

ZENAIDA M. PALMA, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PRODUCTS, INC., RESPONDENTS.

G.R. No. 45158. June 02, 1994

Ponente: QUIASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45158/>

QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals, affirming in toto the decision of the Court of First Instance of Manila in Civil Case No. 69208.

We deny the petition.

I

Reynaldo S. Palma and his wife, Zenaida, purchased from private respondent two Hino Diesel Trucks at a price of P52,056.00 each or a total purchase price of P104,112.00, payable in installments. The Palmas executed two promissory notes in favor of private respondent in the total amount of P104,112.00. It was stipulated therein: (1) that each of the two promissory notes was payable in 24 equal monthly installments with interest of 12% per annum on all unpaid installments; (2) that the debtors should pay attorney's fees and other expenses of collection in the event that said collection was made through a lawyer; and (3) that the acceleration clause would become operative in case of default in the payment of any installment and make the subsequent installments due and demandable. A chattel mortgage over the two trucks was constituted in favor of private respondent.

The Palmas only made an initial payment and failed to pay the succeeding installments despite demands made on them. Hence, on April 14, 1967, private respondent filed a complaint with prayer for the issuance of a writ of preliminary attachment.

On April 19, the trial court issued an order of attachment against the property, both real and personal, of the Palmas.

Subsequently, on June 5, copies of the summons, order of attachment and attachment bond were served upon the Palmas at their residence in Barrio Putol, Kawit, Cavite through Bella Samson, who refused to acknowledge the receipt of the documents.

On June 8, the special sheriff was able to attach one of the trucks purchased from private respondent (Rollo, p. 65; Record on Appeal, p. 11). On the other hand, the dismantled parts of the other truck were recovered in San Pablo City by private respondent (Rollo, p. 65; Record on Appeal, p. 27). The special sheriff was also able to attach the property of the Palmas located in Barrio Putol, Kawit, Cavite and covered by TCT No. T-14464. The attachment was duly annotated on the said title on June 13 (Rollo, p. 65; Record on Appeal, p. 66).

For failure to file their answer and upon motion of private respondent, the Palmas were declared in default on August 26. Private respondent presented its evidence ex parte.

On September 1, the Palmas sold the attached property located at Barrio Putol, Kawit, Cavite to Fernando and Constanca Cresini (Rollo, p. 65; Record on Appeal, p. 106).

In due time, the trial court rendered its decision against the Palmas, the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby renders judgment ordering the defendant-spouses Zenaida M. Palma and Reynaldo S. Palma to pay, jointly and severally, to the plaintiff corporation the sum of P99,931.71 with interest thereon at the rate of 12% per annum starting February 10, 1967 until fully paid; the sum of P2,040.58 representing the premium paid for the attachment bond plus the sum of P1,500.00 as attorney's fees and the costs" (Rollo, p. 65; Record on Appeal, p. 17).

A writ of execution dated December 14, was issued and duly served on the Palmas but the same was returned unsatisfied (Rollo, p. 65; Record on Appeal, p. 56).

On December 29, the Palmas filed a Petition for Relief from Judgment with the trial court, alleging that they failed to file an answer because a copy of the complaint was served on a third party, who failed to give the same to them. They prayed that a preliminary injunction be issued, restraining the enforcement of the decision and that after due hearing the decision be set aside and a new trial be held (Rollo, p. 65; Record on Appeal, p. 21).

In its Order dated January 9, 1968, the trial court denied the Petition for Relief from Judgment for lack of merit (Rollo, p. 65; Record on Appeal, p. 35). The motion for reconsideration of said order was likewise denied by the trial court in its order dated February 21, 1968 (Rollo, p. 65; Record on Appeal, p. 50). Thereafter, an alias writ of execution was issued.

On August 27, the property located at Barrio Putol, Kawit, Cavite was sold at a public auction for P15,000.00 in favor of private respondent as the highest bidder (Rollo, p. 65; Record on Appeal, p. 61). After the lapse of the one-year redemption period with the property still unredeemed, the special sheriff executed the Sheriff's Deed of Absolute Sale and had the same registered with the Register of Deeds of Cavite on December 3 (Rollo, p. 65; Record on Appeal, p. 74).

On May 7, 1970, an Ex-Parte Motion for Confirmation of Sheriff's Sale was filed by private respondent but this was denied by the trial court for failure to give notice to the interested parties (Rollo, p. 65; Record on Appeal, p. 80). Another Motion for Confirmation of Sheriff's Sale, this time with notice to all interested persons, was filed by private respondent (Rollo, p. 65; Record on Appeal, pp. 81-83). The Palmas opposed said motion (Rollo, p. 65; Record on Appeal, pp. 84-85).

On August 12, the trial court issued an Order confirming the Sheriff's Deed of Sale (Rollo, p. 65; Record on Appeal, p. 99). The Palmas filed a motion for reconsideration, contending that the attached property had already been registered in the name of the Cresinis and therefore, the attachment and sale of the same deprived the new owners of their right to due process of law (Rollo, p. 65; Record on Appeal, p. 111). The motion was denied (Rollo, p. 65; Record on Appeal, p. 115).

Consequently, the Palmas appealed to the Court of Appeals.

