

ELEAZAR V. ADLAWAN, PETITIONER, VS. HON. JUDGE VALERIANO P. TOMOL, AS PRESIDING JUDGE OF BRANCH XI OF RTC-CEBU (FORMERLY BRANCH XI, CFI-CEBU), BRANCH XXVII OF RTC-CEBU, WITH STA...

G.R. NO. 63225. April 03, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a special civil action for certiorari and mandamus seeking to annul: [a] the Order dated December 20, 1982 of respondent Judge Valeriano P. Tomol, Branch XI of CFI-Cebu, now Branch XI, RTC-Cebu, in Civil Case No. R-21761, entitled "Aboitiz and Company, Inc. v. Adlawan, et al" denying the motion of the defendant to require the Provincial Sheriff of Cebu to deliver to him the properties seized by the Sheriff of Davao City and [b] the Order dated September 4, 1982 of Judge Ceferino E. Dulay, Branch XVI of the Court of First Instance of Cebu, now Branch XXVII, RTC-Cebu, Lapu Lapu City, in Civil Case No. 619-L between the same parties, denying for lack of merit petitioner's Omnibus Motion to reconsider, dissolve and set aside the Writ of Seizure and Replevin.

The antecedent facts are as follows:

Petitioner Eleazar A. Adlawan, a private contractor, was awarded by the National Irrigation Administration (NIA) and the Bureau of Public Highways (BPH) contracts for the construction of various infrastructure projects of the government. To perform his obligations thereunder, petitioner sought financial assistance and support from private respondent Aboitiz and Company, Inc. For failure of petitioner to pay the installments and amortizations, private respondent filed on May 13, 1982 before the Court of First Instance of Cebu a complaint[1] for the collection of a sum of money and damages including an ex-parte application for the issuance of a writ of preliminary attachment against the property of petitioner as defendant therein. The Executive Judge without notice and hearing issued an order[2] on May 14, 1982 directing the issuance of a writ of preliminary attachment against all the properties of petitioner, real and personal, upon the filing of an attachment bond for Four Million Pesos. The case, docketed as Civil Case No. R-21761 was raffled and later assigned to Branch XI of the Court of First Instance of Cebu, presided by respondent Judge Valeriano P. Tomol. On May 26, 1982, writs of preliminary attachment were issued addressed to the Sheriffs of Cebu, Davao City, Quezon City, Davao del Sur and Davao del Norte, directing them to attach the real and personal properties of petitioner within their respective jurisdictions. On the strength of the writ of preliminary attachment, the bulk of petitioner's property in Davao City was attached.

Subsequently, private respondent filed an Urgent Ex-parte Motion[3] asking the court that it be allowed to take possession and custody of the attached properties to protect its interest and to avoid any damage or deterioration considering that the sheriff has no proper place to store or deposit said properties. This was granted by respondent Judge on May 28, 1982 for being meritorious.

Meanwhile, petitioner before submitting an answer to the complaint, filed a Motion for a Bill of Particulars[4] and

to Set Aside the Ex-Parte Writ of Preliminary Attachment[5] which was opposed by private respondent. Finding that the discharge of the writ of attachment is unavoidable on the ground that it was issued ex-parte, without notice and hearing, based principally on the alleged removal or disposition by the defendants of their properties with intent to defraud the plaintiff, which allegation was limited to a bare assertion and not persuasively substantial, respondent Judge issued an Order[6] dated July 6, 1982, the dispositive portion of which reads:

"Accordingly, the Order of May 14, 1982 granting the writ of preliminary attachment is lifted and vacated. The writs issued on 26 May 1982, are dissolved and recalled and the properties levied and seized by the Sheriffs of Cebu and Davao City are discharged and released.

"SO ORDERED." (Underscoring supplied)

In view of the foregoing, private respondent Aboitiz and Company, Inc. filed an Urgent Ex-Parte Motion[7] dated July 7, 1982 praying for a stay of the July 6, 1982 Order dissolving the writ of preliminary attachment, thus maintaining the status quo. Private respondent further prayed for the court to direct the sheriff of Davao City to desist and/or stop the enforcement or implementation of the order lifting the attachment and to grant them fifteen (15) days to elevate the matter to the Appellate Court. Consequently, respondent Judge Tomol issued on the same day an Order[8] granting the motion prayed for by private respondent Aboitiz and Company, Inc. Thus, the July 6, 1982 Order was stayed.

In the meantime, three (3) Deputy Sheriff of Cebu implemented the Order lifting the Writ of Attachment and were able to pull out some personal properties of petitioner Adlawan. They were not able to take out all the attached properties in view of the subsequent Order of respondent judge to stay its implementation.

