonio Abad had withdrawn the bond executed by them the day before and warning him that if he did not file a new indemnity bond by the 21st of said month, the property would be released from attachment. The letter of the sureties Cordero and Abad withdrawing their bond is dated July 18, 1924 and is marked Exhibits N and 11,

"Mr. M. Singh complied with the conditions required of him and on July 18, 1924, the sureties Lucio Go-Juaco and Ruperto Abelino executed a new bond (Exhibit 12) in favor of Mr. Colinares, as deputy isheriff, which bond was received, accepted and approved by him, according to his certificate Exhibit P issued on July 19, 1924.

"On July 28, 1924, however, deputy sheriff Colinares wrote a letter (Exhibit 15) to Mr. M. Singh to the effect that Lucio Fernando Go-Juaco being delinquent, the bond was disapproved. (See Exhibits 13 and 14.) In view of this, new bonds in the amount of ₱7,500 were executed on August 6, 1924 by Elias Andrade and Isaac Aquino, and Ruperto Avelino and Placido Enerlan in favor of the said deputy sheriff, marked Exhibits S and T and accompanied by certificates, Exhibits W, X and Z, which show that the sureties Placido Enerlan, Elias Andrade and Isaac Aquino were not delinquent in the payment of taxes on the property on that date.

"According to the announcements, Exhibits 3 and 4, the public auction sale of the attached property was postponed to August 14th and was again postponed to August 16, 1924.

"The bonds (Exhibits S and T, marked also 18 and 20) were delivered by Mr. M. Singh to deputy sheriff Bernardo Arteché at Tacloban on August 14, 1924 and transmitted by him to the deputy sheriff Colinares at Basey, according to the letter (Exhibit A A) addressed by Arteché to Mr. Singh on the 15th of the same month. At the foot of said letter there appears a note by said deputy sheriff Arteché which reads: 'You may leave this case and take care of your family in Manila who, according to a telegram, are sick'

This was on August 15th, just prior to the date fixed in the announcement of the sale (Exhibit 3).

"Mr. M. Singh relying upon the statement of deputy- sheriff Arteché and the certificates (Exhibits U, X and Z), left Tacloban for Manila; but while in this city he received a telegram (Exhibit BB) from the provincial sheriff of Samar at Catbalogan, dated August 21, 1924, which read: 'Execution against Santa Singh not levied. Two of your sureties withdrew and the other two are insolvent.' Two facts may be noted in this telegram, to wit: (a) That it was sent on August 21st, or five days after the date fixed for the sale at public auction (Exhibit 3), and (b) that no time was fixed within which the plaintiff might file another indemnity bond. The defendants

presented Exhibits 16, 17 and 19, which bear the dates of August 15 and 16, 1924, but it appears that although Exhibit 19 is dated August 16th, it was ratified by Andrade and Aquino on September 10, 1925.

"On August 22, 1924, that is, immediately after Mr. M. Singh received the telegram (Exhibit BB), his attorney sent a telegram (Exhibit GG) to the provincial sheriff of Samar at Catbalogan, reading as follows:

" 'Wish to inform you of following irregularities deputy sheriff Basey. After requiring my client Singh to file indemnity bonds four times and approving same he suspended execution alleging withdrawal of sureties. Call your attention once obligation ratified sureties cannot withdraw it civil cases. I accuse deputy sheriff having understanding with judgment debtors. Request immediate action ordering sale public auction. Request answer.'

"Not having received an answer to the telegram Exhibit GG, Attorney Sotto, who represented Mr. M. Singh, on August 26, 1924 sent another telegram, (Exhibit GG-1) to the Governor and Sheriff ex-officio at Catbalogan, Samar reading as follows:

""Request definite action prevent deputy sheriff Basey releasing property attached Singh case" ;.

"On August 27, 1924, the provincial sheriff of Samar answered Attorney Sotto by telegram (Exhibit GG-2), as follows:

" 'Indemnity bond filed judgment creditor not yet approved sheriff because sureties not solvent whose property have encumbrances. New bond necessary to my satisfaction' .

