

**SOCORRO L. VDA. DE STA. ROMANA, PETITIONER, VS. PHILIPPINE
COMMERCIAL AND INDUSTRIAL BANK AND HON. SANCHO Y.
INSERTO, AS JUDGE OF BRANCH I, COURT OF FIRST INSTANCE OF
ILOILO, RE...**

G.R. No. 56479. November 15, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

In this petition for review by certiorari, petitioner seeks to annul and set aside an Order of the respondent Judge of the Court of First Instance of Iloilo, Branch I, which dismissed Civil Case No. 13533, entitled "Socorro L. Vda. de Sta. Romana, Plaintiff, versus The Philippine Commercial and Industrial Bank, et al., Defendants." The petition was given due course in the Resolution dated July 29, 1981 and the parties have submitted their respective memoranda.

Civil Case No. 13533 is an offshoot of Civil Case No. 7678, entitled "PCIB, et al. versus Ramon Sta. Romana" which was filed way back on August 6, 1968. Civil Case No. 7678 was an action for rescission with damages filed by herein private respondent PCIB as Administrator of the estate of the deceased C. N. Hodges, and for the recovery of a parcel of land known as Lot No. 1258-G which Ramon Sta. Romana purchased from the late C. N. Hodges under a Contract to Sell. On motion of private respondent PCIB, a writ of preliminary attachment was issued in said case by virtue of which the Sheriff levied on August 23, 1968 on the rights and interests of Ramon Sta. Romana over Lot No. 1258-F and the improvements existing thereon, which lot Ramon Sta. Romana also purchased from C. N. Hodges under another Contract to Sell. A third party claim was filed by a certain Emilio Sta. Romana who claimed that Lot No. 1258-F and its improvements had been sold to him by Ramon Sta. Romana on August 16, 1963.

The trial court rendered its decision in Civil Case No. 7678 on June 16, 1975 rescinding the Contract to Sell and ordering Ramon Sta. Romana to return the possession of Lot No. 1258-G to the herein private respondent, as well as to pay rentals or damages for use and occupation thereof. The decision was appealed to the Court of Appeals which affirmed the same and further ordered Ramon Sta. Romana to pay the land taxes and the interest thereon.

On October 5, 1979, the trial Judge issued a writ of execution by virtue of which the Sheriff issued a notice of sale at public auction of the rights and interests of Ramon Sta. Romana as defendant in the case over Lot No. 1258-F and its improvements for the satisfaction of the damages awarded in the decision.

Ramon Sta. Romana died intestate on October 21, 1979. On November 26, 1979, herein petitioner Socorro L. Vda. de Sta. Romana, the surviving spouse of Ramon Sta. Romana, filed a motion to quash the writ of execution alleging principally that the proceedings in Civil Case No. 7678 did not affect her rights and interests over Lot No. 1258-G and Lot No. 1258-F inasmuch as she was not a party in said action. The trial court denied the said motion to quash the writ of execution. The public auction sale was held and the private respondent was issued the corresponding certificate of sale. A Motion for Reconsideration filed by the herein petitioner was likewise denied

in the Order dated May 15, 1980.

On September 1, 1980, herein petitioner instituted Civil Case No. 13533 praying therein that the writ of execution and the levy on execution made on Lot No. 1258-F and the improvements existing thereon be annulled insofar as her ONE-HALF (1/2) share in the said properties is concerned, and that she be declared the lawful and absolute owner of said ONE-HALF (1/2) share of the said properties. Private respondent filed a motion to dismiss the complaint in Civil Case No. 13533 on the ground of *res judicata*. After the petitioner filed her opposition to the motion to dismiss, the respondent court, in its Order dated November 30, 1980, granted the motion to dismiss on the grounds of *res judicata* and *laches*. This is the order that the petitioner seeks to annul in the present proceeding.

Petitioner assails the pronouncement by the respondent court that Civil Case No. 13533 is barred by *res judicata* on the principal ground that, not being a party in Civil Case No. 7678, she could not be bound by the judgment rendered in said case and, consequently, the writ of attachment and the consequent writ of execution which levied on Lot No. 1258-F, together with its existing improvements, are null and void insofar as her ONE-HALF (1/2) interest in said properties is concerned.

We find no merit in this contention of the petitioner.