As petitioner's Motion for a Bill of Particulars was not immediately acted upon, he was not able to file an answer or interpose any counterclaim. For this reason, petitioner filed an Application for Award of Damages dated July 9, 1982 asking for a reasonable rental on the attached heavy construction equipment, machineries and other properties at the rate of P30,000.00 per day from the date of seizure until said properties are actually returned to his possession and control.[9]

Before the court a quo could act on the motions of petitioner Adlawan, and before he could file an answer, his motion for a bill of particulars not having been acted upon, private respondent Aboitiz and Company, Inc., filed on July 13, 1982 a Notice of Dismissal or Withdrawal of Complaint[10] as a matter of right in accordance with Section 1, Rule 17 of the Rules of Court. Respondent Judge Tomol issued an Order[11] dated July 15, 1982, the dispositive portion of which reads:

"Accordingly, the termination of this case upon the notice of dismissal voluntarily filed by the plaintiff is hereby confirmed. For emphasis, all orders of this Court issued prior to the filing of said notice of dismissal are each and all rendered functus officio. By the same token, all pending incidents, particularly the defendant's motion for a bill of particulars and their petition for damages against the Plaintiff's attachment bond, are now beyond the competence of this Court to consider for being moot and academic.

"SO ORDERED."

Petitioner Adlawan filed a Motion[12] dated July 28, 1982 praying for the issuance of an order to the Provincial Sheriff of Cebu to implement and enforce the Order of respondent Judge dated July 6, 1982 dissolving the writ of preliminary attachment and to secure the delivery of the attached properties to the petitioner. Respondent Judge issued an Order[13] dated December 20, 1982 denying the Motion in view of the institution by private respondent Aboitiz and Company, Inc. of a civil case (No. 619-L) for delivery of Personal Properties with Replevin and Damages before the Court of First Instance of Cebu, Branch XVI in Lapu-Lapu City on July 13, 1982 and the filing of petitioner Adlawan of a case for damages (Civil Case No. 22265) before the Court of First Instance of

Cebu, Branch X, in connection with the seizure of his properties under the writ of preliminary attachment.

With regard to the replevin case filed by private respondent Aboitiz and Company, Inc., the Court of First Instance of Cebu, Branch XVI, Lapu-Lapu City, issued an Order^[14] for the seizure and delivery of the properties described therein to the private respondent. The seized properties were thus delivered to private respondent by the Clerk of Court and Ex-officio Provincial Sheriff on July 24, 1982. Petitioner filed an Omnibus Motion^[15] dated July 17, 1982 to reconsider, dissolve and set aside the Writ of Seizure and Replevin and to direct that the properties seized be returned to petitioner as well as to dismiss the complaint. In support of this motion, petitioner alleged, among others, that private respondent's office is situated in Cebu City while petitioner is a resident of mainland Cebu, particularly Minglanilla, therefore the Court of First Instance of Cebu stationed in Lapu-Lapu should not accept the case. Furthermore, he alleged that the same personal properties seized are in custodia legis by virtue of a writ of preliminary attachment issued by the Court of First Instance of Cebu, Branch XI, presided by respondent Judge Tomol. The Court of First Instance of Cebu, Branch XVI in Lapu-Lapu City, presided by Judge Ceferino E. Dulay denied the Omnibus Motion for lack of merit on September 4, 1982. Petitioner Adlawan filed a Motion for Reconsideration but the same was denied.

Hence, the present petition for certiorari and mandamus impleading respondent Judge Valeriano P. Tomol as Presiding Judge of Branch XI of the Court of First Instance of Cebu (now Branch XI, RTC-Cebu) and Branch XVI, CFI-Cebu presided by Judge Ceferino E. Dulay in Lapu-Lapu City (now Branch XXVII of RTC Cebu in Lapu-Lapu) and private respondent Aboitiz and Company, Inc.

The issues raised by petitioner Adlawan are the following, to wit:

"1)

After the attachment of petitioner's properties was dissolved and discharged because it was found by respondent Judge to be wrongful and illegal, does it not constitute grave and manifest abuse of discretion on the part of the same respondent judge TO REFUSE to implement his own order for the return of the attached properties to petitioner simply because private respondent suddenly dismissed its complaint?

"2)

On the other hand, the court, after having deprived petitioner possession and enjoyment of his properties, by reason of an attachment which, subsequently, was dissolved and discharged, was it not the clear, specific and inescapable duty of that same court, to order that said properties be returned and restored to the possession and enjoyment of petitioner?

"3)

Are not the attached properties of petitioner under the custodia legis of the attaching court - Branch XI, CFI-Cebu (now Branch XI, RTC-Cebu) and, therefore, subject to its jurisdiction and control? If so, does it not constitute grave and manifest abuse of discretion on the part of the attaching court to literally wash his (sic) hands off any duty or responsibility by considering himself (sic) as having been divested of authority to deal with such properties?