"On the same day, that is on August 27, 1924, Attorney Sotto sent another telegram (Exhibit GG-3), which read:

""Request you reduce four thousand bond. Will send affidavit of solvency together with assessment by mail. If you desire other requirements advise us. We await answer"

"As day after day passed without having received a reply Attorney Sotto, on September 2, 1924, sent another telegram (Exhibit GG-4), to the provincial sheriff of Samar which read: . " 'Request answer last telegram asking reduction of bond and other information. Request prevent release of property attached"

"On-September 3, 1924, the provincial sheriff of Samar wired Attorney Sotto (Exhibit GG-5) as follows:

" 'Am awaiting information Basey as to amount of property attached to decide your petition"

"On September 18, 1924, Attorney Sotto sent another telegram (Exhibit GG-6) to the governor and provincial sheriff of Samar which literally read:

" 'Please fix amount and other conditions of bond to definitely levy execution Singh. We request your intervention to prevent release of property attached by sheriff Basey"

"The following day, that is on September 19, 1924, the said provincial sheriff wired (Exhibit GG-7 and Exhibit HH) Attorney Sotto as follows:

" 'Special deputy left for Basey to prevent release of property attached and when he returns I will send amount and other conditions of bond' by mail/

"On October 9, 1924, Attorney Vicente Sotto sent a telegram to the provincial sheriff of Samar (Exhibit GG-8) reading:

""We have not received as yet letter promised as to amount and other conditions of indemnity bond Singh case notwithstanding a month has elapsed. Request immediate definite action."

"Later, the attorney for Mr. Singh received a letter, (Exhibit CC) from governor and provincial sheriff Juan Sulse, ;dated Catbalogan, Samar, October 14th, which read as follows:

"Third party claims were duly presented to the provincial sheriff on the pieces of lumber upon which execution was levied by the special deputy sheriff of Basey, Samar, by virtue of the writ of execution issued by the Court of First Instance of Manila in civil case No. 20222, M. Singh, plaintiff, m J. R. Sarda and Santa Singh, defendants, and for the protection of the sheriff and in order to sell them at public auction, the amount of the bond, as security, is hereby fixed at six thousand pesos (P6,000) in cash or its equivalent in a collectable check to be deposited in a duly accredited bank to avoid delay in case of indemnity"

"In view of this requirement of provincial sheriff Juan Sulse, on.. October 25, 1924, Attorney Sotto sent him a telegram (Exhibit GG-9) requesting reconsideration of the letter (Exhibit CC) in the sense that, instead of a cash bond or a check that might be easily: collected, a personal bond for the amount of P6,000 be accepted.

"No answer having been received, on November 4, 1924, Attorney Sotto sent another telegram (Exhibit GG-10) to the. governor and provincial sheriff of Samar making the following request:

"Request you take action immediately on petition set forth in previous telegram offering personal bond in Singh case."

"On November 5, 1924, the provincial sheriff of Sanitar sent Attorney Vicente Sotto the following telegram (Exhibit GG-11) :

"Accept personal bond for six thousand pesos with solvent sureties whose property must be free from all liens and encumbrances"

"As required by this telegram, the herein plaintiff M. Singh on November 13, 1924, gave an indemnity bond (Exhibit DD) in the City of Manila for the amount of P6,000 in favor of the provincial sheriff of Samar. The bond referred to (Exhibit DD) was received and approved by the sheriff of Samar, Mr. Juan Sulse."

Commenting on the above statement of facts, the judge of the lower court says:

"As will be seen, Mr. M. Singh and his attorney, Mr. Sotto, did everything that was necessary to carry out the writ of execution, but all their efforts were in vain, because the herein defendants did nothing from that time until this date towards carrying out and duly enforcing said writ of execution, it positively appearing that all of the property levied upon by virtue of the writ of execution issued on June 20, 1924 had disappeared. (Exhibits A and B.)

"The judgment creditor M. Singh not desiring that there should be any pretext and to. avoid delay in carrying out the execution, on August 18, 1924, that is, before the expiration of sixty days provided by law, secured another writ of attachment (Exhibit JJ), which was received in due time. This second writ was unnecessary for the reason that the first writ had already been complied with and his act in securing it is the best proof that Mr. M. Singh had not been negligent and that he devoted all of his attention and exerted all his efforts towards carrying out the writ of execution.

"Deputy sheriff Bernardo Arteche admits having attached the property found in the forest belonging to Santa Singh consisting of lumber of the approximate value of P4,000, but said lumber has not been sold, neither has its sale been announced nor does he knew where it can be found. The excuse given by deputy sheriff Arteche for this irregularity is that, according to him, Mr. Singh has neither paid the sheriff's fees nor has he appeared in that place to attend the public auction sale. Mr. Arteche says that Mr. Juan Sulse wrote a letter (Exhibit 24) to Mr. Singh regarding this matter. Mr. Singh denies having received the original of Exhibit 24 and the court believes that it really was never sent to Mr. Singh, and the auction sale could not be held for the simple reason that no date was fixed for the sale, nor was the announcement of the sale at public auction advertised. And as to the sheriff's fees for that execution, Exhibit N contradicts Arteche and his codefendants.

