

JOSE DARWIN, MILAGROS D. OUNO, RODOLFO DARWIN, JOSE DARWIN, JR., ROMEO DARWIN, NORMA DARWIN, AND DIANA DARWIN, PLAINTIFFS-APPELLANTS, VS. FRANCISCA A. TOKONAGA, MAXIMINA A. ORBI...

G.R. No. 54177. May 27, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal to the Court of Appeals interposed by the plaintiffs-appellants from the Order dated 25 January 1974 of Branch III of the then Court of First Instance of Davao, 16th Judicial District, dismissing the complaint in Civil Case No. 4223 for nullification of auction sale by the provincial sheriff and of the consequent Transfer Certificates of Title issued by virtue of an alleged illegal sale which plaintiffs-appellants filed against defendants-appellees on January 6, 1964.

The Court of Appeals docketed the case as C. A. -G.R. No. 55357-R. Considering that only a question of law is involved in the appeal, the Court of Appeals (Sixth Division) in its resolution of 9 May 1980[1] certified the case to this Court, which accepted the case in its resolution of 27 June 1980.

The material operative facts which gave rise to this appeal are as follows:

Plaintiffs-appellants are the successors-in-interest of Ramona A. Darwin who died in a traffic accident in Davao City on 15 November 1963. Plaintiff Jose Darwin is the surviving spouse, while the rest are her children.

During her lifetime, Ramona had two cases between her and private defendants, to wit:

a) C.A.-G.R. No. 23340 (Civil Case No. 1863 of the CFI of Davao) entitled Francisca Agari Tokonaga, et al. vs. Ramona Agari Darwin, et al., pending before the Court of Appeals, and

b) Sp. Case No. 874 entitled In The Matter of the Intestate Estate of Ichisuke Agare, Alingan Idianon, administratrix, Francisca Tokonaga, et al., oppositors, pending before Branch III of the CFI of Davao.[2]

Meanwhile, specifically on 7 January 1959, the parties therein entered into an Amicable Settlement, wherein they agreed, among others, to dismiss the aforementioned two cases.[3] Upon being furnished with a copy of the Amicable Settlement, the Court of Appeals dismissed C.A.-G.R. No. 23340. A copy of the Amicable Settlement was also furnished Branch III of the CFI of Davao, but, plaintiffs-appellants claim, it did not dismiss Sp. No. 874; instead, on 22 February 1960 it issued an Order, reiterated in another order of 22 July 1960, requiring Ramona to pay defendants Francisca Tokonaga, Maximina Orbin, Anastacia A. Sakay and Jovita Polvera the sum of P1,970.00 each, or a total of P7,880.00. Ramona appealed said Order to the Court of Appeals, which was docketed therein as C.A.-G.R. No. 32252-R. However, before the appeal was perfected private defendants filed a motion for the immediate execution of the Order, which the trial court granted. Thereafter, defendant Provincial Sheriff attached on execution real properties of Ramona consisting of several parcels of coconut land worth

P70,000.00 and sold the same in an auction sale held on 7 May 1962 to the private defendants, as they were the highest bidders whose bid was only P8,280.00.[4]

For the execution pending appeal, private defendants put up the required bond on 11 November 1961.[5]

Ramona failed to redeem the property sold at the auction sale within the one-year period which expired on 7 May 1963; so, on 24 September 1963 defendant Provincial Sheriff executed a final deed of sale in favor of the private defendants. Thereafter defendant Register of Deeds issued the corresponding Transfer Certificates of Title over the lots in the name of private defendants.

