

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), PACIFIC BANKING CORPORATION, CHINA BANKING
CORPORATION, PHILIPPINE BANKING CORPORATION, PHILIPPINE
BANK OF COMMUNICATION...**

G.R. No. 78771. January 23, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before the Court are consolidated petitions docketed as G. R. Nos. 78771, 78891 and 80063. The subject, matter of these cases involves properties which were levied upon for the satisfaction of a money judgment rendered against Consolidated Mines, Inc. in Civil Case No. 1421.

The pertinent facts as gleaned from the appended decisions are as follows:

On October 27, 1981, private respondent State Investment House, Inc.(hereinafter referred to as SIHI) filed a complaint for a sum of money against Consolidated Mines, Inc. (hereinafter referred to as CMI) and Felipe Ollada in the then Court of First Instance of Pasig, Metro Manila, which was docketed as Civil Case No. 43586.

On November 27, 1981, the trial court issued a writ of attachment against the real and personal estate of CMI and Felipe Ollada Pursuant to the writ of attachment, a notice of garnishment was served on petitioner Benguet Corporation (hereinafter referred to as BENGUET) at its office in Makati, Metro Manila: levying on all moneys, money receivables, deposits, goods, effects, shares, interests, credits, stocks, debts etc., owing by BENGUET to CMI and Felipe Ollada, and any personal property in its possession or under its control belonging to the said defendants to cover the amount of P26,403,604.02 plus other fees; and requiring BENGUET to make a statement of the above mentioned items and of any other personal property in its, possession or under its control belonging to the defendants, with a warning that if the required answer was not forthcoming within five (5) days from receipt of notice, it could be examined under oath pursuant to Section 10, Rule 57 of the Rules of Court.

On December 16, 1981, a notice of levy with a copy of the writ of attachment was likewise served at BENGUET's mining office in Masinloc, Zambales.

Thereafter, the trial court, acting on a motion filed by SIHI, issued an order on September 7, 1982 requiring BENGUET through its President or Treasurer to appear before it for examination under oath respecting all debts owing to CMI, and other credits and properties belonging to CMI which are in its possession and under its control.

On January 17, 1983, as a result of the reorganization of the Judiciary, the case was re-raffled to the Regional Trial Court (RTC) of Makati, Branch 45 and docketed as Civil Case No. 1421.

On March 29, 1983, BENGUET filed a verified manifestation alleging that, as far back as 1956, it enjoyed as mining operator the exclusive right to possess and use the mining claims of CMI and the buildings, equipments

and other assets belonging to CMI located at the Zambales Mining Reservations in the municipalities of Masinloc, Candelaria and Sta. Cruz, pursuant to a memorandum of agreement and the amendments thereto, which had been duly registered with the Bureau of Mines/Mining Registry (See Agreement, dated July 5, 1956, Amendment to Agreement dated December 5, 1975 and Agreement dated January 8, 1981, Record, pp. 33-73.). The manifestation was filed on the agreement of SIHI's and Benguet's counsel that it would be in lieu of Benguet's examination as garnishee.

On December 5, 1983, the RTC issued a partial summary judgment against CMI, the dispositive portion of which reads as follows:

"WHEREFORE, partial judgment is hereby rendered against defendant Consolidated Mines, Inc. and in favor of plaintiff ordering said defendant to pay plaintiff the, principal amount of P20, 464, 308.31 plus stipulated interest at the rate of 12% per annum and penalty of 2% per month from date of default until full payment, as stipulated in the credit agreements and promissory notes annexed to the Complaint. Judgment is also rendered entering the right of plaintiff to collect attorney's fees in such amount as it may prove in a subsequent proceeding.

With costs against said defendant."

Pending appeal by the defendants, SIHI initiated proceedings to enforce the partial summary judgment. Thus, on January 20, 1984, the RTC ordered the issuance of a writ of execution. On February 6, 1984, a notice of garnishment was served by respondent deputy sheriff Ruben S. Nequinto on BENGUET covering all assets of CMI in its possession. On the next day, February 7, 1984, a Notice of Levy and/or Sale [hereinafter referred to as NOTICE] was sent to BENGUET setting the date of the public auction or sale an execution, on February 16, 1984.

On February 8, 1984, Benguet, responding to the aforesaid, notice and writ, filed a verified reply reaffirming among others, that it was holding the subject CMI properties under a right to the exclusive possessions, use and equipment thereof granted under the Benguet-CMI operating agreement.