The action filed by private respondent against the petitioner Ramon Sta. Romana was clearly a suit to enforce an obligation of the conjugal partnership. Civil Case No. 7678 arose out of the failure of Ramon Sta. Romana to pay the purchase price of a lot he bought from C. N. Hodges presumably in behalf of the conjugal partnership. Petitioner does not deny the conjugal nature of both Lots Nos. 1258-G and 1258-F. Indeed, she bases her contention on the claim that at least Lot No. 1258-F, together with its improvements existing thereon, constitutes property of the conjugal partnership. It may not be denied, therefore, that the liability incurred by Ramon Sta. Romana is chargeable against the conjugal partnership assets, it being undisputed that the said obligation was contracted by the husband for the benefit of the conjugal partnership. (Art. 161 [1], Civil Code.)

The non-inclusion of the herein petitioner as a party-defendant in Civil Case No. 7678 is immaterial. There is no rule or law requiring that in a suit against the husband to enforce an obligation, either pertaining to him alone or one chargeable against the conjugal partnership, the defendant husband must be joined by his wife. The contrary rule is prescribed in Section 4, Rule 3, of the Rules of Court and Article 113 of the Civil Code, but not the other way around, obviously in recognition of the legal status of the husband as the administrator of the conjugal partnership. (Art. 112, Civil Code.) There was, therefore, no need of including the petitioner as a party in Civil Case No. 7678 for the purpose of binding the conjugal partnership properties for the satisfaction of the judgment that could be rendered therein.

We likewise agree with the view that the issues raised by the petitioner in Civil Case No. 13533 may not be litigated anew, if not by the principle of *res judicata* but at least by conclusiveness of judgment. The record reveals that the contentions being raised by the petitioner in Civil Case No. 13533 were squarely placed before and ruled upon by the respondent court in connection with the execution proceedings in Civil Case No. 7678. After the writ of execution was issued on October 5, 1979 (Annex E, Petition), herein petitioner filed a motion to quash the said writ of execution (Annex F, Petition). In said motion, the petitioner raised the following issues:

"... ..

3. That as will be noted from the records, the herein movant as spouse of the defendant was not impleaded as a defendant in the above entitled case;
4. That on the other hand, it would appear from Exh. A, contract to sell dated October 6, 1956, that the

property in question, having been transacted and/or bought by the defendant during his marriage life with the herein movant is a sort of a conjugal property or asset of the defendant and the herein movant;

5. That accordingly, the herein movant would have been an indispensable party in the case at bar; specially when the aforesaid transaction was perfected at the time the Civil Code of the Philippines had already taken effect;

6. That the herein movant having been not impleaded in the case at bar; no jurisdiction over his person had been vested in the proceedings; therefore whatever acts of levy on the property of which she is or presumed to be a co-owner and which has never been liquidated yet is an ultra vires following a well-known principle that a person who is not a party in a given case cannot be reached by any process or order of the given court;

7. Thus, the rule is well-settled in this jurisdiction that "on the contention that at least one-half of the conjugal partnership belongs to the husband, and therefore could be validly levied upon to satisfy the money judgment against said husband, it must be said that as long as the conjugal partnership subsists, there can be no one-half share of the husband or the wife. Only when the conjugal partnership is dissolved and liquidated between husband and wife. In the meantime, the interest of each in the conjugal partnership property is inchoate and is a mere expectancy. Therefore, any levy on the conjugal partnership property to satisfy the money judgment against the husband is null and void. (Quintos Ansaldo vs. Sheriff of Manila, 64 Phil. 116). Conformably to the foregoing doctrine, it is therefore respectfully submitted that the writ of execution, notice of levy if one has been made and the notice of sale in public auction are null and void." (Rollo, pp. 38-39.)

The respondent court ruled on this motion by issuing the Order dated March 5, 1980 denying the same for lack of merit. (Annex B, Petition, Rollo, p. 41.) The petitioner did not seek a further review of the said order of denial either in the respondent court or in any other tribunal; instead, she resorted to the remedy of filing on June 10, 1980 Civil Case No. 13533.

Technically speaking, it may be said that the judgment rendered in the main action Civil Case No. 7678 does not constitute *res judicata* with respect to Civil Case No. 13533. The causes of action in the two (2) cases are not the same; neither is there identity of the subject-matter involved. Civil Case No. 7678 was essentially an action to rescind the Contract to Sell Lot No. 1258-G and to recover possession thereof plus damages. Civil Case No. 13533, on the other hand, is to annul the levy and execution sale of Lot No. 1258-F and the improvements existing thereon with respect to the ONE-HALF (1/2) interest claimed by the petitioner.

