

PATRICIO CONTRERAS, AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED DOLORES CONTRERAS, JERUSALEM GINGCO AND ARCADIO MONILLAS, PLAINTIFFS AND APPELLANTS, VS. JUAN V. MOLINA, TEODO...

G. R. No. 43246. January 19, 1937

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DIAZ, J.:

The plaintiffs and appellants obtained a judgment in their favor against the defendants Juan V. Molina and Teodora Arenas in Civil case No. 44960 of the Court of First Instance of Manila, entitled "Patricio Contreras, as administrator of the estate of the deceased Dolores Contreras, Jerusalem Gingco and Arcadio Monillas, plaintiffs, vs. Teodora Arenas married to Juan V. Molinas, plaintiffs, vs. Teodora Arenas married to Juan V. Molina, defendants." They later obtained a writ of execution of July 31, 1934, ordering the sheriff of Manila to execute the judgment rendered in their favor in the above-cited case against the property of the defendants Teodora Arenas and Juan V. Molina, by selling what was necessary to cover the judgment then amounting to P4,836.31, plus interest thereon at 6 per annum and the other sums stated in the writ for costs and rentals.

After the sheriff, by virtue of the writ in question, had already attached certain apartments and nipa houses in which the plaintiffs and appellants seemed to have some participation, the China Banking Corporation, on the other hand, and the Roman Catholic Archbishop of Manila, on the other hand, filed a third party claim alleging that they had a preferred right to said improvements or properties, the former stating that they had been mortgaged to it prior thereto, and the latter, in turn claiming that he was the owner of the land where the properties in question were constructed and that he had not therefore been paid the corresponding rentals then amounting to P2,327.50. In view of the claims of the two third party claimants, the sheriff of the City of Manila, pursuant to the provisions of section 451 of Act No. 190, as amended by Act No. 4108, duly notified the plaintiffs and appellants to file the corresponding indemnity bond to answer for any damage that might result from the execution, if they wished it to be carried out, fixing the amount of the bond that should be filed by them in each case at P2,500. Inasmuch as the plaintiffs and appellants failed to file said bond, the sheriff lifted the attachment levied by him on the properties above-stated and refrained from taking further steps in the attempted sale of said properties to satisfy the amount of the judgment in question with the proceeds thereof.

To compel the sheriff to proceed with the attachment and sale of the properties in question, the plaintiffs filed in the lower court their two motions of September 19, 1934, praying that after overruling the claim of the third party claimants, the sheriff be ordered to carry out the writ of execution issued by actually selling the properties attached by him. The lower court, deciding the incident, issued the order of November 27, 1934, thereby denying the plaintiffs' two motions in question for lack of merit. The plaintiffs appealed from this order, alleging that the lower court committed the following errors:

"First Error.—In denying the plaintiffs' motion praying that the Philippine Guaranty Co. be ordered to turn over to them the sum of P693.03 to be spent for the repair of the apartments partially burned, or to the China Bank with the obligation on the part of the latter to invest it in said repairs, in order not to cause damage to the

plaintiffs.

"Second Error.—In sustaining the third party claim filed by the China Banking Corporation and in not declaring it premature; and in not ordering the sheriff of Manila to carry out the sale at public auction of the defendants' properties, in order to cover the amount of this execution,

"Third Error.—In likewise sustaining the third party claim filed by the Archbishop of Manila and in not declaring it premature; and in not ordering the sheriff of Manila to carry out the sale at public auction of the defendants' properties, to cover the amount of this execution.

"Fourth Error.—In not overruling the two third party claims filed by the China Bank and the Archbishop of Manila, and in not declaring them frivolous, not to say malicious, and that they were filed for the sole purpose of favoring the defendants and at the same time of frustrating the ends of justice, and

"Fifth Error.—In not ordering the third party claimant, the China Bank, to pay damages to the plaintiffs, for its failure to employ the sum of P693.03 received by it from the Philippine Guaranty Co. in the repair of that part of the building damaged by fire."

The first and fifth alleged errors refer to only one point or question. It should be stated with respect thereto that they are unfounded because the order, which the plaintiffs and appellants attempt to impugn by means of said errors, has never been excepted to or appealed from: it is the order issued by the lower court on September 20, 1934, denying the petition of the plaintiffs and appellants that the Philippine Quaranty Co., as an insurance company, pay to them, not to the China Banking Corporation, the sum of P693.03, the court basing its opinion upon the fact that the insurance policy, by virtue of which said insurance company was obliged to pay said sum, had been duly endorsed to the China Banking Corporation. Questions decided at the trial may be raised on appeal only by means of a previous exception entered in due time. (Andrews vs. Morente, 9 Phil., 634; Roman Catholic Bishop of Lipa vs. Municipality of San Jose, 27 Phil., 571; Vergara vs. Laciapag, 28 Phil., 439.)

As already stated, the only order from which the appellants appealed is that of November 27, 1934, as shown by their pleading of January 3, 1935, which reads as follows:

"EXCEPTION AND NOTICE OF APPEAL

"Come now the plaintiffs through the undersigned attorney, and to this Honorable Court they respectfully except to the order of November 27, 1934, of which this representation was notified only on December 6, 1934, and hereby announce their intention to appeal from said resolution to the Honorable Supreme Court, by
BILL OF EXCEPTIONS.

"Manila, P. L, January 3, 1935.

(Sgd.) "LUCIO JAVILLONAR

"Attorney for the plaintiffs

"134 Arzobispo, Manila"

The second, third and fourth assignments of error refer to questions which cannot properly be passed upon in this case. They are questions requiring determination of whether or not said third party claimants really have the rights and interest claimed by them in the properties against which the appellants seek execution of the judgment rendered in their favor. The determination of said questions should not take place in an incident of the nature of the one raised by the appellants, but, in the case of the third party claimant the China Banking Corporation, in a

separate action instituted by the appellants for the nullity of the mortgage deed which said third party claimant, under oath, claims to have been executed in its favor by the judgment debtors; and in the case of the third party claimant the Roman Catholic Archbishop of Manila, in another action to determine who has a preferred right to the proceeds of the sale of the properties under execution, if sold, inasmuch as they failed to file the indemnity bond prescribed by section 451 of Act No. 190, as amended by Act No. 4108, which was the only means of compelling said third party claimant to bring the action, or the lower court to grant the petition of the appellants.

For all the foregoing considerations, and there being no merit in the plaintiffs' appeal, the appealed order is affirmed, without costs, in view of the fact that according to the record said plaintiffs are paupers. So ordered.

Avancena, C. J., Villa-Real, Mad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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