"The excuse now given by the defendants m regard to the disappearance of the lumber first attached (Exhibit B) is that, because of the third party claims and the failure to file a bond with solvent sureties, said lumber was

released from attachment. But, in the opinion of the court, this is a mere pretext without any foundation, because,; if it were true that the said lumber in Exhibit B had been released from attachment the provincial sheriff would not have required the filing of a bond for P6,000 as per his telegram (Exhibit GP-11), nor would he have accepted and approved the bond Exhibit DD. These telegrams and bond are dated November 5 and 13, 1924, respectively, and it is to be presumed that on said dates the property set forth in Exhibit B had not yet been released from the attachment.

"The plaintiff Mr. M. Singh says that the public auction sale of the attached property belonging to Santa Singh was carried out because the herein defendant conspired with the sureties. The plaintiff, Mr. M. Singh, could not; as is natural, present direct evidence of the alleged conspiracy of the defendants with the judgment debtors and the sureties, but there is sufficient circumstantial evidence to establish the existence of a conspiracy or, at least, bad faith on the part of the defendant-sheriffs, for the following reasons:

"Juan Sulse and his deputies Bernardo Arteché and Francisco Colinares now pretend and state in Exhibits 22 and 24 that the 25 carabaos were not attached by virtue of the first writ of execution; but this is untrue as these carabaos appear among the attached property in Exhibit B, the words "25 carabaos" in said document having been written and initialed by Francisco Colinares; and it furthermore appears in Exhibit H that said carabaos were claimed by Marcelo Abesamis who alleged that they had been transferred to him by Santa Singh on January 29, 1920, from which date he has had them in his possession, which is another falsehood because, according to the certificate of the deputy treasurer (Exhibit EE), said carabaos were transferred to Marcelo Abesamis by Santa Singh on July 14, 1924, that is, after they had been attached.

"Here it is seen that the defendants lied in stating that the carabaos were not attached, when it can logically be deduced from the documents mentioned, Exhibits B and H that they were attached and later claimed by Abesamis, pretending to be the owner by virtue of the supposed said transfer evidenced by Exhibit EE."

And the trial judge concludes:

"There is no doubt that the failure to carry out the writ of execution of the judgment rendered in civil case No. 20222 of the Court of First Instance of Manila was due to the conspiracy between the defendant-sheriffs and Santa Singh in connivance with the sureties and other persons; that the reproachable conduct of the judicial functionaries Sulse, Colinares and Arteché has caused considerable damage to Mr. M. Singh; that the gross amount of the damages consists of the following sums: The amount of the writ of execution, Exhibit A, which is P1,871.74, P1,455.62 plus P500, plus P216.12, minus P300); the amount of P12.50 which Mr. M. Singh paid on account of sheriff's fees; the amount of P135 for freight on the launch which transported the property set forth in Exhibit B; the amount of P200 for trips made by the plaintiff between Tacloban, Calbayog and Catbalogan and vice versa to take the defendant Arteché to Basey, Samar; the amount of P1,400 for premiums on the various bonds which were required of the plaintiff; the sum of P800 for plaintiff's Attorney's fees in the present case, plus P48 the cost of the various telegrams sent by the plaintiff and his attorney in connection with the writ of execution (see Exhibit FF composed of various receipts), total P4,467.24.

"It is indisputable that the deputies Colinares and Arteché are liable for their illegal acts and that the provincial sheriff Mr. Sulse is liable jointly and severally, with his deputies for his acts and for those of his deputies."

We have reviewed the record before us and find that the assignments of error by the appellant are groundless. We are of the opinion that the finding of facts arrived at by the lower court is duly supported by the evidence, and that the judgment appealed from is in accordance with law.

The appellant alleges that as a mere deputy sheriff he is not liable for the enforcement of the writs of execution which were directed to the provincial sheriff. This allegation is untenable. Although, under the rule that the official default of a deputy is chargeable to the sheriff, an action is properly brought against the sheriff for such default yet an action may be brought against the sheriff and his deputy for active malfeasance of said deputy, such

action being against him as a wrongdoer and not in his capacity as deputy. (35 Gyc, 1788,) And this rule is applicable to the case at bar because, according to the evidence, the appellant, by his actions and omissions as held by the lower court, contributed in a certain degree to the non-enforcement of the writ of execution to the prejudice of the judgment creditor-appellee.

We find no merit in the assignments of error of the appellant and for this reason the judgment appealed from must be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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