

JOSE C. ZULUETA, BENITO MACROHON, AS PROVINCIAL SHERIFF OF RIZAL, PASIG, RIZAL, AND HON. ANDRES S. SIOCHI, AS MUNICIPAL JUDGE OF PASIG, RIZAL, PETITIONERS, VS. HON. CECILIA MUÑO...

G.R. No. 25635. August 23, 1966

Ponente: DIZON, J.

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DIZON, J.:

Original petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction, filed by Jose C. Zulueta and others against the Honorable Cecilia Muñoz Palma as judge of Court of First Instance of Rizal, Branch I (Pasig), Victoria Lasin Vda. de Atienza, Gregorio Atienza and Rosario Atienza de Guzman, for the annulment of the orders of October 12, 1965, January 4, 1966, January 20, 1966, and February 3, 1966 (Annexes E, O, T, and U of the petition, respectively) issued by the respondent judge and Judge Guillermo Torres in Civil Case No. 8913.

The order of October 12, 1965 issued by the Honorable Guillermo E. Torres provided that the court would grant the motion filed by respondents in Civil Case No. 8913 to dissolve the restraining order issued therein unless petitioner filed a bond in the sum of P15,000.00 within five days from notice and deposit the corresponding monthly rental within the first five days of each month with the office of the Clerk of Court until the case is finally terminated.

The order of January 4, 1966 issued by the herein respondent judge allowed Gregorio L. Atienza to intervene in the aforesaid Civil Case No. 8913; approved the P8,000.00 bond filed by Victoria Lasin Vda. de Atienza pursuant to the order of Judge Torres; and restrained the Provincial Sheriff of Rizal and his deputies from carrying out the writ of execution issued by the Municipal Court of Pasig, Rizal in Civil Case No. 938 of said court.

The order of January 20, 1966, another order of the herein respondent judge, ordered Jose Zulueta and Antonio Mariñas and/or their representatives to restore Victoria Lasin Vda. de Atienza in possession of the premises subject-matter of Civil Case No. 938 of the Municipal Court of Pasig, in view of the existing restraining order issued in Civil Case No. 8913, and to refrain from molesting and harassing her.

The order of February 3, 1966, also issued by the herein respondent judge, directed the Provincial Sheriff of Rizal and his deputies to discharge the levy of execution on the personal properties mentioned in the motion of third-party claimant Rosario A. de Guzman, without the necessity of filing a counterbond.

The petition for the issuance of a writ of preliminary injunction was granted and the writ was issued on February 11, 1966.

It appears that on or about September 15, 1964 petitioner Zulueta filed an action for ejectment against Gregorio Atienza in the Municipal Court of Pasig, Rizal (Civil Case No. 938). At that time Atienza was abroad, having left the Philippines on June 26, 1964 for San Diego, California, U.S.A. to serve as an enlisted man of the U.S. Navy.

On September 26, 1964, the sheriff, attempting to serve summons on him, delivered it to his sister, the herein

respondent Rosario Atienza de Guzman at Gen. Malvar St., Pasig, Rizal.

On December 15, 1964, the case was called for trial and because nobody appeared nor filed an answer for the defendant, he was declared in default, and after receiving plaintiff's evidence, the court rendered judgment ordering said defendant to vacate the premises in question; to deliver their possession to the plaintiff; to pay the latter the sum of P8,649.45 as accrued rentals, with legal interest from the filing of the complaint, the further sum of P414.02 as monthly rental from September 1964 until possession of the premises to the plaintiff has been effected, aside from the sum of P500.00 as attorney's fees and the costs of suit. A copy of the decision sent to the defendant by registered mail on December 17, 1964 was undelivered and was returned to the court on January 6 of the following year.

On January 4, 1965 the court issued a writ of execution and on the 18th of the same month the Provincial Sheriff of Rizal, after attaching several personal properties, issued a notice of sale thereof. On the 30th day of the same month, Victoria Lasin Vda. de Atienza filed a motion with the court for a reconsideration of the latter's decision calling attention to the fact that the defendant was abroad and that she herself had no knowledge of said decision until January 18, 1965 when the writ of execution was served upon her by a Deputy Sheriff, but said motion was denied.

Thereafter, or more specifically on September 18, 1965, she filed in the Court of First Instance of Rizal a petition for certiorari and mandamus, with preliminary injunction, against the Honorable Andres S. Siochi, as municipal judge of Pasig, Rizal, Benito Macrohon, as Provincial Sheriff of Rizal, and Jose C. Zulueta (Civil Case No. 8913) mainly for the annulment of the decision rendered by said respondent judge in the ejectment case (Civil Case No. 938). On September 20 of the same year, the Court of First Instance of Rizal issued an order restraining the respondents in said Civil Case No. 8913 from enforcing the decision of the Municipal Court of Pasig and from proceeding with the auction sale of the personal properties levied upon in connection therewith. A motion to dissolve the restraining order was filed by Zulueta on September 23, 1965 and on October 12 the court - through Judge Guillermo Torres - resolved to grant the motion unless the petitioner filed a P15,000.00 bond within fifteen days from notice, and deposited the corresponding monthly rentals within the first five days of each month with the office of the Clerk of Court until the final disposition of the case. On October 21 of the same year, the petitioner in said case filed, in turn, a motion to reconsider and set aside this last order on the ground that when it was issued the case had already been assigned to Branch I of the Court of First Instance of Rizal presided by the Honorable Cecilia Muñoz Palma, and that therefore Judge Torres had no authority to issue the order. The motion also prayed, in the alternative, that the P15,000.00 bond be reduced, the same being excessive.

