

**SPOUSES RICKY WONG AND ANITA CHAN, LEONARDO JOSON,  
JUANITO SANTOS, EMERITO SICAT AND CONRADO LAGMAN,  
PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT AND  
ROMARICO HENSON, RESP...**

*G.R. No. 70082. August 19, 1991*

Ponente: FERNAN, C. J.

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**FERNAN, C. J.:**

Submitted for adjudication in the instant petition for review on certiorari is the issue of whether or not the execution of a decision in an action for collection of a sum of money may be nullified on the ground that the real properties levied upon and sold at public auction are the alleged exclusive properties of a husband who did not participate in his wife's business transaction from which said action stemmed.

Private respondent Romarico Henson married Katrina Pineda on January 6, 1964.[1] They have three children but even during the early years of their marriage, Romarico and Katrina had been most of the time living separately. The former stayed in Angeles City while the latter lived in Manila. During the marriage or on January 6, 1971, Romarico bought a 1,787-square-meter parcel of land in Angeles City for P11,492 from his father, Dr. Celestino L. Henson[2] with money borrowed from an officemate. His father needed the amount for investments in Angeles City and Palawan.[3]

Meanwhile, in Hongkong sometime in June 1972, Katrina entered into an agreement with Anita Chan whereby the latter consigned to Katrina pieces of jewelry for sale valued at 199,895 Hongkong dollars or P321,830.95.[4] When Katrina failed to return the pieces of jewelry within the 20-day period agreed upon, Anita Chan demanded payment of their value.

On September 18, 1972, Katrina issued in favor of Anita Chan a check for P55,000 which, however, was dishonored for lack of funds. Hence, Katrina was charged with estafa before the then Court of First Instance of Pampanga and Angeles City, Branch IV.[5] After trial, the lower court rendered a decision dismissing the case on the ground that Katrina's liability was not criminal but civil in nature as no estafa was committed by the issuance of the check in payment of a pre-existing obligation.[6]

In view of said decision, Anita Chan and her husband Ricky Wong filed against Katrina and her husband Romarico Henson, an action for collection of a sum of money also in the same branch of the aforesaid court.[7] The records of the case show that Atty. Gregorio Albino, Jr. filed an answer with counterclaim but only in behalf of Katrina. When the case was called for pre-trial, Atty. Albino once again appeared as counsel for Katrina only. While it is true that during subsequent hearings, Atty. Expedito Yumul, who collaborated with Atty. Albino, appeared for the defendants, it is not shown on record that said counsel also represented Romarico. In fact, a power of attorney which Atty. Albino produced during the trial, showed that the same was executed solely by Katrina.[8]

After trial, the court promulgated a decision[9] in favor of the Wongs. It ordered Katrina and Romarico Henson to pay the Wongs HK\$199,895.00 or P321,830.95 with legal interest from May 27, 1975, the date of filing of the complaint, until fully paid; P20,000 as expenses for litigation; P15,000 as attorney's fees, and the costs of the suit.

A writ of execution was thereafter issued. Levied upon were four lots in Angeles City covered by Transfer Certificates of Title Nos. 30950, 30951, 30952 and 30953 all in the name of "Romarico Henson x x x married to Katrina Henson." [10]

The public auction sale was first set for October 30, 1977 but since said date was declared a public holiday, Deputy Sheriff Emerito Sicat reset the sale to November 11, 1977. On said date, the following properties registered in the name of Romarico Henson "married to Katrina Henson" were sold at public auction: (a) two parcels of land covered by Transfer Certificates of Title Nos. 30950 and 30951 with respective areas of 293 and 289 square meters at P145,000 each to Juanito L. Santos,[11] and (b) two parcels of land covered by Transfer Certificates of Title Nos. 30952 and 30953 with respective areas of 289 and 916 square meters in the amount of P119,000.00 to Leonardo B. Joson.[12]

After the inscription on Transfer Certificate of Title No. 30951 of the levy on execution of the judgment in Civil Case No. 2224, the property covered by said title was extrajudicially foreclosed by the Rural Bank of Porac, Pampanga on account of the mortgage loan of P8,000 which Romarico and Katrina had obtained from said bank. The property was sold by the sheriff to the highest bidder for P57,000 on September 9, 1977. On September 14, 1978, Juanito Santos, who had earlier bought the same property at public auction on November 11, 1977, redeemed it by paying the sum of P57,000 plus the legal interest of P6,840.00 or a total amount of P63,840.00.[13]