On February 9, 1984, BENGUET filed a third-party claim with respondent deputy sheriff, a copy of which was also filed in the RTC alleging its adverse interest in the personal properties referred to in the notices, and stating by affidavit the estimated value of said properties at P91 Million. On the next day, BENGUET filed a motion to nullify the NOTICE, reasserting its possessory right, as lessee and/or usufructuary, over the personal properties listed in the NOTICE. On the other hand, because the respondent deputy sheriff failed to secure, entry into the CMI mine site occupied by BENGUET for the purpose of taking possession of the subject properties, SIHI filed an urgent motion on February 13, 1984 praying for the issuance of an order authorizing, respondent deputy sheriff to break open the gate of the CMI mine site at Masinloc Zambales, and the buildings or enclosures located therein, to wit:

"x x x to cause the gate of CMI Mine Site at Koto, Masinloc, Zambales and/or the building enclosure therein where the [subject] personal properties x x x may be found to be broken open and take said properties into his possession in connection with the public sale thereof x x x on February 16, 1984 x x x."

On February 15, 1984, the RTC issued an order denying BENGUET's third-party claim, and Granting SIHI's urgent (notion for the issuance of a "break open" order, based on the following grounds" (1) the fact that BENGUET claims the right of exclusive possession over the subject properties is no legal obstacle to a valid levy under attachment or levy on execution of the properties, since the same are undeniably owned by the judgment debtor CMI and the scheduled execution sale, at any rate, shall be without prejudice to third-party claimant's interests, if any, over the properties; and, (2) the proper forum for the resolution of BENGUET's third-party claim

is not Civil Case No. 1421, but a separate and independent civil action filed by the claimant as provided in Section 17, Rule 39 of the Revised Rules of Court and consistent with the doctrine in *Bayer Philippines, Inc. v. Agana* (G.R. No. L-38701 & L-33801, April 8, 1975, 63 SCRA 355). Furthermore, after its review of the stipulations in the mining operating agreements between CMI and BENGUET, the trial court denied BENGUET's third-party claim, finding that BENGUET was merely acting as an agent of the judgment debtor CMI.

By virtue of the above order, respondent deputy sheriff proceeded with the scheduled auction sale on February 16, 1984 and sold to SIHI, as the highest bidder, the properties listed in Annexes D to H, M to Z, AA and OO of the NOTICE for P21 Million. On February 17, 1984, the" auction items listed in Annexes A to C, I to L and FFF to KKK were also sold to SIHI as the highest bidder for P250,000.00.

On February 17, 1984, BENGUET filed in the then Intermediate Appellate Court (IAC) a petition for certiorari with preliminary injunction seeking to nullify the RTC order dated February 15, 1984. This petition was docketed as CA-G.R. SP No. 02735. BENGUET prayed therein that a preliminary restraining order be issued to restore to BENGUET possession of CMI properties that may have been removed or seized from it, and that the NOTICE and all proceedings or transactions in connection therewith be nullified or, in the alternative, that the same be declared to be without prejudice to BENGUET's possessory interests in the subject properties.

On February 20, 1984, the IAC issued a temporary restraining order enjoining respondents from carrying out or enforcing in any manner the RTC order dated February 15, 1984.

During the hearing on BENGUET's application for a writ of preliminary injunction conducted on March 6, 1984, the counsel for respondent SIHI gave assurance that SIHI would maintain the status quo until BENGUET's petition is finally resolved.

Meanwhile, a consortium of twelve Philippine banks led by Consolidated Bank and Trust Co. (hereinafter referred to as CONSORTIUM) moved for leave to be allowed to be present during this hearing as observers and/or amici curiae.

In a resolution dated March 8, 1984, the IAC granted the motion and suggested to the consortium to formally file a motion to intervene. The IAC also reiterated the assurance given by respondent SIHI that the status quo would be maintained by the parties concerned pending final resolution of the case.

Thereafter, on March 9, 1984, the CONSORTIUM filed a motion for intervention alleging that it had a valid and preferential lien over the levied personal properties superior to the rights of SIHI. It claimed that the banks comprising the CONSORTIUM were mortgagees of CMI properties situated in the mine site at Coto, Masinloc, Zambales, as evidenced by a deed of Real Estate and Chattel Mortgage with Assignment of Rights dated November 10, 1978 and executed by CMI, duly registered in the Chattel and Real Estate Mortgage Registry of said province. The consortium further stated that on February 6, 1984, a few days before the execution sale conducted by respondent deputy sheriff, the mortgaged properties were purchased by the banks in an extra-judicial foreclosure sale supervised by the deputy sheriff Romero Enriquez of Zambales. The CONSORTIUM thus prayed that all the properties enumerated and listed in the inventory of fixed assets attached to its motion be declared as owned and belonging to the CONSORTIUM.

On January 29, 1987, the appellate court, now the Court of Appeals (CA), rendered its decision denying BENGUET's petition for certiorari and the motion for intervention filed by the CONSORTIUM, and lifting the restraining order dated February 20, 1984.

BENGUET and the twelve-bank CONSORTIUM filed a motion for reconsideration, which was subsequently set for hearing on March 11, 1987. At this hearing, the parties agreed to explore the possibility of an amicable

settlement. After several extensions, however, SIHI manifested on April 21, 1987 that efforts at amicable settlement had failed. Finally, on June 18, 1987, the CA issued a resolution denying the petitioner's motion for reconsideration.