Prior to the order of Judge Torres, or more specifically on September 29, 1965, the respondents in said case (Civil Case No. 8913) filed a motion to dismiss it on the ground that the therein petitioner, Victoria Lasin Vda. de Atienza, had no capacity to sue nor a cause of action against the respondents, the real party in interest being her son, Gregorio Atienza, and on the further ground that jurisdiction over the person of the latter not having been raised in the municipal court the same could not be raised for the first time in the Court of First Instance on certiorari.

On October 21, 1965, the herein respondent, Honorable Cecilia Muñoz Palma, to whose branch of the Court of First Instance of Rizal Civil Case No. 8913 had been assigned, (a) denied the motion to dismiss mentioned above; (b) allowed an amendment to the petition for certiorari by substituting Gregorio Atienza in place of his mother, and (c) reduced the P15,000.00 bond required by Judge Torres to P8,000.00. On October 30, 1965, Zulueta moved to have the order just mentioned of the respondent judge reconsidered, claiming that the petition for certiorari having been brought by a party who had no interest therein, such defect was jurisdictional and the action should therefore be dismissed without prejudice to the real party in interest commencing a new one. The herein

respondent judge denied this motion for reconsideration in an order of November 12, 1965 which also granted the petitioner Victoria Lasin Vda. de Atienza another ten-day period to file the amended petition.

It appears, however, that instead of an amended petition with Gregorio Atienza taking his mother's place as petitioner, on November 26, 1965 a motion for intervention was filed by Gregorio himself. His petition made substantially the same allegations as the petition for certiorari etc. filed in the name of his mother. Zulueta and his co-respondents opposed the motion to intervene but the respondent judge overruled the opposition, and in an order of January 4, 1966, the motion to intervene was granted; the P8,000.00 bond filed by petitioner Victoria Lasin Vda. de Atienza was approved; and the Provincial Sheriff of Rizal and his deputies were enjoined or restrained from carrying out the writ of execution mentioned heretofore.

On January 12, 1966, Rosario Atienza de Guzman, a sister of Gregorio, filed a motion in Civil Case No. 8913 alleging that on January 18, 1965, the Provincial Sheriff of Rizal had levied on the personal properties therein described pursuant to the writ of execution issued by the Municipal Court of Pasig, Rizal on January 4, 1965 in Civil Case No. 938 of said court; that thereafter she had filed a third party claim with the Provincial Sheriff of Rizal alleging that said personal properties belonged exclusively to her having purchased them from different parties for a total consideration of P5,888.00; that the said chattels and household effects were badly needed by her and were fast deteriorating in the hands of the sheriff; and that she was willing to file a counterbond for their release. Zulueta opposed said motion suggesting that the third party claimant's remedy was a separate action against the sheriff, but this notwithstanding, the herein respondent judge, in an order dated February 3, 1966, issued an order the dispositive part of which reads as follows:

"Wherefore, in view of an existing Order of Honorable Judge Guillermo Torres dated September 20, 1965 temporarily restraining respondents from proceeding with the auction sale and enforcing the Decision dated December 15, 1965, this Court resolves to direct the Provincial Sheriff of Rizal and/or any of his deputies to discharge the levy of execution on the personal properties mentioned in the above-stated motion without necessity of filing a counter-bond and to effect a status quo as regards said properties."

Thereupon, herein petitioners filed the present action charging that the respondent judge acted without or in excess of jurisdiction or with grave abuse of discretion in (a) denying the motion to dismiss and the (2) motion to dissolve restraining order stopping the auction sale, (3) in granting the motion for intervention of Gregorio Atienza, and in (4) restoring the premises to Victoria Vda. de Atienza and (5) restoring the personal properties subject of said levy to the third-party claimant, Rosario de Guzman.

There is no question that when the complaint for ejectment against Gregorio Atienza was filed in the Municipal Court of Pasig, Rizal on September 15, 1964, the latter was a resident of the United States being then an enlisted man of the United States Navy. It is also an admitted fact that the summons intended to be served on him was delivered to his sister, Rosario Atienza de Guzman, at Gen. Malvar St., Pasig, Rizal. These facts clearly show that the summons aforesaid was not served in the manner provided by Section 17, Rule 14 of the Revised Rules of Court.