On 6 January 1964 plaintiffs-appellants, as successors-in-interest of Ramona, filed their complaint in the aforesaid Civil Case No. 4223 for the annulment of the auction sale and the Transfer Certificates of Title. They also asked for actual and moral damages and attorney's fees and prayed for the issuance of a writ of preliminary injunction.[6]

At the time the above complaint was filed C.A.-G.R. No. 32252-R was still pending before the Court of Appeals.[7]

On 20 January 1964, defendants-appellees filed a Motion to Dismiss alleging as ground therefor the pendency of another action between the parties and for the same cause. The other action referred to is C.A.-G.R. No. 32252-R.[8] Plaintiffs-appellants filed on 24 January 1964 an opposition thereto.[9]

On 25 January 1964 the trial court handed down an Order deferring the determination of the motion to dismiss until after the trial considering that "the grounds alleged therein do not appear indubitable." [10]

On 31 January 1964 defendants-appellees filed their Answer with Special and Affirmative Defenses and Counterclaim.[11] In their Special and Affirmative Defenses they assert that the "present action should have been raised as an incident in the final termination in Sp. Case No. 874"; the substantial allegations in the complaint are matters brought before the Court of Appeals in C.A.-G.R. No. 32252-R; moreover, Ramona's motion of 24 September 1963 in Sp. Case No. 874 for the deferment of the execution of the deed of absolute sale had been denied and Ramona did not appeal therefrom; and, finally, Ramona's petition for prohibition with injunction filed with the CFI of Davao, docketed as Civil Case NO. 4011 against the Sheriff and questioning the legality of the act of the Sheriff in the execution of the Order in Sp. Case No. 874 was dismissed, which dismissal bars Civil Case No. 4223.

On 3 February 1964 the plaintiffs-appellants filed their Answer to the Counterclaim.[12]

On 10 July 1964 defendants-appellees filed a motion for preliminary hearing on the Affirmative Defenses.[13]

On 11 September 1964 plaintiffs-appellants filed their opposition to the aforesaid motion.[14] On this same date the trial court issued an Order deferring resolution on the motion for the reason that the grounds in support thereof "do not appear indubitable." [15]

In the meanwhile, or on 10 April 1969, the Court of Appeals rendered its decision in C.A.-G.R. No. 32252-R, affirming the order of the trial court in Sp. Case No. 874.[16]

On 20 February 1971, defendants-appellees filed a motion to dismiss the complaint alleging therein that since it arose from the execution of a judgment in Special Case No. 874 in Branch III of the court, that branch retained jurisdiction over its judgment and should be ventilated in the same proceeding to the exclusion of all other co-ordinate courts for its execution and all incidents thereof, and to control, in furtherance of justice the conduct of its ministerial officers in connection therewith, citing, in support thereof, *De Leon vs. Hon. Salvador, et. al.*, G.R. No. L-30871,[17] which was just then recently promulgated, i.e., only on 28 December 1970.

On 6 April 1971, plaintiffs-appellants filed their opposition to this motion to dismiss.[18]

On 25 January 1974 the trial court handed down an Order granting the motion to dismiss and dismissing the case on the ground that, per authority of *De Leon vs. Salvador*, (36 SCRA 567), "[T]he plaintiffs' remedy should be ventilated in Special Case No. 874 as an incident thereof" and not in a separate action.[19]

On 9 February 1974 plaintiffs-appellants filed their Notice of Appeal, wherein they indicated that they are appealing from the Order to the Court of Appeals.[20]

The appeal was docketed as C.A.-G.R. No. 55357-R in the Court of Appeals.

On 9 January 1975 plaintiffs-appellants filed their Brief with the Court of Appeals.

On 28 January 1975 defendants-appellees filed a motion to dismiss the appeal on the ground that the Court of Appeals does not have appellate jurisdiction over the issue raised, it being a question of law.[21] In their opposition filed on 3 March 1975,[22] plaintiffs-appellants agreed that only a question of law is involved in the appeal, however, pursuant to Section 3 of Rule 50 of the Rules of Court, the appeal should not be dismissed but certified to the Supreme Court. They prayed for such certification.

In its resolution of 13 March 1975, the Court of Appeals (Ninth Division) resolved to hold in abeyance action on the motion to certify the appeal to this Court until the appellees shall have filed their Brief.[23]

On 28 May 1975 defendants-appellees filed their Brief.[24]

As stated in the introductory portion of this Decision, on 9 May 1980 the Court of Appeals handed down a resolution certifying to this Court the appeal on the ground that "the only question to be resolved is one of law"[25] and per resolution of 27 June 1980, We accepted this case.[26]

In their Brief plaintiffs-appellants assigned two errors, to wit:

First Assignment of Error

THE TRIAL COURT ERRED IN CONSIDERING THE DOCTRINE OF *DE LEON VS. SALVADOR* APPLICABLE TO THIS CASE.