Hence, BENGUET and the CONSORTIUM FILED THEIR PETITIONS IN THE Court, docketed as G.R. No. 78891 and G.R. No. 78771, respectively, and raffled to the Third Division.

With respect to the G.R. No. 80663, there are specific and pertinent facts which should also be taken into account, namely:

By virtue of the writ of execution issued by the RTC in Civil Case No. 1421, a levy on execution was made on February 7, 1984 on the properties of CMI. One of these properties was a parcel of land, with the improvements thereon, situated in Barrio Taltal, Masinloc, Zambales and covered by OCT No. 6955 in the name of CMI. The next day, respondent deputy sheriff Nequinto issued a notice to sheriff's sale on execution of CMI real properties covering among others the said parcel of land together with its improvements.

On March 8, 1984, respondent deputy sheriff Ruben Nequinto sold to private respondent SIHI, as the highest bidder at the auction sale conducted on that day, the parcel of land with the improvements thereon covered by OCT No. 6955 for and in consideration of P18,000,000.00. After the lapse of the one (1) year redemption period, without CMI exercising its right of redemption, respondent deputy sheriff executed in favor of SIHI the corresponding final deed of sale over the parcel of land. Thereafter, SIHI demanded from CMI the surrender of its owner's copy of OCT No. 6955, but the latter refused to do so. As a consequence thereof, SIHI filed with the Regional Trial Court of Zambales Branch 70 a petition, docketed as LRC No. 288 G.L.R.O. No. 50513, seeking the cancellation of OCT No. 6955 and the issuance, in lieu thereof, of a new certificate of title in its name.

SOLIDBANK, in representation of the twelve-bank CONSORTIUM, intervened in this land registration case. It filed an answer in intervention dated June 3, 1986, alleging that SIHI's petition should be dismissed because the execution sale of March 8, 1984 was conducted in contravention of the temporary restraining order and a resolution issued in CA-G.R. SP No. 02735 on February 20, 1984 and March 8, 1984, respectively. Moreover, the CONSORTIUM claimed that it was owner of various mining machineries, equipments and facilities situated on the registered parcel of land, having earlier purchased these properties in an extrajudicial foreclosure sale conducted on February 6, 1984 by deputy provincial sheriff Romero Enriquez of the province of Zambales. Consequently, the CONSORTIUM prayed that it be declared owner of said properties.

The issues having been joined, the RTC proceeded to hear the case.

Anticipating an unfavorable result in the proceedings, the CONSORTIUM filed another petition for prohibition in the CA, docketed as CA-G.R. SP No. 09583. The CONSORTIUM sought to enjoin respondent trial judge from continuing with the land registration case until after the petition for certiorari in CA-G. R. SP No. 02735 was finally decided by the appellate court.

On February 20, 1987, the CA dismissed the CONSORTIUM'S petition, finding that the execution sale for the properties covered under OCT No. 6955, conducted by respondent deputy sheriff Nequinto on March 8, 1984, did not contravene the temporary restraining order, nor did the March 8, 1985 resolution, issued in CA-B.R. SP No. 02735 because the latter referred only to the status of CMI properties listed in Annexes "A" to "YYYY" of the NOTICE which did not include the registered property. The CA further held that the claim of ownership asserted by the CONSORTIUM, over certain mining machineries, equipment and facilities situated on the parcel of land should be the subject of a separate and independent action.

On November 10, 1987, the CA denied the CONSORTIUM'S motion for reconsideration.

Hence, the CONSORTIUM filed a petition for review in the Court, docketed as G. R. No. 80663 and assigned to the Second Division.

Upon motion of petitioners BENGUET and the CONSORTIUM, the Court ordered the consolidation of G.R. No. 78891 with G.R. No. 78771, per resolutions dated November 25, 1987 and December 9, 1987. On August 15, 1988, the Court likewise resolved to consolidate G.R. No. 80663 with G.R. Nos. 78771 and 78891 pursuant to a February 1, 1988 resolution.

We will first discuss the controversy raised by BENGUET in G.R. No. 78891 before going on to the issues in G.R. Nos. 78771 and 80663 respectively.

G. R. NO. 78891

Petitioner BENGUET seeks the reversal of the decision of the appellate court in CA-G.R. SP. No. 02735, which held that the trial court did not act in grave abuse of its discretion when it denied BENGUET's third-party claim and authorized the deputy sheriff to dispossess it of personal properties turned over to it by CMI.

The issues ultimately presented for resolution are procedural, to wit:

- a) Whether or not the respondent CA erred in affirming the authority of the RTC to issue the order dated February 15, 1984 which denied BENGUET's third-party claim and authorized respondent deputy sheriff to dispossess BENGUET of the subject properties in order to facilitate the execution sale thereof in Civil Case No. 1421; and,
- b) Whether or not a valid levy under attachment or levy on execution was effected on the subject properties by respondent deputy sheriff.