"4)

Did not the Lapu-Lapu Branch of CFI-Cebu act, without or in excess of his (sic) jurisdiction or, at least, with grave abuse of discretion, in taking cognizance of the replevin case which involves properties already in custodia legis of Branch XI of CFI-Cebu?

"5)

On the other hand, was it not the clear, specific and inescapable duty of the Lapu-Lapu Branch of CFI-Cebu, to dismiss the replevin case and dissolve the writ of replevin, not only because of the principle of custodia legis but also because it was in clear violation of Adm. Order No. 6 of this Honorable Supreme Court, which amends Adm. Orders No. 147 and 328 of the Department (now Ministry) of Justice?"[16]

From the recital of facts may be gleaned a series of peculiar events and circumstances requiring examination and looking into in order that justice and equity may be subserved.

Petitioner's properties were attached on the strength of the writs of preliminary attachment issued without notice and hearing by the executive judge. These attached properties were given to the custody of private respondent, Aboitiz and Company, Inc. Petitioner then filed a Motion to Dissolve the Writ of Attachment which was granted by respondent Judge Tomol. Thus, petitioner was able to recover some of his properties. But on the following day, this order was stayed by the same respondent judge leaving the rest of petitioner's properties with private respondent. Later, private respondent withdrew its complaint which was confirmed by respondent Judge Tomol. Petitioner Adlawan filed a motion to have the rest of his properties returned but respondent judge refused to act on said motion due to cases filed by both parties in the different branches of the Court of First Instance of Cebu relating to the same case.

After a careful examination of the records of the case We rule in favor of petitioner Adlawan.

There is no question that the order dated July 6, 1982 of respondent Judge Valeriano P. Tomol, Jr. lifting and vacating the order granting the writ of preliminary attachment is a valid order, issued while he had jurisdiction over the case. The execution of aforesaid order of July 6, 1982 was stayed for a period of fifteen (15) days on motion of the plaintiff to enable the latter to question the propriety or impropriety of the same in the appellate court. Instead, plaintiff filed a civil case for delivery of Personal Properties with Replevin and Damages with another branch of the CFI of Cebu. Accordingly, having failed to appeal or question the aforementioned order in the appellate court as originally manifested, the same became 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.[17]

But as earlier stated, the reasons advanced by respondent Judge Tomol for denying the enforcement of his order dated July 6, 1982 which lifted the writ of attachment and the restoration of the seized properties to the defendant petitioner herein are: [a] the filing by private respondent of Civil Case No. 619-L with Branch XVI of CFI-Lapu-Lapu City for delivery of Personal Properties with Replevin and Damages which as a consequence, the same properties involved in this case were seized under a writ of replevin upon order of aforesaid court and [b] the filing by petitioner of Civil Case No. 22265 before Branch X of the Court of First Instance of Cebu, for damages.

Hence, the issues in this case center on the nature and purpose of the writ of attachment.

"A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the Sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant."[18]

The provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant.[19] The purpose and function of an attachment or garnishment is two-fold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus prevents the loss or dissipation of the property by fraud or otherwise. Second, it subjects to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor.[20] This remedy is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[21]

Attachment is an ancillary remedy. It is not sought for its own sake but rather to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action.[22]

The remedy of attachment is adjunct to the main suit, therefore, it can have no independent existence apart from a suit on a claim of the plaintiff against the defendant. In other words, an attachment or garnishment is generally ancillary to, and dependent on, a principal proceeding, either at law or in equity, which has for its purpose a determination of the justice of a creditor's demand.[23]

Thus, this Court ruled that upon levy by attachment of the property in question by order of the Court, said property fell into custodia legis of that court for purposes of that civil case only. Any relief against such attachment and the execution and issuance of a writ of possession that ensued subsequently could be disposed of only in that case.[24]

More specifically, it was held that courts have no jurisdiction to order the delivery of personal property (replevin) to the plaintiff if the property is under attachment.[25] Only courts having supervisory control or superior jurisdiction in the premises, have the right to interfere with and change possession of property in custodia legis.[26]

More recently, this Court ruled that the garnishment of property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the jurisdiction of the court issuing the writ. It is brought into custodia legis, under the sole control of such court.[27]

During the life of the attachment, the attached property continues in the custody of the law, the attaching officer being entitled to its possession and liability for its safe keeping.[28]

Based on the above-cited principles, it is obvious that the writ of preliminary attachment issued is already dissolved and rendered non-existent in view of the withdrawal of the complaint by Aboitiz and Company, Inc. More importantly, even if the writ of attachment can be considered independently of the main case, the same having been improperly issued as found by respondent Judge Tomol himself, is null and void and cannot be a justification for holding petitioners' properties in custodia legis any longer.