With respect to Civil Case No. 8913 where the orders complained of were issued, it is clear that Victoria Lasin Vda. de Atienza was not the real party in interest, but this defect was obviously not jurisdictional - as petitioner Zulueta erroneously contends- but merely formal, and the herein respondent judge correctly allowed the petition to be correspondingly amended by having said petitioner substituted by her son, Gregorio Atienza, who was the real party in interest. That this is proper and correct procedure has long ago been held by this court in *Alonzo vs. Villamor*, 16 Phil., pp. 315, 321-322) and more recently in *Torres vs. Caluag et al.*, G. R. No. L-20906, July 30, 1966.

That instead of amending the petition in Civil Case No. 8913 in the sense authorized by the court a motion for, and complaint in intervention were filed by Gregorio Atienza is of little moment and significance because this was precisely intended to correct the same formal defect in the proceedings. That the herein respondent judge allowed the intervention of Gregorio Atienza - the real party in interest - can not therefore be an act without or in excess of jurisdiction nor tainted with grave abuse of discretion. In reality, it was absolutely necessary in order to bring the real party in interest in court.

The suggestion that instead of allowing the amendment and intervention the herein respondent judge should have dismissed the case without prejudice to Gregorio Atienza filing a new action is but an attempt to resort to a technicality that serves no useful purpose and would result in the multiplication of judicial proceedings.

Petitioners also assail the propriety of the motion of Rosario Atienza de Guzman for the release of the personal properties therein described, which had been previously the subject of a third party claim filed by her with the Provincial Sheriff who made a levy thereon, it being claimed that her remedy, after the filing of a counterbond by the judgment creditor in Civil Case No. 938 of the Municipal Court of Pasig, Rizal, being a separate action against the sheriff. We find this likewise to be untenable.

Among the grounds for intervention allowed under the Revised Rules of Court is when the party who seeks to intervene "is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof" (Section 2, Rule 12, Revised Rules of Court).

Under the rules of procedure prior to the Rules of Court, a third person claiming to be the owner of personal property attached or levied upon for purposes of execution in an action for money against another, had no right to intervene because he had no interest in the debt sued upon by the plaintiff. Such principle, however, has been abandoned and it is now permissible, under the provision just mentioned, for a third person claiming ownership over properties preliminarily attached or levied in execution not only to file a third party claim with the sheriff, but also to intervene in the action to ask that the writ of attachment or levy be quashed. In *Manila Herald etc. vs. Ramos et al.*, 88 Phil. pp. 100-101, We said the following:

"Separate action was indeed said to be the correct and only procedure contemplated by Act No. 190, intervention being a new remedy introduced by the Rules of Court as addition to, but not in substitution of, the old process. The new Rules adopted section 121 of Act No. 190 and added thereto Rule 24 (a) of the Federal Rules of Procedure. Combined, the two modes of redress are now section 1 of Rule 13,[1] the last clause of which is the newly added provision. The result is that, whereas, 'under the old procedure, the third person could not intervene, he having no interest in the debt (or damages) sued upon by the plaintiff,' under the present Rules, 'a third person claiming to be the owner of such property may, not only file a third-party claim with the sheriff, but also intervene in the action to ask that the writ of attachment be quashed.' (1 Moran's Comments on the Rules of Court, 3rd Ed., 238, 239.) Yet, the right to intervene, unlike the right to bring a new action, is not absolute but left to the sound discretion of the court to allow."

It is true, of course, that this intervention by Rosario Atienza de Guzman was allowed not in the ejectment case (Civil Case No. 938 of the Municipal Court of Pasig) but in the action for certiorari etc. (Civil Case No. 8913) filed in the Court of First Instance of Rizal, but it must not be forgotten that the latter case was instituted precisely to annul the decision and other proceedings - including naturally the attachment levied upon the personal properties claimed by Rosario Atienza de Guzman - had in the ejectment case aforesaid. It can not be denied, therefore, that she had the right to intervene in the certiorari etc. proceedings.

With respect to the orders complained of which provide for the restoration of possession of the premises subjectmatter of Civil Case No. 938 of the Municipal Court of Pasig, Rizal to Victoria Lasin Vda. de Atienza (in effect to Gregorio Atienza), and a similar restoration of possession of the personal properties levied upon by the

sheriff in connection with the writ of execution issued in the same case, to Rosario Atienza de Guzman, it appears that both orders are in consonance with the restraining order issued by the Hon. Guillermo E. Torres, petitioner Zulueta's rights having been protected by the P8,000.00 bond filed in said case for the purpose precisely of maintaining the restraining order already referred to, thus preventing the execution of the judgment rendered in the ejectment case while Civil Case No. 8913 was pending final determination.

WHEREFORE, the writs prayed for are denied and the petition for certiorari and prohibition is dismissed, with costs. The preliminary injunction heretofore issued is hereby set aside.

Concepcion, C.J., Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave.

[1] Section 1. When proper. - A person may, at any period of a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

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