The appellate court ruled that the third-party claim of the petitioner is barred in Civil Case No. 1421 on the ground that it cannot prosecute its claim in the court issuing the writ of execution citing the cases of *Bayer Philippines Inc., et al. v. Hon. Enrique Agana, et al.* and *San Francisco Oil and Paint Co., Inc., et al. v. Bayer Philippines, Inc, et al.* (63 SCRA 355 [1975]) and *Bobis v. Provincial Sheriff of Camarines Norte* (121 SCRA 32 [1983]). The appellate court, further, ruled that the remedy of the petitioner is to file a separate civil action as regards the petitioner's claim over the levied properties under section 17, Rule 39 of the Rules of Court, to wit:

"SEC. 17. Proceedings where property claimed by third person — If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer x x x. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action." (Emphasis supplied)

The petitioner now submits that the appellate court erred in applying section 17, Rule 39 of the Rules of Court in the instant case. The petitioner contends that section 17 applies to a situation where the sheriff obtained custody over the subject property as a result of a valid levy in execution. In the instant case, the petitioner submits that the levy on the CMI properties was void, hence, section 17 does not apply but section 45, Rule 39 of the Rules of

Court.

Under section 17, Rule 39 it is immaterial as to whether or not the sheriff made a valid levy on properties on execution before a person other than the judgment debtor claiming ownership or right over the levied properties can file a separate action to prosecute his claim over the levied properties. (See *Bayer Philippines, Inc. v. Agana*, supra, *Sampaguita Pictures, Inc. v. Jalwindor Manufacturers, Inc.* 93 SCRA 420 [1979]; *Roque v. Court of Appeals*, 93 SCRA 540 [1979] *Tan Boon Bee and Co., v. Jarencio*, 163 SCRA 205 [1988].) Thus, in the cases of *Sampaguita Pictures, Inc. v. Jalwindor Manufacturers, Inc.* supra, we ruled that a person other than the judgment debtor may file a separate action to prosecute his claim over the levied properties despite, the fact that the sheriff's levy on the properties on execution was considered void. The issue as to whether or not there was illegal levy on properties on execution can be threshed out in the separate action.

A person other than the judgment debtor who claims ownership or- right over levied properties is not precluded, however, from taking other legal remedies to prosecute his claim. Thus, in other cases, we ruled that a third person claiming ownership or interest over levied properties on execution may file a third-party claim in the same case under special circumstances:

"The contention of private respondents that petitioner is not entitled to any relief as it was not a party in Civil Case No. Q-16142 is not tenable. According to private respondent, if complete relief is sought, petitioner should have brought a separate and independent action as its claim involves an important legal issue. (Memorandum for Private Respondents, p. 7)

We do not agree, In *Regino v. Estipona*, the case relied upon by petitioner to support its stand, the Court said:

'Upon the levy by attachment of the property in question by order of the court in Civil Case No. 4435, the said property fell into the custodial legis of that court for the 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. x x x.

'As regards Felisa Rejuso who is a new party in Civil Case No. 5102, suffice it to say that her remedy, if it has not yet been barred by the statute of limitations or become stale in some other way is within Civil Case No. 4435. Indeed, it is superfluous to start a new action on a matter which can be more simply and conveniently litigated within a former proceeding of which it is more logically and legally an integral part. (*Ipekjdian Merchandising Co. Inc. v. CTA*, 8 SCRA 59 [1963]) Actually, the court in which the former proceeding was pending has exclusive jurisdiction thereof, (*De Leon v. Salvador*, 36 SCRA 567) the fact that the two cases are in the same Branch of the same Court of First Instance and presided over by the same Judge notwithstanding. After all, it is simpler and more- convenient to observe such practice, which insures also consistency in the resolutions of related questions because they are to be determined in most if not all instances by the same judge.' (*Development Bank of the Philippines v. Solano*, 165 SCRA 63, [1988]).

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While it is correct for the Court of Appeals to declare that there are other remedies available to the government in connection with its tax claims, yet, the filing of a separate action, in accordance with Section 17, Rule 39, of the Rules of Court would only delay final satisfaction of the tax liabilities of the Maritime Company of the Philippines. The purpose of said rule is to afford a claimant an opportunity to vindicate his ownership over the property levied upon by the sheriff. x x x" (*Republic v. Enriquez*, 166 SCRA 608 [1988])

The trial court has the competence to identify and to secure properties and interests therein held by the judgment debtor for the satisfaction of a money judgment rendered against him. (Section 15, Rule 39, Revised Rules of Court). The exercise of its authority is premised on one important factor: that the properties levied upon, or sought to be levied upon, are properties unquestionably owned by the judgment debtor and are not exempt by law from

execution. For the power of the Court in the execution of its judgment extends only over properties belonging to the judgment debtor. (See *Reyes v. Grey*, 21 Phil. 73 [1911], *Misut v. West Coast San Francisco Life Insurance Co.*, 41 Phil. 258. [1920], *Herald Publishing Co. v. Ramos*, 88 Phil. 94 [1951]; and *Bayer Philippines, Inc. v. Agana supra*).

