

ZACARIAS COMETA AND HERCO REALTY AND AGRI-DEVELOPMENT CORPORATION, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT AND JOSE FRANCO, RESPONDENTS.*G.R. No. 69294. June 30, 1987*

Ponente: GUTIERREZ, JR., J.

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This is a petition for review of the decision of the then Intermediate Appellate Court, now Court of Appeals, granting the issuance of a writ of possession in favor of respondent Jose Franco thus placing him in possession of certain real properties sold to him as judgment creditor and highest bidder at an execution sale. The appellate court reversed an earlier decision of the Regional Trial Court.

On July 2, 1976, in a suit for damages filed by respondent Jose Franco, entitled "Jose Franco v. Zacarias Cometa" and docketed as Civil Case No. 17585, the then Court of First Instance of Rizal, Branch XV, awarded to the respondent the sum of P57,396.85. The judgment became final and a writ of execution was issued on March 9, 1978. Thereafter, the sheriff levied on execution three commercial lots of Cometa (Rollo, p. 122) and sold them at public auction on October 17, 1978 to the respondent for the amount of the judgment. The sheriff's return was made on March 12, 1981.

On November 17, 1981, petitioner Herco Realty and Agri-Development Corporation filed with the same Branch XV of the Court of First Instance of Rizal an action to annul the levy on execution and sale at public auction of the real properties. It alleged that the ownership of the lots had been transferred to it by Cometa before the execution sale. It assailed the validity of the levy and sale on the ground that the sheriff, in disregard of the proper procedural practice, immediately proceeded against Cometa's real properties without first exhausting his personal properties, that the properties were sold en masse and not by each parcel, and that the said properties which are commercial lots situated in Guadalupe, Makati and are conservatively valued at P500,000.00 were sold only for P57,396.85, the amount of the judgment.

On March 22, 1982, the trial court in the first case issued an order directing the Registrar of Deeds of Rizal to cancel Cometa's certificates of title to the lots and to issue new ones in favor of the respondent. Cometa went to this Court on petition for certiorari questioning the said order. On February 28, 1983, however, the petition was dismissed for lack of merit.

On May 13, 1983, the respondent filed with the Regional Trial Court, Branch 140, National Capital Region, a motion for the issuance of a writ of possession. The petitioner opposed the motion on the ground that there is pending before another Regional Trial Court an action for the annulment of the levy and sale of the properties in question. On August 12, 1983, the trial court issued an order granting the motion but the same was reconsidered and set aside on November 18, 1983 on the ground that the issuance of a writ of possession was pre-mature. The respondent instituted a special civil action for certiorari before this Court on June 27, 1984 but the case was referred to the then Intermediate Appellate Court. On October 4, 1984, the appellate court ruled for the respondent

and granted the issuance of the writ in his favor.

Hence, this petition for certiorari filed by the petitioners Zacarias Cometa and Herco Realty and Agri-Development Corporation.

The only issue in this case is whether or not Regional Trial Court, Branch 140, can order petitioner Cometa to deliver the possession of the properties sold at public auction to the respondent in spite of the pendency of Civil Case No. 43846 in another Regional Trial Court for the annulment of the levy and sale of said properties.

The petitioners maintain the negative. They allege that the issuance of a writ of possession is premature because the validity of the levy and sale on execution is still in issue. They take exception to the finding of the respondent appellate court that their failure to redeem the properties within the redemption period authorized the trial court under Section 35, Rule 39 of the Revised Rules of Court, to place the purchaser or judgment creditor in possession of the said properties. They further assail the respondent court's finding that the "petitioner has only himself to blame that more property was sold by the sheriff, or that the value of the property sold to satisfy his debt far exceeded the judgment against him, for he could, and should, have been present at the auction to direct the manner and order of the sale of his various property (sic)" (Rollo, p. 27).

On the other hand, the respondent asserts that this Court disposed of Civil Case No. 17585 when it issued resolutions dated February 9, 1983 and May 4, 1983 denying, for lack of merit, the petitioner's prayer to reverse the trial court's order for entry of judgment and issuance of new certificates of title in favor of the respondent. He states that what the lower court has to do is ministerial and mandatory. He contends that in this case, even Civil Case No. 43846 which seeks the annulment of the levy and sale of the properties may be dismissed on the ground of res judicata.

We sustain the petitioner's view.

The resolution of this case calls for a consideration of the nature of a writ of possession as it relates to an execution sale.

In the case of *Mabale v. Apalisok* (88 SCRA 234), this Court held:

"xxx That writ is available (1) in a land registration proceeding, which is a proceeding in rem (Sec. 17, Act No. 496; *Estipona v. Navarro*, L-41825, January 30, 1976, 69 SCRA 285, 291); (2) in an extrajudicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135); (3) in a judicial foreclosure of a mortgage, a quasi in rem proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened (*Rivera v. Court of First Instance of Nueva Ecija and Rupac*, 61 Phil. 201; *Ramos v. Manalac and Lopez*, 89 Phil. 270, 275) and (4) in execution sales (last par. of sec. 35, Rule 39, Rules of Court)."

The possession of the property sold at an execution sale shall be conferred on the purchaser under the conditions set by Section 35 of Rule 39, Rules of Court, to wit:

"Sec. 35. Deed and possession to be given at expiration of redemption period. By whom executed or given. - If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time of redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession, but in all cases the judgment debtor shall have the entire period of twelve (12) months from the date of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

"Upon the execution and delivery of said deed the purchaser, or redemptioner, or his assignee, shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment debtor."

From the foregoing discussion, it can be seen that the writ of possession may issue in favor of a purchaser in an execution sale when the deed of conveyance has been executed and delivered to him after the period of redemption has expired and no redemption has been made by the judgment debtor.

A writ of possession is complementary to a writ of execution (see *Vda. de Bogacki v. Inserto*, 111 SCRA 356, 363), and in an execution sale, it is a consequence of a writ of execution, a public auction sale, and the fulfillment of several other conditions for conveyance set by law. The issuance of a writ of possession is dependent on the valid execution of the procedural stages preceding it. Any flaw afflicting any of its stages, therefore, could affect the validity of its issuance.

In the case at bar, the validity of the levy and sale of the properties is directly put in issue in another case by the petitioners. This Court finds it an issue which requires pre-emptive resolution. For if the respondent acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession.

The respondent appellate court's emphasis on the failure of the petitioner to redeem the properties within the period required by law is misplaced because redemption, in this case, is inconsistent with the petitioner's claim of invalidity of levy and sale. Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground. (See *Castillo v. Nagtalon*, 4 SCRA 48, 53.)

Moreover, equitable considerations constrain us to reverse the decision of the respondent court. The fact is undisputed that the properties in question were sold at an unusually lower price than their true value. Properties worth at least P500,000.00 were sold for only P57,396.85. We do not comment on the consequences of the inadequacy because that is the very issue which confronts the court below in the pending case. It appearing, however, that the issuance of the writ of possession would and might work injustice because the petitioner might not be entitled thereto, we rule that it be withheld.

WHEREFORE, the decision appealed from is hereby REVERSED. The order of the trial court dated November 18, 1983 is reinstated.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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