Second Assignment of Error

THE TRIAL COURT ERRED IN DISMISSING THE CASE AND NOT CONTINUING WITH THE TRIAL AND THEREAFTER RENDERING JUDGMENT ON THE MERITS."

These errors revolve on only one issue which is, as appellants themselves formulated in their Brief:

"Whether a court of first instance, even if it be the same branch which issued the Writ of Execution leading to a Sheriff's Sale, is without jurisdiction to pass upon the validity and legality of such sale in a separate action instituted for the purpose by the party aggrieved thereby." [27]

We find no merit in the appeal.

The trial court correctly applied the doctrine We laid down in *De Leon vs. Hon. Judge Salvador, etc., et al.*, L-30871 and L-31603, 28 December 1970.[28] In said cases, guided by Our rulings in the earlier cases of *Cabigao vs. Del Rosario*, 44 Phil. 182; *Nuñez vs. Low*, 19 Phil. 244; *Orais vs. Escaño*, 14 Phil. 208; *Hubahib vs. Insular Drug Co., Inc.*, 64 Phil. 119; *National Power Corp. vs. De Veyra*, 3 SCRA 646; *Luciano vs. Provincial Governor* 28 SCRA 517, We held:

"The decisive issue at bar is a simple one of jurisdiction: which court, Branch XII presided by Judge Cruz or

Branch XIV presided by Judge Salvador has exclusive jurisdiction to set aside for alleged irregularities the execution sale held on February 14, 1967 by virtue of the writ for the execution of the final judgment in the first case (No. C-189) issued by Judge Cruz' court and to order a new auction sale - which was the relief sought by the judgment debtor in the second case (No. C-1217) in Judge Salvador's court?

It is patent that such exclusive jurisdiction was vested in Judge Cruz' court. Having acquired jurisdiction over Case No. C-189 and rendered judgment that had become final and executory, it retained jurisdiction over its judgment, to the exclusion of all other co-ordinate courts for its execution and all incidents thereof, and to control, in furtherance of justice, the conduct of its ministerial officers in connection therewith. Execution of its judgment having been carried out by the sheriff with the levy and sale of the judgment debtor's properties, Eusebio Bernabe as judgment debtor could not in the guise of a new and separate second action (Case No. 1217) ask another court of co-ordinate jurisdiction, Judge Salvador's court, to interfere by injunction with the execution proceedings, to set them aside and to order the holding of a new execution sale - instead of seeking such relief by proper motion and application from Judge Cruz' court which had exclusive jurisdiction over the execution proceedings and the properties sold at the execution sale."

In the Cabigao case We ruled that:

"... no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having power to grant the relief sought by injunction. . . . The various branches of the Court of First Instance of Manila are in a sense coordinate courts and to allow them to interfere with each others' judgments or decrees by injunctions would obviously lead to confusion and might seriously hinder the administration of justice."

In a stronger language, We stated in the Hubahib case that:

"... The various branches of a Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments by means of injunction."

Appellants, however, maintain that the De Leon vs. Salvador case does not apply in the instant case because the former had a different factual setting. In that case the second action was assigned to another Branch (Branch XIV) and not the Branch which issued the writ of execution; in the instant case, the second case (meaning Civil Case No. 4223) was assigned to the same Branch which issued the writ of execution.[29] Moreover, the irregularity in the execution sale, subject of Civil Case No. 4223, occurred after the approval of the record on appeal. The latter was approved on 23 March 1962 while the execution sale was consummated on 7 May 1962. Consequently, the invalidity of the sale could not be litigated in the appeal. These arguments hold no water. The first contention proceeds from a misunderstanding of the doctrine in the De Leon case. The doctrine bars the filing of a separate action for or in connection with a mere incident of a case pending before a branch of a court. The proper remedy for that incident must be obtained in the latter case "by proper motion and application." In Pajarito vs. Señeris, et al., 87 SCRA 275, 283, We had the occasion to rule as to when a case is still pending:

"A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general requisitory control over the processes of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution."[30]

Unquestionably, at the time Civil Case No. 4223 was filed, Sp. Case No. 874, under which was issued the appealed Order subject of the writ of execution enforced and implemented by defendant-appellee Provincial Sheriff, was still pending.