As early as 1956, the petitioner was already operating the CMI mining claim in Masinloc, Zambales. It had free and full use and exclusive possession of all equipments under the CMI-BENGUET mining operating agreements registered with the Bureau of Mines which SIHI is now trying to take over because of CMI's obligations. The petitioner is a complete stranger to the case where its interests were ordered seized in favor of SIHI. After more than thirty (30) years of exclusive, free, and full use of machineries and equipment its interests cannot be lightly disregarded without due process.

"As far back as 1908, *U.S. v. Ling Su Fan*, (10 Phil. 104, 111. In a 1965 decision, *Albert v. University Publishing Co.*, L-19118 this definition of Webster was referred to Cf. *Reyes, J.B.L., J. con. in Carcia v. Salcedo*, L-19748, Sept. 13, 1962) this Court affixed the imprimatur of its approval on Webster's definition of procedural due process. Thus: 'By the law of the land is more clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.' (47 Phil. 23, 32) This Court in a 1924 decision, *Lopez v. Director of Lands*, after quoting the above added that due process 'contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property.' It is satisfied according to another leading decision: 'If the following conditions are present, namely: (1) there must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding' (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing.' (*Banco Español-Filipino v. Palanca*, [1918] 37 Phil. 921, 934.)

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"A 1957 decision *Cruzcosa v. Concepcion*, (101 Phil. 147. In the excerpt quoted, the following cases were referred to: *Pobre v. Blanco*, [1910] 17 Phil. 156; *Tayzon v. Ycasiano*, [1949] 83 Phil. 921; *Galang v. Uytiepo*, [1952] 92 Phil. 344. In the *Galang* decision, *Omaña v. Gatulayao*, [1941] 73 Phil. 66; *Santiago v. Sheriff*, [1947] 77 Phil. 740 and *Gozon v. De la Rosa*, [1947] Phil. 919 were cited) is even more illuminating in so far as the availability of the remedy sought is concerned. In the language of this Court, speaking through Justice J.B.L. Reyes: The petition is clearly meritorious. Petitioners were conclusively found by the court of Appeals to be co-owners of the building in question. Having an interest therein, they should have been made parties to the ejectment proceedings to give them a chance to protect their rights; and not having been made parties thereto they are not bound and can not be affected by the judgment, rendered therein against their co-owner *Catalino Cruzcosa, Jr. x x x.*' Two due process cases deal specifically with a writ of execution that could not validly be enforced against a party who was not given his day in court, *Sicat v. Reyes*, (100 Phil. 505 [1956]) and *Hamoy v. Batingoio*. (L-18119, August 30, 1962) According to the former: 'The above agreement, which served as basis for the ejectment of *Alipio Sicat*, cannot be binding and conclusive upon the latter, who is not a party to the case. Indeed, that order, as well as the writ for execution, cannot legally be enforced against *Alipio Sicat* for the simple reason that he was not given his day in court.' From the latter: 'The issue raised in the motion to *Rangar* is not involved in the appeal for it concerns a right which he claims over the property which has not so far been litigated for the reason that he was not made a party to the case either as plaintiff or as defendant. He only came to know of the litigation when he was forced out of the property by the sheriff, and so he filed the present motion to be heard and prove his title to the property. This he has the right to do as the most expeditious manner to protect his interest instead of filing a separate action which generally is long tedious and protracted.'" (*Macabingkil v. Yatco*, 21 SCRA 150 [1967])

In the instant case, the petitioner was the lawful possessor of the levied properties by virtue of the CMI-Benguet operating mining agreement. The petitioner has the right to be respected in his possession (Article 339, New Civil

Code). The law provides that "in no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto." (Article 536, New Civil Code). It can even be assumed that some of the equipments were replaced, acquired or purchased by Benguet during its 30 years operation in the mining site. Too many factual issues have been disregarded.

Accordingly, the "break open order" issued by the trial court which was affirmed by the appellate court authorizing the deputy sheriff to break open the gate of the CMI mine site at Masinloc, Zambales, and the building and enclosures therein for the purpose of taking possession of the CMI properties under the lawful possession of the petitioner violated the petitioner's right to due process. It is similar to a taking of real property against a lawful possessor without filing an ejectment suit against him. The petitioner has the right to be heard on its claim of "free and full use" of the CMI properties, a right it asserts against the whole world including CMI itself.

We rule that the levy under attachment or levy on execution of the CMI properties effected by the deputy sheriff is null and void.