However, it may not be denied that the issues raised by the petitioner in Civil Case No. 13533 had already been litigated and finally decided in the subsequent proceedings taken to enforce the judgment in Civil Case No. 7678. The parties involved in said proceedings are the same, and so are the subject-matter involved and the cause of action relied upon by the petitioner in Civil Case No. 13533. The only possible doubt as to whether *res judicata* may be utilized as a bar to the filing of Civil Case No. 13533 is that the pronouncement constituting the bar to a new action was not in the main judgment in Civil Case No. 7678 but only in a subsequent incident therein.

It is Our considered opinion that such circumstances does not militate against the existence of *res judicata* if all the requisites for its application are otherwise present. The order denying the petitioner's motion to quash the writ of execution issued in Civil Case No. 7678 is not merely an interlocutory order. It attained finality due to the failure of the petitioner to appeal or seek a review of the same. It is not questioned that the trial court had jurisdiction to take cognizance of the motion to quash the writ of execution and over the parties litigating the same. The order of denial is on the merits of the motion. There was also identity of parties involved in the motion to quash the writ of execution, identity of subject-matter and identity of causes of action. The requisites of *res judicata* being all present in the incident concerning the issuance of the writ of execution, We feel no hesitancy in declaring that the filing of Civil Case No. 13533 is barred by the principle of *res judicata*. The underlying

philosophy of this doctrine is:

"... that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate....." (2 Moran Rules of Court, p. 362, citing *Sta. Ana v. Narvades*, L-24390, Nov. 28, 1969, 30 SCRA 454, 463.)

To sanction the filing of Civil Case No. 13533 is to nullify altogether the proceedings had in connection with the petitioner's motion to quash the writ of execution and the ruling made by the respondent court thereon which had already attained the status of finality.

In the least, the institution of Civil Case No. 13533 may be deemed barred by the principle of conclusiveness of judgment which is expressed in the Rules in the following terms:

"Effect of judgments. — The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

... ..

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." (SEC. 49, Rule 39, New Rules of Court.)

Even assuming, therefore, that Civil Case No. 13533 is on a different cause of action than that involved in Civil Case No. 7678, the ruling in the latter on the motion for the quashing of the levy on execution made on Lot 1258-F which involved the same subject-matter and parties litigating Civil Case No. 13533 is rendered conclusive under the doctrine of conclusiveness of judgment.

Petitioner has further argued that her having filed the motion to quash the writ of execution in Civil Case No. 7678 to assert her claim over ONE-HALF (1/2) interest in Lot No. 1258-F and its improvements does not preclude her from filing a separate civil action to pursue the same claim. She cites the case of *Manila Fidelity and Surety Company vs. Teodoro, et al.*, 20 SCRA 463, which holds that "'a third party claim is not an exclusive remedy; the same rule (Section 17, Rule 29), provides that nothing therein shall prevent such third person from vindicating his claim to the property by any proper action.'"

We find no merit in this argument. The petitioner did not merely file a third party claim on the property levied upon in connection with the writ of execution issued in Civil Case No. 7678. Instead of a third party claim which, under the rules, must be filed with the "officer making the levy and a copy thereof upon the judgment creditor" (Sec. 17, Rule 29, Rules of Court), the petitioner filed a "Motion to Quash Writ of Execution and All Subsequent Proceedings" (Record on Appeal, p. 17) to which private respondent filed its Opposition (Ibid., pp. 20-24), and to which in turn the petitioner filed her Reply to Opposition (Ibid., pp. 25-31). When the respondent court issued its Order dated May 5, 1980 denying the aforesaid Motion to Quash Execution for lack of merit (Ibid., p. 32), the petitioner filed a Motion for Reconsideration (Ibid., p. 33-34) which was opposed by the private respondent in writing (Ibid., pp. 35-35-B) and which in turn a Reply to Opposition was filed by the petitioner (Ibid., pp. 36-38). In said motions, oppositions and replies repeatedly filed by the parties, the same issues sought to be reopened by the petitioner in Civil Case No. 13533 had been fully and exhaustively ventilated. It was on the basis of such exposure of those issues that the respondent court issued its Order denying the motion to quash the writ of execution, and also the Order denying a motion for a reconsideration of the same.

WHEREFORE, the Petition is DENIED, and the Orders of the respondent Judge issued in Civil Case No. 13533

dated March 5, 1980 and May 15, 1980 are hereby AFFIRMED. With costs against the petitioner.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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