About a month before such redemption or on August 8, 1978, Romarico filed an action for the annulment of the decision in Civil Case No. 2224 as well as the writ of execution, levy on execution and the auction sale therein in the same Court of First Instance.[14] Romarico alleged that he was "not given his day in court" because he was not represented by counsel as Attys. Albino and Yumul appeared solely for Katrina; that although he did not file an answer to the complaint he was not declared in default in the case; that while Atty. Albino received a copy of the decision, he and his wife were never personally served a copy thereof; that he had nothing to do with the business transactions of Katrina as he did not authorize her to enter into such transactions; and that the properties levied on execution and sold at public auction by the sheriff were his capital properties and therefore, as to him, all the proceedings had in the case were null and void.

On November 10, 1978, the lower court issued an order restraining the Register of Deeds of Angeles City from issuing the final bill of sale of Transfer Certificates of Title Nos. 30950 and 30951 in favor of Juanito Santos and Transfer Certificates of Title Nos. 30952 and 30953 in favor of Leonardo Joson until further orders of the court.[15] On January 22, 1979, upon motion of Romarico, the court issued a writ of preliminary injunction enjoining the sheriff from approving the final bill of sale of the land covered by the aforementioned certificates of title and the Register of Deeds of Angeles City from registering said certificates of title in the names of Santos and Joson until the final outcome of the case subject to Romarico's posting of a bond in the amount of P321,831.00.[16]

After trial on the merits, the lower court[17] rendered a decision holding that Romarico was indeed not given his day in court as he was not represented by counsel nor was he notified of the hearings therein although he was never declared in default. Noting that the complaint in Civil Case No. 2224 as well as the testimonial and documentary evidence adduced at the trial in said case do not show that Romarico had anything to do with the transactions between Katrina and Anita Chan, the court ruled that the judgment in Civil Case No. 2224 "is devoid

of legal or factual basis which is not even supported by a finding of fact or ratio decidendi in the body of the decision, and may be declared null and void x x x pursuant to a doctrine laid down by the Supreme Court to the effect that 'the Court of First Instance or a branch thereof, has authority and jurisdiction to try and decide an action for annulment of a final and executory judgment or order rendered by another court of first instance or of a branch thereof' (Gianan vs. Imperial, 55 SCRA 755)."[18]

On whether or not the properties levied upon and sold at public auction may be reconveyed to Romarico, the court, finding that there was no basis for holding the conjugal partnership liable for the personal indebtedness of Katrina, ruled in favor of reconveyance in view of the jurisprudence that the interest of the wife in the conjugal partnership property being inchoate and therefore merely an expectancy, the same may not be sold or disposed of for value until after the liquidation and settlement of the community assets. The dispositive portion of the decision reads:

"WHEREFORE, and in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against all the defendants, as follows:

"(a) The Decision of the Court of First Instance of Pampanga and Angeles City, Branch IV, rendered in Civil Case No. 2224, entitled "RICKY WONG, ET AL. vs. KATRINA PINEDA HENSON and ROMARICO HENSON", is hereby declared null and void, only as far as it affects plain-tiff herein Romarico Henson;

"(b) The Writ of Execution, levy in execution and auction sale of the conjugal property of the spouses Romarico Henson and Katrina Pineda Henson which were sold at public auction on November 11, 1977, without notice to plaintiff herein, by Deputy Sheriff Emerito Sicat, are likewise declared null and void and of no force and effect;

"(c) Defendants Emerito Sicat and Conrado Lagman, in their official capacity as Sheriff and Register of Deeds, respectively, are enjoined permanently from issuing and/or registering the corresponding deeds of sale affecting the property;

"(d) The aforementioned buyers are directed to reconvey the property they have thus purchased at public auction to plaintiff Romarico Henson;