The well-settled doctrine is that a "proper levy is indispensable to a valid sale on execution. A sale unless preceded by a valid levy is void. (Leath v. Deweese, 162 Ky 227 Jarbae v. Hall, 37 Md. 345 cited in Llenares v. Valdeavella and Zoreta 46 Phil. 358 [1924]) Therefore, since there was no sufficient levy of the execution in question, the private respondent did not take any title to the properties sold thereunder.

Given these circumstances, we agree with the petitioner that the applicable law is section 45, and not section 17, Rule 39 of the Rules of Court, to wit:

"SEC. 45. Proceedings when indebtedness denied or another person claims the property - If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought, at any time, upon such terms as may be just."

In effect, what the trial court should have done was to issue an order authorizing SIHI, the judgment creditor to file a separate action for the recovery of properties under the lawful possession of the petitioner and as claimed by Benguet, "not take the illegal shortcut of grabbing possession by the expedient of obtaining a notice of levy on attachment or execution, serving it upon Benguet and breaking open its premises if observance of the law is insisted upon." (Rollo, G.R. No. 78891, pp.13-14)

G.R. No. 78771

Petitioner CONSORTIUM seeks the reversal of the decision of respondent Court of Appeals in CA-G.R. SP No. 02735 which denied its motion for intervention filed in the same case.

The CONSORTIUM contends that the disallowance of its motion was a violation of its right to due process of law since respondent Court of Appeals had earlier allowed its intervention in a resolution of the Third Special Cases Division dated March 8, 1984.

It is to be recalled that the CONSORTIUM's purpose in filing a motion for intervention was to assert their valid and preferential lien over the levied properties, subject matter of CA-G.R. SP No. 02735 which are also the subject matter of G.R. No. 78891. the banks comprising the CONSORTIUM claimed that they were mortgages of the CMI properties situated in, among others, the mine site at Coto, Masinloc, Zambales under a Deed of Real

Estate and Chattel Mortgage with Assignment of Rights dated November 10, 1978 and executed by CMI duly registered in the Chattel and Real Estate Mortgage registry of said province; that on February 6, 1984, a few days before the execution sale conducted by respondent deputy sheriff, the mortgaged properties were purchased by the bank in an extra-judicial foreclosure sale supervised by Deputy Sheriff Romeo Enriquez of Zambales.

Thus, the CONSORTIUM prayed that all the properties enumerated and listed in the inventory of fixed assets attached to its motion be declared as owned and belonging to the CONSORTIUM.

Considering, however, our ruling in G.R. No. 78891 that the levy on attachment or execution on the subject properties made by respondent deputy sheriff was improper and void and, therefore, private respondent SIHI did not acquire any title over the said levied properties, the prayer for immediate relief filed by the intervenors is also resolved. However, the basic issue of ownership of the disputed properties is still open.

We, therefore, choose to discuss some of the merits of the instant petition in relation to our "duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules" as we have "the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees" (*Salonga v. Cruz Paño*, 134 SCRA 438 [1985]).

We have to clarify certain points because of a disturbing pattern observed in some earlier cases. A failing corporation borrows huge sums of money from banks and other financial institutions. One of the creditors, in this case it is SIHI, files an action for sum of money. The borrower who may be bankrupt or has nothing to lose anyway half-heartedly or totally does not defend his case. The plaintiff wins on the basis of default or summary judgment. He tries to execute on properties already owned by or mortgaged to third parties. The other creditors who may be owners or mortgagees with earlier or superior rights over the property being executed cannot even come in as they were unaware and were not made parties in the main case.

The CONSORTIUM states that it has prior and preferential rights over the attached properties by virtue of the Deed of Real Estate and of Chattel Mortgage executed by CMI in their favor. The well-settled rule is that a mortgage lien is inseparable from the property mortgaged. (*Philippine National Bank v. Mallorca*, 21 SCRA 694 [1969]). As mortgagees, their ownership rights would possibly be superior to that of SIHI (see *Caltex Philippines, Inc. v. Intermediate Appellate Court*, 176 SCRA 741 [1989]). In fact, the Banks claimed to be owners because of an earlier foreclosure of the items covered by the chattel mortgage. The Banks state that SIHI may validly levy to satisfy its unsecured claim only upon CMI's equity of redemption. In this case, the Banks were unaware of the initial proceeding. A short period of intervention was granted only to be later reconsidered. The appellate court ruled "that it had no more jurisdiction over the intervention.

We said in the case of *Director of Lands v. Court of Appeals*. (93 SCRA 238, [1979]):

"Rule 12, Section 2 of the Rules of Court provides the procedure for intervention. According to Section 2 thereof, which reads:

"Sec. 2. Intervention. - A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter, in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

It is quite clear and patent that the motions for intervention filed by the movants at this stage of the proceedings where trial has already been concluded, a judgment thereon had been promulgated in favor of private respondent and on appeal by the losing party, the Director of Lands, the same was affirmed by the Court of Appeals and the instant petition for certiorari to review said judgment is already submitted for decision by the Supreme Court, are obviously and manifestly late, beyond the period prescribed under the aforecited Section

2, Rule 12 of the Rules of Court.