On June 18, 1976, the Court of Appeals rendered its decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing and finding no reversible error in the decision appealed from, the same is hereby affirmed in toto. With costs against the appellants" (Rollo, p. 38).

Reynaldo S. Palma died during the pendency of this case in the Court of Appeals; hence this petition was filed solely by Zenaida M. Palma (Rollo, p. 16).

II

Petitioner contends that there was no proper service of summons upon her person, resulting to a denial of her right to due process of law.

We do not agree. The trial court in its Order dated January 9, 1968 noted:

"It is claimed by petitioner Zenaida M. Palma in her 'affidavit of merit' dated December 28, 1967, attached to the petition for relief dated September 28, 1967, that the complaint in this case was received by 'her niece, who was of minor age' who left those papers in the drawer of their small table and that when she saw it, the period to answer the complaint had long expired. In her testimony before this Court, she declared that the summons and complaint were received by her son, Manolito Palma who left the papers in a drawer and she found it only on June 1967, and that she went immediately to the Office of the Plaintiff where she allegedly told Mrs. Ferro that she will return the two trucks. This material inconsistency of the statement of the petitioner renders improbable her claim" (Rollo, p. 65; Order, p. 32).

In addition thereto, we find that petitioner had voluntarily submitted to the jurisdiction of the trial court when she filed her petition for relief from judgment (*J. M. Tuason & Co., Inc. v. Estabillo*, 62 SCRA 1 [1975]) praying that a preliminary injunction be issued restraining plaintiffs from enforcing the judgment upon the filing of a bond and that after due hearing a new trial be held on the merits of the case (Rollo, p. 65; Record on Appeal, pp. 20-21).

When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to said jurisdiction. If the appearance is for any other purpose, the defendant is deemed to have submitted himself to the jurisdiction of the court. Such an appearance gives the court jurisdiction over the person (*Flores v. Zurbito*, 37 Phil. 746 [1918]). We have likewise ruled that even though the defendant objects to the jurisdiction of the court, if at the same time he alleges any non-jurisdictional ground for dismissing the action, the court acquires jurisdiction over him (*Far East International Import & Export Corporation v. Nankai Kogyo, Co., Ltd.*, 6 SCRA 725 [1962]).

Petitioner further contends that the trial court erred in rendering judgment for the entire amount of the purchase price of the two trucks attached by private respondent, without deducting the value thereof.

Article 1484 of the Civil Code provides:

"In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void."

In the case at bench, private respondent opted for the first remedy provided by the law and brought an action for collection of the unpaid balance, with prayer for an issuance of a writ of preliminary attachment. It did not elect to cancel the sale or resort to a foreclosure of the chattel mortgage. A judgment in an action for specific performance, as in this case, may be executed on all personal and real properties of the vendee which are not exempt from execution and which are sufficient to satisfy such judgment.

The mere fact that private respondent secured possession of the trucks through an attachment did not necessarily mean that it would resort to a foreclosure of the mortgage (*Universal Motors Corporation v. Dy Hian Tat*, 28

SCRA 161 [1969]). Since there was no showing of the valuation of the trucks when attached or that they were eventually sold at a public auction, therefore, no value can be deducted from the purchase price.

Petitioner further questions the validity and legality of the issuance of the writ of execution, the subsequent sale at a public auction and the confirmation of sale of her real property.

It will be noted that petitioner failed to file within the reglementary period an appeal from the Decision dated September 29, 1967 of the trial court. When petitioner filed her petition for relief from judgment, the decision of the trial court had long become final and executory.

Section 1, Rule 39 of the Revised Rules of Court provides:

"Execution upon final judgment or orders. -- Execution shall issue upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been perfected."

It is basic that once a judgment becomes final, the prevailing party is entitled, as a matter of right, to a writ of execution, and the issuance thereof is the Court's ministerial duty (*Adlawan v. Tomol*, 184 SCRA 31 [1990]).

The failure of petitioner to redeem the property after the expiration of the redemption period vests title over the property to private respondent. Unlike in a foreclosure sale, there was no need to confirm the sale on execution (Revised Rules of Court, Rule 39, Section 24).

Records show that the notice of attachment over petitioner's real property was registered as early as June 13, 1967; while the sale of the same property to the Cresinis was on September 1, 1967. An attachment is a proceeding in rem against a particular property and the attaching creditor acquires a specific lien upon the attached property, which may ripen into a judgment against the res when the order of sale is made (Civil Code of the Philippines, Art. 2242 [7]; Revised Rules of Court, Rules 39 and 57; *Santos v. Aquino, Jr.*, 205 SCRA 127 [1992]; *Vda. de Carvahal v. Coronado*, 18 SCRA 635 [1966]).

Lastly, petitioner contends that her motions dated July 8, 1976 and July 20, 1976 were not acted upon by the appellate court in violation of her right to due process of law. Such contention is unfounded. The aforementioned motions were in fact acted upon by the appellate court in its Resolution dated August 3, 1976 (Rollo, p. 113; Brief for Private Respondent, p. 42).

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., (Acting Chairman), Bellosillo, and Kapunan, JJ., concur.
Cruz, J., (Chairman), on leave.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.