To reiterate, an attachment is but an incident to a suit; and unless the suit can be maintained, the attachment must fall.

When Aboitiz and Company, Inc. withdraw its complaint, the attachment ceased to have a leg to stand on. The attached properties of petitioner Adlawan which are in the custody of private respondent Aboitiz should be returned to petitioner. This is only proper and equitable and in consonance with the rules and principles of law. The parties, by the withdrawal of the complaint should be placed in the same standing as they were before the filing of the same.

Petitioner also questions the jurisdiction of the CFI of Cebu stationed in Lapu-Lapu City to hear the replevin case filed by private respondent in view of the fact that petitioner is a resident of Minglanilla, Cebu while private respondent's principal place of business is in Cebu City. Obviously, the question posed by petitioner is venue.

A reading of the Omnibus Motion filed by petitioner, then defendant therein, would reveal that he not only questioned the jurisdiction of the court but likewise alleged non-jurisdictional grounds for dismissing the replevin case, such as the amount of the bond put up by Aboitiz & Co. as grossly insufficient and that the same properties are involved both in the replevin case and in the original collection case with preliminary attachment. Thus in so doing, the court acquired jurisdiction over him. In the case of *Wang Laboratories, Inc. vs. Mendoza*[29] this Court held:

"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."

Furthermore, in the case of *City of Cebu v. Consolacion*,[30] We held that:

"x x x any of the branches of the Court of First Instance of the Province of Cebu, whether stationed in the city of the same name or in any of the municipalities of the province, would be proper venue for its trial and determination, it being admitted that the parties are residents of the Province of Cebu x x x."

Finally, the employment by counsel for private respondent of dubious procedural maneuvers as what transpired in the case at bar obviously to continue the wrongful and illegal possession and custody of petitioner's properties even after the dissolution of the attachment is to say the least, hardly commendable if not a form of "forum shopping", to seek the court where he may possibly obtain favorable judgment.[31]

It may therefore be stated that the right to come before the Courts to redress a grievance or right a wrong should be exercised with prudence and good faith. In the case of *Indianapolis v. Chase National Bank, Trustee* 314 U.S. 69, it is opined that "Litigation is the pursuit of practical ends, not a game of chess."

WHEREFORE, in view of the foregoing, this Court rules that the attached properties left in the custody of private respondent Aboitiz and Company, Inc. be returned to petitioner Eleazar V. Adlawan without prejudice to the outcome of the cases filed by both parties.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 34-39.

[2] Rollo, p. 40.

[3] Rollo, pp. 43-44.

[4] Rollo, pp. 93-94.

[5] Rollo, pp. 96-100.

[6] Rollo, pp. 113-124.

[7] Rollo, pp. 125-127.

[8] Rollo, p. 128.

- [9] Rollo, pp. 129-130.
- [10] Rollo, p. 132.
- [11] Rollo, pp. 133-134.
- [12] Rollo, pp. 135-140.
- [13] Rollo, p. 141.
- [14] Rollo, pp. 175-176.
- [15] Rollo, pp. 426-429.
- [16] Rollo, pp. 551-552.
- [17] Balintawak Const. Supply Corp. v. Valenzuela, 124 SCRA 331 (1983); Pamantasan ng Lungsod ng Maynila v. IAC, 143 SCRA 315 (1986).
- [18] Virata v. Aquino, 53 SCRA 30-31 (1973).
- [19] Calo v. Roldan, 76 Phil. 445.
- [20] See: Mabanag v. Gallemore, 81 Phil. 254; Quasha v. Juan, 118 SCRA 505.
- [21] Salgado v. Court of Appeals, 128 SCRA 395.
- [22] Sievert v. Court of Appeals, G.R. No. 84034, 22 December 1988.
- [23] Malolos v. Asia Pacific Finance Corp., 147 SCRA 61.
- [24] Rojuso v. Estipona, 74 SCRA 510 (1976).
- [25] Ona v. Cuevas, 83 SCRA 388 (1978).
- [26] National Power Corp. v. De Veyra, 3 SCRA 646-647 (1961).
- [27] Rizal Commercial Banking Corp. v. de Castro et al., G.R. No. 34548, 29 November 1988.
- [28] Manila Herald Publishing Co., Inc. v. Ramos, 88 Phil. 94; Consolidated Bank v. IAC, 150 SCRA 591.
- [29] 156 SCRA 45.**
- [30] 38 SCRA 152 (1971).**
- [31] Artiaga, Jr. v. Villanueva, Adm. Case No. 1892, 29 July 88, En Banc Per Curiam.

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