"(e) As far as the claim for reimbursement filed by Juanito Santos concerning the redemption of the property covered by Transfer Certificate of Title No. 30951 from the Rural Bank of Porac, which foreclosed the same extrajudicially, is concerned, plaintiff Romarico Henson may redeem the same within the period and in the manner prescribed by law, after the corresponding deed of redemption shall have been registered in the Office of the Registry of Deeds for Angeles City;

"(f) Defendants Spouses Ricky Wong and Anita Chan are, with the exception of the defendants Juanito Santos, Leonardo Joson, Sheriff and Register of Deeds, are ordered jointly and severally, to pay the plaintiff Romarico Henson the sum of P10,000.00, corresponding to the expenses of litigation, with legal interest thereon from the time this suit was filed up to the time the same shall have been paid, plus P5,000.00 for and as attorney's fees, and the costs of suit; and

"(g) The counterclaims respectively filed on behalf of all the defendants in the above-entitled case are hereby DISMISSED.

"SO ORDERED."

The defendants appealed to the then Intermediate Appellate Court. In its decision of January 22, 1985[19] the said court affirmed in toto the decision of the lower court. It added that as to Romarico, the judgment in Civil Case No. 2224 had not attained finality as the decision therein was not served on him and that he was not represented by counsel. Therefore, estoppel may not be applied against him as, not having been served with the decision,

Romarico did not know anything about it. Corollarily, there can be no valid writ of execution inasmuch as the decision had not become final as far as Romarico is concerned.

On whether the properties may be levied upon as conjugal properties, the appellate court ruled in the negative. It noted that the properties are Romarico's exclusive capital having been bought by him with his own funds. But granting that the properties are conjugal, they cannot answer for Katrina's obligations as the latter were exclusively hers because they were incurred without the consent of her husband, they were not for the daily expenses of the family and they did not redound to the benefit of the family. The court underscored the fact that no evidence has been submitted that the administration of the conjugal partnership had been transferred to Katrina either by Romarico or by the court before said obligations were incurred.

The appellants filed a motion for reconsideration of the decision of the appellate court but the same was denied for lack of merit on February 6, 1985.[20]

Hence, the instant petition for review on certiorari. Petitioners contend that, inasmuch as the Henson spouses were duly represented by Atty. Albino as shown by their affidavit of August 25, 1977 wherein they admitted that they were represented by said counsel until Atty. Yumul took over the actual management and conduct of the case and that Atty. Albino had not withdrawn as their counsel, the lower court "did not commit an error" in serving a copy of the decision in Civil Case No. 2224 only on Atty. Albino. Moreover, during the 2-year period between the filing of the complaint in Civil Case No. 2224 and the public auction sale on November 11, 1977, Romarico remained silent thereby making him in estoppel and guilty of laches.

Petitioners further aver that there being sufficient evidence that the auction sale was conducted in accordance with law, the acts of the sheriffs concerned are presumed to be regular and valid. But granting that an irregularity consisting of the non-notification of Romarico attended the conduct of the auction sale, the rights of Santos and Joson who were "mere strangers who participated as the highest bidders" therein, may not be prejudiced. Santos and Joson bought the properties sincerely believing that the sheriff was regularly performing his duties and no evidence was presented to the effect that they acted with fraud or that they connived with the sheriff. However, should the auction sale be nullified, petitioners assert that Romarico should not be unduly enriched at the expense of Santos and Joson.

The petitioners' theory is that Romarico Henson was guilty of laches and may not now belatedly assert his rights over the properties because he and Katrina were represented by counsel in Civil Case No. 2224. Said theory is allegedly founded on the perception that the Hensons were like any other ordinary couple wherein a spouse knows or should know the transactions of the other spouse which necessarily must be in interest of the family. The factual background of this case, however, takes it out of said ideal situation.

Romarico and Katrina had in fact been separated when Katrina entered into a business deal with Anita Wong. Thus, where that business transaction eventually resulted in the filing of Civil Case No. 2224, Romarico acted, or, as charged by petitioners, failed to act, in the belief that he was not involved in the personal dealings of his estranged wife. That belief was buttressed by the fact that the complaint itself did not mention or implicate him other than as the husband of Katrina. On whether Romarico was also represented by Atty. Albino, Katrina's counsel, the courts below found that:

"x x x Atty. Albino filed an Answer with Counter-claims dated July 25, 1975 solely on behalf of defendant Katrina Henson. The salutary statement in that Answer categorically reads: 'x x x COMES NOW THE DEFENDANT KATRINA HENSON by and through undersigned counsel, in answer to plaintiffs' complaint respectfully alleges: x x x.'