The contention that the irregularity in the execution sale was an incident which occurred after the approval of the record on appeal hence it could not be litigated in the appeal is a flimsy, if not an empty, belated excuse to justify the filing of an independent action. This matter was never suggested in any of the pleadings plaintiffs-appellants filed before the trial court. Their opposition to the first- motion to dismiss provided them the first opportunity to raise it; but they did not.

In their opposition to the second motion to dismiss (filed on 20 February 1971) specifically based on the *De Leon vs. Salvador* case (*supra.*), appellants lamely argued that said case "has no application in the instant case as in this case it does not involve any other branch of the same court." [31] Moreover, the earlier approval of the record on appeal did not operate to bar appellants from filing the appropriate motion in Sp. Case No. 874 to question the actuation of the Provincial Sheriff. The appeal interposed by plaintiffs-appellants' predecessor-in-interest, Ramona Darwin, from an Order issued therein (C.A. -G.R. No. 32252-R) did not divest the trial court of its jurisdiction over Sp. Case No. 874.

The cases of *Dulap vs. Court of Appeals* (42 SCRA 537, erroneously indicated in Appellants' Brief as 12 SCRA 534) and *Guianan vs. Hon. Imperial* (55 SCRA 755) cited by the appellants to save their cause are not applicable in the instant case. In the first case, the question presented was whether a branch (Branch III) of the Court of First Instance of Manila has the power or authority to annul a judgment rendered by another branch (Branch XVII) thereof. In the second case, the question raised was whether a branch (Branch II) of the Court of First Instance of Camarines Sur was without jurisdiction to try and decide a complaint for annulment of a final judgment rendered by another Branch (Branch III) thereof. Clearly, both cases involved final judgments, or prior cases which are no longer pending, unlike the case of which the subject matter of Civil Case No. 4223 is merely an incident.

The trial court then correctly dismissed Civil Case No. 4223 of the then Court of First Instance of Davao.

WHEREFORE, the instant appeal is DENIED and the Order of the trial court of January 25, 1974 in Civil Case No. 4223 is hereby AFFIRMED.

Costs against plaintiffs-appellants.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Rollo, 67-69.

[2] Record on Appeal, 2-5.

[3] Annex "A" of Complaint in Civil Case No. 4223, *Id.*, 12-20.

[4] Record on Appeal, 5-7.

[5] Brief for Appellees, 2.

[6] Record on Appeal, 1-12.

[7] Brief for Appellees, 3.

[8] Record on Appeal, 30-36.

[9] *Id.*, 37-40.

[10] *Id.*, 40.

[11] Id., 41-48.

[12] Record on Appeal, 48-49.

[13] id., 50-56.

[14] Id., 56-61.

[15] Id., 62.

[16] Brief for Appellees, 3.

[17] Record on Appeal, 70-75. This case was consolidated with L-31603, entitled Bernabe, et al. vs. Hon. Judge Cruz, et al., and a joint decision was rendered.

[18] Id., 76-80.

[19] Id., 107-115.

[20] Record on Appeal, 115.

[21] Rollo, 21-23.

[22] Id., 35.

[23] Id., 40.

[24] Id., 51, et seq.

[25] Rollo, 67-69.

[26] Id., 72.

[27] Brief for Appellants, 1-2.

[28] 36 SCRA 567.

[29] Brief for Appellants, 21.

[30] See also Vda. de Paman, et al. vs. Señeris, et al., 115 SCRA 709 and Seavan Carrier Inc., et al. vs. GTI Sportswear Corp., et al., 137 SCRA 580.

[31] Record on Appeal, 80.

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