

**CLEMENTE MANOTOC, GUARDIAN OF HIS MINOR CHILDREN
CEFERINO, BENITA, ET AL., PLAINTIFF, M. JOSH MCMICKINGS,
SHERIFF OF THE CITY OF MANILA, AND GREGORIO TRINIDAD,
DEFENDANTS.**

G.R. No. 4251. February 10, 1908

Ponente: MAPA, J.

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MAPA, J.:

Application is made in the complaint for the issue of a writ of mandamus directing the defendant McMicking, as sheriff for the city of Manila, forthwith to proceed to levy an attachment on the house owned by the other defendant, Gregorio Trinidad, mentioned in the same complaint, and to sell it subject to the legal formalities, and to apply the proceeds thereof to satisfy a judgment entered in favor of the plaintiff as against the said Trinidad.

As a basis for the complaint it is alleged that, in an action instituted by the plaintiff in the court of the justice of the peace of Manila, against the aforesaid Trinidad, judgment was entered on the 15th of August, 1907, sentencing the latter to pay the sum of P522.71; that said judgment having become final because no appeal was taken therefrom, the justice of the peace of Manila, under date of the 2d of September, 1907, issued a writ of execution addressed to the defendant McMicking, as sheriff of the said city, directing him to levy an attachment on the property of the said Trinidad, and to sell the same in order to apply the proceeds toward the payment of the aforesaid judgment and of the legal costs; it is further alleged that Trinidad 'possesses no property which is not exempt from execution, nor any other kind of property beyond a house in which he lives with his family, which house is worth less than P150, Philippine currency, and is erected on a parcel of land belonging to the minors of whom the plaintiff is the representative, the said Trinidad having no title to or interest whatever in the same; that the plaintiff named the said house to the defendant, the sheriff of Manila, in order that an attachment be levied thereon; and that, notwithstanding the fact that he was requested so to do and that the writ of execution is still in force, the said sheriff refused, and still refuses, to attach the said house and sell the same in order to apply the proceeds thereof toward satisfying the aforesaid judgment.

The defendants demurred to the complaint on the ground that the facts therein alleged do not constitute a cause for action.

From the terms of the complaint it may be seen that the writ of execution addressed to the defendant sheriff was against the property in general of the other defendant, Trinidad, and not expressly and specifically against the house named by the plaintiff. This being the case, the claim of the said plaintiff, within the facts alleged in the complaint, appears unfounded and contrary to law. In case No. 2360, *Fetersen vs. Peterson*, Sheriff of the city of Manila, we have established the doctrine that "the remedy of mandamus will not lie to compel a sheriff to levy an attachment upon certain specified property,"[1] and this is the very question in the case at bar, because the demand in this case is made to compel the sheriff, by means of a writ of mandamus, to attach a specific and determined property; that is, the individual house named in the complaint.

It is true it is alleged that, beyond the said house, the defendant possesses no other property subject to execution, and this would seem to be an attempt to argue that, there being but one specific piece of property subject to attachment, the sheriff can not avoid levying upon the same. This, however, does not alter the terms of the question. It is not a question of rights, but one of procedure. It may be that the plaintiff would ultimately be entitled to obtain an attachment upon the house, there being no other property subject thereto, but a writ of mandamus is not the adequate means to attain the purpose. An officer can not be compelled, by means of a writ of mandamus, to perform an act not specially prescribed by the law as one of the duties inherent in his office, and in no case is there any provision of law imposing upon a sheriff the obligation to levy upon a specific piece of property when the writ of attachment issued is in general terms against the property of the debtor.

Moreover, such an argument contains the defect of taking it for granted that whatever the plaintiff thinks should 1 Resolution of the Supreme Court of April 23, 1900, in the matter of be attached is really subject to execution, while this question may very well be the object of controversy; and, as a matter of fact, such appears to be the case herein, judging by the various petitions presented by the parties before the filing of the amended complaint. The sheriff may, with more or less reason, believe that the thing in question is exempt from execution, in which case a question of law arises which, by reason of its nature, can not clearly be a matter for the application of the remedy of the writ of mandamus.

Further than this there is another reason to deny such a remedy in the present case. The matter at issue is a writ of execution which should have been returned by the sheriff unsatisfied. This case is expressly provided for in the Code of Civil Procedure, in the chapter dealing with proceedings supplementary to the execution of judgments. (Secs. 474 et seq.) The necessary procedure is therein established to obtain an order from the judge directing that any property of the judgment debtor, not exempt by law, according to the wording of section 482, be applied toward the satisfaction of the judgment in cases where the writ of execution is entirely or partly unsatisfied. It is feasible to deal with the matter under the procedure thus provided, and it even seems that it should be so treated judging by the underlined words of the section just cited, as to whether or not a determined property of the judgment debtor is exempt from execution, and if under the law it may or may not be levied upon. Since such ordinary and adequate procedure exists therefor, it is evident that the special and extraordinary remedy of a writ of mandamus, according to sections 222 and 515 of the Code of Civil Procedure, can not be granted under the law.

The demurrer is therefore sustained, and the plaintiff is granted ten days in order that he may, if he should desire, file an amended complaint. No special ruling is made as to costs. So ordered.

Arellano, C.J., Torres, Willard, and Tracey, JJ., concur.

Johnson, J., dissents.

Carson, J., reserves his vote.

[1] Resolution of the Supreme Court of April 23, 1906, in the matter of Petersen vs. Peterson.

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