

SPS. OSCAR T. OLIB AND ROBERTA R. OLIB, PETITIONERS, VS. HON. EDELWINA C. PASTORAL, JUDGE OF THE REGIONAL TRIAL COURT OF AGUSAN DEL NORTE AND BUTUAN CITY, BRANCH III AND CORAZON...

G.R. No. 81120. August 20, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

This case could have been remanded to the Court of Appeals, which has concurrent jurisdiction with this Court in petitions for certiorari against the regional trial courts under Rule 65 of the Rules of Court. We have decided to retain and rule on it directly, however, so we can emphasize the important doctrines we shall here affirm.

On November 13, 1981, Corazon M. Navia sued the spouses Oscar and Roberta Olib, petitioners herein, for dissolution of their partnership and other reliefs, with a prayer for the issuance of a writ of a preliminary attachment.[1] The writ was granted on November 10, 1983, resulting in the attachment of six parcels of land belonging to the petitioners, along with stocks of merchandise in their bodega.[2] The writ was amended on December 14, 1983, to release the merchandise. Two years later, on May 16, 1985, the petitioners filed a motion to discharge the preliminary attachment on the ground that the attachment bond executed for one year from November 1983 had already lapsed.[3] This was accompanied by a certification from the bonding company that the bond had not been renewed and the corresponding payment for extension had not been made.[4]

On February 25, 1986, Judge Miguel S. Rallos of the Regional Trial Court of Agusan del Norte and Butuan City rendered judgment for the petitioners and sentenced the private respondent to pay them actual, moral and exemplary damages, plus attorney's fees and litigation expenses.[5] On April 16, 1986, Navia perfected her appeal from the challenged judgment, and the records of the case were elevated to the Court of Appeals on January 25, 1988.[6]

Although the trial court found in the text of the decision that the private respondent was not entitled to the issuance of the writ of preliminary attachment, no mention was made of the said writ in the dispositive portion. As a result, the annotation of the preliminary attachment on the certificates/titles of the attached lands was maintained and could not be canceled.

On July 20, 1987, the petitioners moved for the discharge of the writ of preliminary attachment by the respondent court on the basis of the judgment in their favor. Navia filed an opposition, contending that as she had perfected her appeal to the Court of Appeals, the trial court no longer had any jurisdiction over the case. The private respondent cited Rule 41, Section 9, of the Rules of Court, reading as follows:

When appeal deemed perfected; effect thereof. - If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any

matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals.

On August 24, 1987, Judge Edelwina C. Pastoral, who had succeeded Judge Rallos, denied the motion on the ground invoked in the opposition and declared:

Settled is the rule that the trial court loses its jurisdiction over the record and over the subject of the case once an appeal in the case has been perfected. The exception to this rule refers to the orders of the Court to protect and preserve the rights of the parties which do not involve any matter litigated by appeal (Section 9, Rule 41 of the Rules of Court). The writ of preliminary attachment was earlier granted as a security for the satisfaction of the judgment, the latter being now the subject of the appeal. To grant defendant's motion at this juncture is to disturb and not to preserve the rights of the parties. It is the stand of this Court that the status quo of the parties shall be maintained for it cannot predetermine the posture which the appellate court will adopt, either to affirm, modify or reverse the questioned decision of this Court.

The petitioners moved for reconsideration, invoking the case of *Galang v. Endencia*,^[7] where this Court held:

The levy in attachment of the properties of the defendant upon the allegation that he is about to dispose of the same to defraud his creditors is one which is intended for the protection and preservation of the rights of the plaintiff and which in no way involves any matter litigated by the defendant's appeal. And as the respondent court had jurisdiction to issue the writ of attachment, its errors, if any, committed in the appreciation of the probative value of the facts stated in the petition for the writ do not affect its jurisdiction but merely the exercise of such jurisdiction. We need not belabor here the rule that what makes up jurisdiction is the authority to act in a particular case and not the correctness of the action taken thereon. Without such authority, as determined by law, the court cannot act, or if it does, its actuations are null and void; but where the authority exists, all orders and decisions of the court rendered in the exercise thereof and within its limits are valid even if they were erroneous.

They argued that if the court a quo could issue a writ of attachment after the appeal had been perfected, then it could a fortiori discharge such a writ, especially where, as in the case at bar, the movants were the prevailing parties.

Later, somewhat inconsistently, the petitioners also contended that there was really no more need for an order discharging the attachment as this followed by operation of Rule 57, Section 19, of the Rules of Court. Such discharge was the immediate and automatic effect of any judgment in favor of the party whose property had been attached, thus:

SEC. 19. Disposition of attached property where judgment is for party against whom attachment is issued. - If judgment be rendered against the attaching creditor, all the proceeds of sales and money collected or received by the sheriff, clerk, or other proper officer under the order of attachment, and all property attached remaining in any such officer's hands, shall be delivered to the party against whom attachment was issued, and the order of attachment discharged.

The motion having been denied, the petitioners sought reconsideration a second time, insisting that (a) the attachment had been automatically discharged under Rule 57, Section 19; and (b) the attachment bond had already lapsed for non-payment of the premiums. They were rebuffed again. They then came before this Court, contending that the respondent court committed grave abuse of discretion in denying their motion.

