

**BENITO MANEJERO, PETITIONER, VS. MARIANO BUYSON LAMPA,
JUDGE OF FIRST INSTANCE OF ILOILO, ESTRELLA ZAMORA,
ACCOMPANIED BY HER HUSBAND RICARDO LUNA, AND THE
PROVINCIAL SHERIFF OF...**

G. R. No. 42750. December 17, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is a petition for a writ of certiorari filed by the petitioner to set aside the order entered by the respondent judge on October 11, 1934, directing the clerk of court to issue a new writ of execution in civil case No. 9627 of the Court of First Instance of Iloilo, declaring that the sum of P610 deposited by the petitioner, pending the determination of civil case No. 9628 of said court, is subject to attachment by virtue of said execution, and setting aside that part of his order of October 3, 1934, declaring that said sum should be held on deposit, and also to set aside the writ of execution issued by the clerk of court pursuant to said order of October 11, 1934.

In the same Court of First Instance of Iloilo, the petitioner instituted civil case No. 9628, entitled Benito Manejero, plaintiff, vs. Encarnacion Luna de Manahan, Pedro Manahan, Ricardo Luna, Estrella Zamora and the provincial sheriff of Iloilo, defendants, in which it was sought to annul the deed of sale of lot No. 54 of the Iloilo cadastre. In said case, the petitioner consigned and deposited with the clerk of court various sums of money amounting to P610, to be applied to the result of the suit. The deposit appears to have been made in conformity with the provisions of articles 1176 and 1178 of the Civil Code, in view of the fact that in that case the petitioner sought to annul a sale for which he had received a certain sum of money in payment. It is materially impossible to make an exact statement of the nature of that case owing to the fact that the petitioner has not attached to his petition for certiorari the documents annexed thereto and referred to therein.

On September 20, 1934, said civil case No. 9628 was dismissed at the instance of the petitioner. On the following day, however, said petitioner again filed a new complaint alleging the same causes of action against the same defendants, and the case was docketed in that court as No. 9971. The petitioner notified the clerk of court that the consignment and deposit made by him in the dismissed case should be considered as consignment and deposit in the new case No. 9971.

In the justice of the peace court of the City of Iloilo, the respondents Ricardo A. Luna and Estrella Zamora instituted ejectment proceedings against the herein petitioner and obtained judgment against him for the sum of P120 for rents due and unpaid, plus a monthly rent of F15. The petitioner appealed from the judgment and the case was docketed in the Court of First Instance as No. 9627. Inasmuch as the petitioner had failed to pay to the respondents the rents due, or had not deposited them with the clerk of court as required by section 88 of the Code of Civil Procedure, as amended, the respondents, as plaintiffs in that case, prayed the court to issue a writ of execution of the judgment entered by the justice of the peace court and to apply the sum of P610 deposited with the clerk of court for the enforcement of said execution which was granted. The petitioner filed a motion for

reconsideration of the order directing execution of the judgment and succeeded in having the court set it aside, on the ground that the money so deposited was property in custodia legis. Said respondents, in turn, filed a motion for reconsideration and the court, on October 11, 1934, entered the order with which the present petition is concerned, setting aside its former order and directing that the clerk of court issue a new writ of execution of the judgment of the justice of the peace court and that the deposit of P610 be applied to the payment of said judgment.

The clerk of court issued the writ of execution and the respondent sheriff, upon delivery to him of said writ, attached the sum of P310, paid the sum of P362.16 to the respondent Luna spouses, and retained the balance which continues to be in his hands.

The principal contention of the petitioner is that the respondent judge lacked or exceeded his jurisdiction in directing the issuance of the writ of execution and the application of the deposit of P610 to the payment of the judgment entered by the justice of the peace court, and, as his ground, it is alleged that said sum could not be levied on by the respondent sheriff because it was in custodia legis.

The respondents contend that when the sheriff attached said money, the same was no longer in custodia legis, for the reason that it took place immediately after the dismissal of civil case No. 9628 and before the institution of the other case No. 9971.

It is a well-established doctrine in practically every jurisdiction that money deposited with a clerk of court is exempt from attachment and not subject to execution. (Springer vs. Odlin, 3 Phil., 344; 23 C. J., p. 357, sec. 107.)

The allegation of the respondents to the effect that the sheriff attached the money when the first case had already been dismissed is of no weight, in view of the undisputed fact that, in dismissing said case, the court made no pronouncement regarding the consignment or deposit and, consequently, the money remained as consignment or deposit made by the petitioner in the second case No. 9971. From the moment the deposit was made by the petitioner, the money remained under the control and jurisdiction of the court and, the former could not recover it without an express order of restitution. For this reason, when the sheriff levied on it, the money continued to be in custodia legis.

The fact that the petitioner did not notify the respondents of the deposit, in violation of the provisions of articles 1177 and 1178 of the Civil Code, is of no moment, because the object of this case is not to determine the effects produced by the consignment for the purpose of releasing the petitioner from his liability in connection with the contract of sale which he sought to annul. What appears to be certain is that the money was really deposited with the clerk of court and for that reason it was exempt from attachment and execution.

Wherefore, the remedy applied for is granted, the order of October 11, 1934, as well as the writ of execution issued by the clerk of court, is set aside, and the respondents Estrella Zamora, Ricardo Luna and the provincial sheriff of Iloilo are ordered to return to the clerk of the Court of First Instance of Iloilo the sum of P610, with costs against the respondent spouses Ricardo Luna and Estrella Zamora. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

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