But Rule 12 of the Rules of Court like all other Rules therein promulgated, is simply a rule of procedure, the whole purpose and object of which is to make the powers of the court fully and completely available for justice. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and; delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adopted to obtain that thing. In other words, it is a means to an end. (Manila Railroad Co. v. Attorney-General, 20 Phil. 523, 525)."

It must be stressed that the CONSORTIUM has a legal interest in the levied properties by virtue of their prior mortgage lien over the same, which are the subject matter in CA-G.R. SP No. 02735. In this regard, we have ruled:

"Secondly, the same Section 2, Rule 12, further provides that intervention by a person may be permitted 'when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.' On this point, the Supreme Court observed:

" 'We shall now speak of the case where the stranger desires to intervene for the purpose of asserting a property right in the res, or thing, which is the subject-matter of the litigation, without becoming a formal plaintiff or defendant, and without acquiring the control over the course of a litigation, which is conceded to the main actions (sic) therein. The mode of intervention to which reference is now made is denominated pro interesse suo and is somewhat analogous to the trial of a right of property in an action of law, its purpose being to enable a person whose property gets into the clutches of a court, in a controversy between others, to go into court and to procure it or its proceeds to be surrendered to him. It often happens that a person who really owns property, or has a superior lien or other interest in it, sees a litigation spring up between others who assert rights in or concerning it. If the court takes possession of the res, or otherwise gets jurisdiction over it in such a controversy, the real owner is not compelled to stand idly by and see , the property' disposed of without asserting his rights. Though it be granted that the litigation would not be technically binding on him, because of his not being a party, yet it might well happen that complications would ensue whereby his rights would be materially prejudiced. For instance, the subject-matter of the litigation might consist of a fund to be distributed, and the conditions might be such that if it were turned over to the particular litigant who should appear to have the better right in the original action, the person really having a superior title might be left without redress. Accordingly, provision is made thereby persons who have not been joined as parties in the original proceedings may intervene and assert a right antagonistic or superior to that of one or both of the parties. (Bosworth v. Terminal etc. Assoc. of St. Louis, 174 U.S., 182, 187, 43 L. ed., 941, 943). As regards the right to intervene in this manner, it may be stated that if the party desiring to intervene shows a legitimate and proper interest in the fund or property in question, the motion to intervene should be granted, especially if such interest cannot be otherwise properly protected. (Joaquin v. Herrera, 37 Phil. 705, 722-724)" (Republic of the Philippines v. Sandiganbayan, G.R. No. 85284, February 28, 1990)

It is not also clear why the appellate court should suddenly drop a case over which it had already acquired jurisdiction simply because a subsequent law, Executive Order No. 33, was issued on July 28, 1986. As stated by the consortium, a party litigant may not by dint of naked legislation find himself no longer a party, foreclosed from rights he was entitled to under existing law when he filed the case, without violating the constitutional guaranty of substantive and procedural due process. The petitioner claims the property as owner because it had earlier foreclosed preferred mortgage liens. It was also raising the important issue of why the Sheriff included movable machineries and equipment introduced and used on the land later than the time of registrations, as part of the "improvements" on the real estate levied upon. The decision, in effect, was like a default judgment where the petitioner was knocked out of the litigation not through its own fault, but because of the umpire's interpretation of a rule enacted while the flight was in progress.

Under the circumstances surrounding the case and in the interest of substantial justice, the Court, of Appeals should have granted the CONSORTIUM'S motion for intervention and resolved the issues instead of leaving them open.

G.R. No. 80063.

Petitioner CONSORTIUM seeks the reversal of a decision of respondent CA rendered in CA-G.R. SP No. 09583 which dismissed its petition for prohibition seeking to enjoin respondent trial judge from hearing LRC No. 288 G.R.L.O. No. 50153 during the pendency of CA-G.R. SP No. 02735.

The CONSORTIUM alleges that the anticipated cancellation of OCT No. 6955 covering a "parcel of land (PLAN--PSU-65013) with the improvements thereon," situated on Barrio Taltal, Masinloc, Zambales and the issuance of a new certificate of title in favor of SIHI in lieu thereof is prejudicial to its legal interests, as owner, in various mining machineries, equipment and facilities situated on the land [listed in Annex "B" of the petition, Rollo, pp. 33-44], having purchased the same in an extra-judicial foreclosure sale on February 6, 1984. The CONSORTIUM contends that since OCT No. 6955 covers not only a parcel of land, but also the "improvements thereon", the issuance of a new title in favor of SIHI would result as well in an adjudication of ownership over the particular properties in favor of the latter.