"That Answer was signed by GREGORIO ALBINO, JR., over the phrase 'COUNSEL FOR DEFENDANT

KATRINA HENSON.'

"Again, when Civil Case No. 2224 was called for pre-trial on November 27, 1975, before then Presiding Judge Bienvenido Ejercito, it is clearly stated on page 2 of the day's stenographic notes, under 'APPEARANCES' that Atty. Albino, Jr. appeared as 'COUNSEL FOR DEFENDANT KATRINA HENSON.' And when the case was called, Atty. Jose Baltazar, Sr. appeared for the plaintiffs while Atty. Albino categorically appeared 'FOR DEFENDANT KATRINA HENSON.'

"It might be true that in subsequent hearings, Atty. Expedito Yumul 'appeared as counsel for the defendants', but the whole trouble is that he never expressly manifested to the Court that he was likewise actually representing defendant 'ROMARICO HENSON', for it cannot be disputed that Atty. Yumul only entered his appearance in collaboration with Atty. Albino (see p. 2 tsn, January 26, 1976, Espinosa), who in turn entered his initial appearance during the pre-trial, and through the filing of an Answer, for defendant KATRINA HENSON. As a matter of fact the Power of Attorney which Atty. Albino produced during the pre-trial was executed solely by defendant KATRINA HENSON. Accordingly, as collaborating counsel, Atty. Yumul cannot, by any stretch of the imagination, be considered as duly authorized to formally appear likewise on behalf of defendant ROMARICO HENSON for whom principal counsel of record Atty. Gregorio Albino, Jr. never made any formal appearance. On this score, it is not amiss to state that 'A spring cannot rise higher than its source.'

"Now, what about that statement in the aforementioned joint affidavit of the spouses KATRINA HENSON and ROMARICO HENSON, to the effect that 'our first lawyer in said case was Atty. Gregorio Albino, Jr., and sometime later Atty. Expedito B. Yumul took over x x x.'

"That statement which plaintiff ROMARICO HENSON was made to sign by Atty. Yumul on August 25, 1977, after the filing of this case, allegedly for the purpose of dissolving the writ of execution, as claimed in paragraph XIV of the complaint herein, and is satisfactorily explained by both plaintiff herein and his wife, while on cross-examination by Atty. Baltazar, Sr., and We quote:

'Q. So, the summons directed your filing of your Answer for both of you, your wife and your good self?

'A. Yes, sir but may I add, I received the summons but I did not file an answer because my wife took a lawyer and that lawyer I think will protect her interest and my interest being so I did not have nothing to do in the transaction which is attached to the complaint.' (TSN, Jan. 14, 1980, pp. 52-53).

"That plaintiff never appeared in Civil Case No. 2224, nor was he therein represented by counsel was impliedly admitted by defendants' counsel of records thru a question he propounded on cross, and the answer given by Katrina Pineda, to wit:

'Q. How about your husband, do you remember if he physically appeared in that Civil Case No. 2224, will you tell us if he was represented by counsel as a party defendant?

'A. No, sir, he did not appear.

'Q You are husband and wife, please tell us the reason why you have your own counsel in that case whereas Romarico Henson did not appear nor a counsel did not appear in that proceedings?' (TSN, Feb. 25, 1980, pp. 6-7).

xxx xxx xxx.

'A. Because that case is my exclusive and personal case, he has nothing to do with that, sir.' (TSN, Feb. 25, 1980, p. 9)." (Rollo, pp. 17-20)

Hence, laches may not be charged against Romarico because, aside from the fact that he had no knowledge of the transactions of his estranged wife, he was also not afforded an opportunity to defend himself in Civil Case No.