We hold that it did not.

Attachment is defined as a provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any

judgment that may be recovered by the plaintiff or any proper party.[8]

It is an auxiliary remedy and cannot have an independent existence apart from the main suit or claim instituted by the plaintiff against the defendant.[9] Being merely ancillary to a principal proceeding, the attachment must fail if the suit itself cannot be maintained as the purpose of the writ can no longer be justified.

The consequence is that where the main action is appealed, the attachment which may have been issued as an incident of that action, is also considered appealed and so also removed from the jurisdiction of the court a quo. The attachment itself cannot be the subject of a separate case independent of the principal action because the attachment was only an incident of such action.

We held in *Olsen v. Olsen*:[10]

The preliminary attachment is an auxiliary remedy the granting of which lies within the sound discretion of the judge taking cognizance of the principal case upon whose existence it depends. The order of the judge denying a motion for the annulment of a writ of preliminary attachment, being of an incidental or interlocutory and auxiliary character, cannot be the subject of an appeal independently from the principal case, because our procedural law now in force authorizes an appeal only from a final judgment which gives an end to the litigation. (Section 143, Act 190; 3 C.J., 549, par. 389.)

x x x

While it is true that an order denying a motion for the annulment of a preliminary attachment is not subject to review through an appeal independently from the principal case, it is not constituting a final order, yet when the writ of preliminary attachment becomes final by virtue of a final judgment rendered in the principal case, said writ is subject to review jointly with the judgment rendered in the principal case through an ordinary appeal.

It is also worth noting, as an appropriate observation on the impropriety of the remedy employed by the petitioners in this case, that, in *Jopillo v. Court of Appeals*,[11] this Court observed:

x x x even assuming that the trial court committed an error in denying the motion to discharge the writ of attachment the error (if it is an error at all) is an error in judgment which cannot be corrected through the extraordinary remedy of certiorari but by an ordinary appeal at the proper time.

Coming now to the argument that the attachment was automatically lifted because of the non-payment of the premium on the attachment bond, the Court feels it is time again to correct a common misimpression. The rule is that the bond is not deemed extinguished by reason alone of such non-payment. The Court made this clear in *Luzon Surety Co. v. Quebrar*,[12] where it declared:

To allow the defendants-appellants to evade their liability under the Indemnity Agreements by non-payment of the premiums would ultimately lead to giving the administrator the power to diminish or reduce and altogether nullify his liability under the Administrator's Bonds. As already stated, this is contrary to the intent and purpose of the law in providing for the administrator's bonds for the protection of the creditors, heirs, legatees, and the estate.

x x x

Lastly, in *Manila Surety and Fidelity Co., Inc. v. Villarama* (107 Phil. 891), it was held that "the one-year period mentioned therein refers not to the duration or lifetime of the bond, but merely to the payment of premiums, and, consequently, does not affect at all the effectivity or efficacy of such bond. But such non-payment alone of the premiums for the succeeding years x x x does not necessarily extinguish or terminate the effectivity of the counter-bond in the absence of an express stipulation in the contract making such non-payment of premiums a cause for the extinguishments or termination of the undertaking.

These principles are applicable to other kinds of bonds, including the attachment bond in the case at bar. On this bond, the respondent court correctly observed:

x x x a cursory examination of the bond for levy on attachment executed between herein plaintiff Corazon M. Navia and the branch manager of the First Continental Assurance Co., Inc. (Rollo, pp. 347-348) discloses no stipulation that the surety company will terminate the bond for non-payment of the premium. This minor matter on non-payment of premiums of the bond pertains to the contracting parties to resolve.[13]

Finally, on the correct interpretation of Rule 57, Section 19, of the Rules of Court, we hold that the order of attachment is considered discharged only where the judgment has already become final and executory and not when it is still on appeal. The obvious reason is that, except in a few specified cases, execution pending appeal is not allowed.[14]

WHEREFORE, the petition is DISMISSED, with costs against the petitioners. The petitioners may, if they see fit, move for the lifting of the writ of preliminary attachment in the Court of Appeals, to which that ancillary remedy is deemed elevated along with the principal action.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 2.

[2] Ibid., p. 3.

[3] Id., pp. 17-19.

[4] id., p. 11.

[5] id., pp. 20-35.

[6] id., p. 93.

[7] 73 Phil. 399.

[8] Moran, Rules of Court, Vol. 3, 1980 ed., p. 3.

[9] Francisco, Rules of Court, Vol. IV-A, 1971 ed., p. 124; Malolos v. Asia Pacific Corporation, 147 SCRA 61.

[10] 48 Phil. 238.

[11] 167 SCRA 247.

[12] 127 SCRA 295.

[13] Rollo, pp. 78-81.

[14] Philippine National Bank v. Court of Appeals, G.R. Nos. 86105-06, September 29, 1989; Roxas v. Court of Appeals, 157 SCRA 370; Jaca v. Davao Lumber Company, 113 SCRA 107.

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