

VALENTIN MONTOJO, TEE LEONG SIO, TE TAN CUY, AND CARLOS VILLA ABRILLE, PETITIONERS, VS. CEFERINO HILARIO, JUDGE OF THE TWENTY-SIXTH JUDICIAL DISTRICT, AND A. G. CASTILLO, PROVIN...

G.R. No. 39925. September 14, 1933

Ponente: HULL, J.

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HULL, J.:

Original action for prohibition instituted by petitioners to enjoin the respondents from enforcing a writ of execution issued on May 22, 1933, by the Court of First Instance of Davao. Petitioners are the sureties on a bond given to protect the sheriff after a third party claim had been filed with the sheriff relative to properties which he had seized on an execution issued after judgment in civil case No. 934, Court of First Instance of Davao. Protected by this bond, the sheriff continued with the execution and sale of the properties then in his possession. After sale the third party claimant brought suit against the creditor and the sheriff and secured judgment for the wrongful seizure of his properties.

In that action the sheriff did not interplead the sureties on the bond, and they were strangers to that proceeding. Execution issued against the principal of the bond and the sheriff (defendants in that action) has been returned unsatisfied. The original defendant company has been dissolved and the manager has left the Islands.

When this return of the sheriff was made, the original third party claimant filed a motion praying the court to issue a writ of execution against the sureties on the indemnity bond. This motion was approved by the court and execution issued. Properties of petitioners have been seized with a view to sale to satisfy the writ of execution. Upon this showing this court granted a preliminary writ of prohibition, and petitioners now pray that the writ of prohibition be made permanent, that the orders of the Court of First Instance of Davao dated May 20, 1933, directing that a writ of execution issue against petitioners and the writ of execution issued May 22, 1933, pursuant to said orders be declared null and void.

Respondents have proceeded on the theory that the liabilities of sureties on a bond to protect a sheriff on a third party claim are the same as that of sureties on a supersedeas bond. No authorities upholding this contention have been brought to our attention. On the contrary, petitioners cite 57 C. J., 923 et seq., which uphold their contentions that execution will not issue against the surety until after action has been had against them.

Therefore, we hold in the present case that the Court of First Instance of Davao had no jurisdiction to issue the writ of execution against the properties of the petitioners, that the said writ of execution is null and void. It is further hereby ordered that the preliminary injunction issued by this court in this proceeding be made absolute. Costs against the respondent. So ordered.

Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

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