2224.[21] There is no laches or even finality of decision to speak of with respect to Romarico since the decision in Civil Case No. 2224 is null and void for having been rendered without jurisdiction for failure to observe the notice requirements prescribed by law.[22] Failure to notify Romarico may not be attributed to the fact that the plaintiffs in Civil Case No. 2224 acted on the presumption that the Hensons were still happily married because the complaint itself shows that they did not consider Romarico as a party to the transaction which Katrina undertook with Anita Wong. In all likelihood, the plaintiffs merely impleaded Romarico as a nominal party in the case pursuant to the provisions of Rule 3, Section 4 of the Rules of Court.

Consequently, the writ of execution cannot be issued against Romarico as he has not yet had his day in court[23] and, necessarily, the public auction sale is null and void.[24] Moreover, the power of the court in the execution of judgments extends only over properties unquestionably belonging to the judgment debtor.[25]

On the matter of ownership of the properties involved, however, the Court disagrees with the appellate court that the said properties are exclusively owned by Romarico. Having been acquired during the marriage, they are still presumed to belong to the conjugal partnership[26] even though Romarico and Katrina had been living separately.[27]

The presumption of the conjugal nature of the properties subsists in the absence of clear, satisfactory and convincing evidence to overcome said presumption or to prove that the properties are exclusively owned by Romarico.[28] While there is proof that Romarico acquired the properties with money he had borrowed from an officemate, it is unclear where he obtained the money to repay the loan. If he paid it out of his salaries, then the money is part of the conjugal assets[29] and not exclusively his. Proof on this matter is of paramount importance considering that in the determination of the nature of a property acquired by a person during coverture, the controlling factor is the source of the money utilized in the purchase.

The conjugal nature of the properties notwithstanding, Katrina's indebtedness may not be paid for with them her obligation not having been shown by the petitioners to be one of the charges against the conjugal partnership.[30] In addition to the fact that her rights over the properties are merely inchoate prior to the liquidation of the conjugal partnership, the consent of her husband and her authority to incur such indebtedness had not been alleged in the complaint and proven at the trial.[31] Furthermore, under the Civil Code (before the effectivity of the Family Code on August 3, 1988), a wife may bind the conjugal partnership only when she purchases things necessary for the support of the family or when she borrows money for the purpose of purchasing things necessary for the support of the family if the husband fails to deliver the proper sum;[32] when the administration of the conjugal partnership is transferred to the wife by the courts[33] or by the husband,[34] and when the wife gives moderate donations for charity.[35] Having failed to establish that any of these circumstances occurred, the Wongs may not bind the conjugal assets to answer for Katrina's personal obligation to them.

Petitioners' contention that the rights of Santos and Joson as innocent buyers at the public auction sale may not be prejudiced, is, to a certain extent, valid. After all, in the absence of proof that irregularities attended the sale, the same must be presumed to have been conducted in accordance with law. There is, however, a peculiar factual circumstance that goes against the grain of that general presumption - the properties levied upon and sold at the public auction do not exclusively belong to the judgment debtor. Thus, the guiding jurisprudence is as follows:

"The rule in execution sales is that an execution creditor acquires no higher or better right than what the execution debtor has in the property levied upon. The purchaser of property on sale under execution and levy takes as assignee only, as the judicial seller possesses no title other than that which would pass by an assignment by the owner. 'An execution purchaser generally acquires such estate or interest as was vested in the execution debtor at the time of the seizure on execution, and only such interest, taking merely a quit-claim of the execution debtor's title, without warranty on the part of either the execution officer or of the parties,

whether the property is realty or personality. This rule prevails even if a larger interest in the property was intended to be sold. Accordingly, if the judgment debtor had no interest in the property, the execution purchaser acquires no interest therein.” (Pacheco vs. Court of Appeals, L-48689, August 31, 1987, 153 SCRA 382, 388-389 quoting Laureano vs. Stevenson, 45 Phil. 252; Cabuhat vs. Ansery, 42 Phil. 170; Fore v. Manove, 18 Cal. 436 and 21 Am. Jur., 140-141. Underscoring supplied.)