The records show that the parcel of land (PLAN-PSU- 65013) and the improvements thereon, located at Barrio Taltal, Masinloc, Zambales were among the levied properties in Civil Case No. 1421. These properties are not among the properties claimed by Benguet in CA-G.R. SP No. 02735. However, petitioner CONSORTIUM filed a motion to intervene in CA-G.R. SP No. 02735 by virtue of its prior mortgage lien over the mining equipments and machineries which were among the levied properties in Civil Case No. 1421. Considering, therefore, that the parcel of land sought to be registered by private respondent SIHI in the land registration proceedings (LRC No. 288 G.R. L.O. No. 50153 filed with the Regional Trial Court of Iba Zambales) includes improvements, and "improvements" on the parcel of land was interpreted to include the mining equipments and other machineries being claimed by CONSORTIUM in CA-G. R. SP. No. 02735, the appellate court erred in not enjoining the trial court from hearing the said land registration proceedings.

Indeed, in the event that levy on these properties is declared' improper and void by virtue of the prior mortgage, lien of CONSORTIUM which the CONSORTIUM claimed in their motion for intervention in CA-G.R. No. 02735, the land registration proceedings as far as these improvements are concerned would not prosper in accordance with the principle that one does not take, title over levied properties improperly affected in a sale on execution. (*Llenares v. Valdeavella and Zorete*, supra).

Respondent SIHI urges in these petitions that the correct remedy is a separate reivindicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the Sheriff.

Where there are conflicting but inextricably interconnected issues in one and the same complicated case, it is best that these be resolved in one integrated proceeding where an overall picture of the entirety of the case can be presented and examined. Piecemeal determinations, by several trial courts on segments of the basic issue and disconnected appeals to different Divisions of the Court of Appeals resulting in separate decisions each dealing with only part of the problem are discouraged. Needless multiplicity of suits is something which is frowned upon.

The Supreme Court has more than enough work attending to the increasingly heavy influx of significant cases without having to reconcile or make sense out of disparate decisions on the same subject property rendered by different courts going tangentially in varying directions. We cannot allow several decisions each dealing with only

part of the problem to become final because the other courts to whom the more basic issues are later tossed for subsequent and separate determinations will be fettered by findings and conclusions already executory or executed.

Intervention is discouraged where it is likely to inject confusion into the issues with which the third party claimant has nothing to do. In these petitions, however, intervention would have introduced order into a confused situation. The private respondent won a P20,464,308.31 suit as a result of a summary judgment. It levied upon and purchased properties which the third party claimant states were acquired for P91,000,000.00, completely ignoring the rights of said claimant to these properties. The Banks asserting preferred statutory mortgage liens do not claim as mere mortgagees but as owners who had foreclosed on the properties even before the execution sale conducted by the Deputy Sheriff. As stated in *Northern Motors Inc. v. Coquia* (68 SCRA 374 (1975)), mortgaged properties answer for the mortgage credit and not for the judgment credit of the mortgagor's unsecured creditor. In this case, the mortgagees were completely unaware of the proceedings which deprived them of their apparently superior liens. The defendant readily surrendered without bothering to have a possessor of 30 years standing and several secured creditors brought into the case. To require the mortgagees to file independent actions to enforce what appear to be superior or preferred credits would; defeat the purpose and structure of our system of mortgage credits. The lien which is supposed to directly attach to the mortgaged property would be illusory.

To say that the Banks can anyway vindicate their rights in a reivindicatory suit or a damage claim against a bond brought before still another court would indeed be oppressive and violative of simple justice.

WHEREFORE, premises considered: (1) the petition in G.R. No. 78891 is GRANTED. The questioned decision of the Court of Appeals is REVERSED and SET ASIDE; The questioned Order dated February 15, 1984 is DECLARED NULL and VOID; (2) In G.R. No. 78771, the questioned decision denying the petitioner intervenor's motion for intervention in CA-G.R. SP No. 02735 is SET ASIDE as reversible error. The rights and interests of the petitioners are still to be determined; (3) In G.R. No. 80063, the petition is GRANTED. The questioned decision and resolution of the Court of Appeals are REVERSED and SET ASIDE. The Regional Trial Court of Iba, Zambales, Branch 70 is enjoined and prohibited from further continuing with the land registration case (LRC No. 288 G.L.R.O. No. 50153) until after the rights of the parties in G.R. No. 78891, G.R. No. 78771 and in G. R. No. 80063 itself are determined. These cases are hereby, REMANDED to the Regional Trial Court of Makati, Branch 145 which is directed to conduct a full length trial where the rights and interests of all the parties, in relation to the questioned mining properties are fully ventilated and all the issues are resolved.

SO ORDERED.

Fernan, C.J. and Bidin, J. concur.

Feliciano, J., no part.

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