Applying this jurisprudence, execution purchasers Santos and Joson possess no rights which may rise above judgment debtor Katrina's inchoate proprietary rights over the properties sold at public auction. After all, a person can sell only what he owns or is authorized to sell and the buyer can, as a consequence, acquire no more than what the seller can legally transfer.[36] But, inasmuch as the decision in Civil Case No. 2224 is void only as far as Romarico and the conjugal proper-ties are concerned, the same may still be executed by the Spouses Wong against Katrina Henson personally and exclusively. The Spouses Wong must return to Juanito Santos and Leonardo Joson the purchase prices of P145,000 and P119,000 respectively, received by said spouses from the public auction sale.

The redemption made by Santos in the foreclosure proceeding against Romarico and Katrina Henson filed by the Rural Bank of Porac should, however, be respected unless Romarico exercises his right of redemption over the property covered by Transfer Certificate of Title No. 30951 in accordance with law.

WHEREFORE, the decisions of the appellate court and the lower court in Civil Case No. 2859 are hereby AFFIRMED subject to the modifications above-stated. No costs.

**SO ORDERED.**

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

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[1] TSN, January 14, 1980, p. 54.

[2] Exh. I.

[3] TSN, January 14, 1980, p. 14.

[4] Decision in Civil Case No. 2224, Exh. K, pp. 1-2.

[5] Presided by Judge Bienvenido Ejercito.

[6] Decision in Criminal Case No. 3205, Exh. J, p. 11.

[7] Civil Case No. 2224.

[8] Decision in Civil Case No. 2859, pp. 12-15.

[9] Penned by Judge Felisa de la Fuente-Samson.

[10] Exhs. Nos. A to D.

[11] Exh. 5- Juanito Santos.

[12] Exh. 6- Joson.

[13] Exh. 4- Santos.

[14] Civil Case No. 2859.

[15] Record on Appeal, p. 25.

[16] Ibid., p. 54.

[17] Presided by Judge Ignacio M. Capulong. The presiding judge of Branch IV had earlier inhibited himself from taking cognizance of the case. Hence, Civil Case No. 2859 was trans-ferred to Branch V of the same court.

[18] Pursuant to Section 9 (2) of Batas Pambansa Blg. 129, the Court of Appeals now exercises exclusive original juris-diction over actions for annulment of judgments of the Regional Trial Courts (Islamic Da Wah Council of the Philippines vs. Court of Appeals, G.R. No. 80892, September 29, 1989, 178 SCRA 178; Liwag vs. Court of Appeals, G.R. No. 86094, December 20, 1989, 180 SCRA 420).

[19] Penned by Justice Eduardo P. Caguioa and concurred in by Justices Ramon G. Gaviola, Jr., Ma. Rosario Quetulio-Losa and Leonor Ines Luciano.

[20] Rollo, p. 56.

[21] Bailon-Casilao v. Court of Appeals, G.R. No. 78178, April 15, 1988, 160 SCRA 738, 747.

[22] Portugal v. Reantasa, L-46078, November 24, 1988, 167 SCRA 712.

[23] New Owners/Management of TML Garments, Inc. v. Zaragoza, G.R. No. 75866, February 23, 1989, 170 SCRA 563; Vda. de Medina v. Cruz, L-39272, May 4, 1988, 161 SCRA 36.

[24] Ver v. Quetulio, G.R. No. 77526, June 29, 1988, 163 SCRA 80.

[25] Escovilla, Jr. v. Court of Appeals, G.R. No. 84497, November 6, 1989, 179 SCRA 109; Ong v. Tating, G.R. No. 61042, April 15, 1987, 149 SCRA 265.

[26] Art. 160, Civil Code; Cuenca v. Cuenca, G.R. No. 72321, December 8, 1988, 168 SCRA 335.

[27] Art. 178, Ibid., Flores v. Escudero, 92 Phil. 786.

[28] Ahern v. Julian, 39 Phil. 607.

[29] Art. 153 (2), Civil Code.

[30] Art. 161, Ibid.; Lacson v. Diaz, L-19346, May 31, 1965, 14 SCRA 183.

[31] Art. 172, Ibid.; Manaois-Salonga v. Natividad, 107 Phil. 268.

[32] Art. 115.

[33] Arts. 196, 167 & 178.

[34] Art. 168.

[35] Art. 174.

[36] See: Segura v. Segura, L-29320, September 19, 1988, 165 SCRA 368, 374.

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