

ESTEBAN B. UY, JR. AND NILO S. CABANG, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, WILSON TING, AND YU HON, RESPONDENTS.

G.R. No. 83897. November 09, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to reverse the decision* which dismissed CA--G.R. No. SP-05659 for Certiorari and Prohibition with Preliminary Injunction and/or Restraining Order filed by petitioner seeking to annul and set aside the two Orders dated August 24, 1982 and October 10, 1983 issued by the then Court of First Instance of Rizal Branch LII** (now Regional Trial Court of Quezon City Branch XCLVII***) in Civil Case No. Q-35128, granting a writ of preliminary attachment and directing the sheriff assigned therein to attach the properties of defendants Uy and Cabang (herein petitioners); and denying defendants' motion to dismiss.

The antecedent facts of the case as found by the Court of Appeals are as follows:

On March 24, 1982, Esteban B. Uy, Jr (herein petitioner) filed a complaint against Sy Yuk Tat for sum of money, damages, with preliminary attachment, docketed as Civil Case No Q-34782 ("the first case" for short) in the then Court of First Instance of Rizal, Branch LII, Quezon City (the case was later assigned to the Regional Trial Court of Quezon City, Branch XCVII now presided over by respondent Judge). On the same day, upon plaintiff filing a bond of P232,780.00 said court issued a writ of preliminary attachment and appointed Deputy Sheriff Nilo S. Cabang (co-petitioner herein) as Special Sheriff to implement the writ. On April 6, 1982, the same court issued a break-open order upon motion filed by petitioner Uy.

On the following day, April 7, 1982, petitioner Cabang began to implement the writ of preliminary attachment as the Special Sheriff on the case.

On April 19, 1982, petitioner Cabang filed a Partial Sheriff's Return, stating, *inter alia*:

x x x x x

That in the afternoon of April 12, 1982, the undersigned together with Atty. Lupino Lazaro, plaintiff's counsel and the members of the same team proceeded to No. 65 Speaker Perez St., Quezon City, and effected a physical and actual count of the items and merchandise pointed to by the Ting family as having been taken from the Mansion Emporium and nearby bodega which are as follows:

- a) 329 boxes of "GE" Flat Iron each box containing 6 pcs. each;
- b) 229 boxes of Magnetic Blank Tapes with 48 pcs. each;
- c) 239 boxes of floor polishers marked "Sanyo"
- d) 54 boxes of floor polishers marked (Ronson"

x x x x x

On April 12, 1982, a third party claim was filed by Wilson Ting and Yu Hon (private respondents herein) in the same Civil Case No. Q-34782, addressed to petitioner Cabang asserting ownership over the properties attached at No. 65 Speaker Perez St., Quezon City (other than those attached at No. 296 Palanca St., Manila). The third party claim specifically enumerated the properties, as reflected in the Partial Sheriff's Return dated April 13, 1982, belonging to the plaintiffs (private respondents herein).

On the same day that petitioner Cabang filed his Partial Sheriff's Return (April 19, 1982) the third party claimants Ting and Yu filed a motion to dissolve the aforementioned writ of preliminary attachment in the same Civil Case No. Q--34782; alleging among others, that being the absolute owners of the personal properties listed in their third party claim which were illegally seized from them they were willing to file a counterbond for the return thereof; which motion was opposed by plaintiff Uy.

On April 29, 1982, then CFI Judge Jose P. Castro rendered judgment by default in said Civil Case No. Q-34782 in favor of plaintiff Uy.

Meanwhile, on May 5, 1982, third party claimants Wilson Ting and Yu Hon filed a complaint for damages with application for preliminary injunction against Esteban Uy and Nilo Cabang (co-petitioners herein) in the then Court of First Instance of Rizal, Branch 52, Quezon City ("the court a quo for short) which case was docketed as Civil Case No. Q-35128 ("the second case" for short). The complaint alleged inter alia, that the plaintiffs are the owners of the personal properties reflected in the Partial Sheriff's Return dated April 13, 1983 which have been attached and seized by defendant Cabang. In this second civil case, the court a quo (then presided over by CFI Judge Concepcion B. Buencamino) issued an order on May 5, 1982, stating among other things, the following:

"Considering that it will take time before this Court could act upon said prayers for the issuance of a Writ of Preliminary Injunction, the parties are hereby ordered to maintain the STATUS QUO in this case with respect to the properties attached and subject of this action alleged to belong to the plaintiffs" (Rollo, p. 133)

Meanwhile, in the first case, where a judgment by default had been rendered, the first court issued an order striking off from the records all pleadings filed by the third party claimants.

With respect to the case in the court a quo, defendants Uy and Cabang filed their answer with counterclaim.

Meanwhile, in the first case, plaintiff Uy on June 7, 1982, filed an ex--parte motion for writ of execution which was granted the following day, June 8, 1982.

On the same day (June 7, 1982) that plaintiff Uy filed his ex-parte motion for writ of execution he and Cabang filed a motion to quash or dissolve status quo order in the case a quo as defendants therein on the ground that the court "has no jurisdiction to interfere with properties under custodia legis on orders of a court of co-equal and co-ordinate jurisdiction" and that plaintiffs' complaint is not for recovery of properties in question."

On June 24, 1982, plaintiff Uy in the first case filed his ex-parte motion to authorize Sheriff to sell the attached properties enumerated in Sheriff Cabang's partial return filed on April 19, 1982, on the ground that the properties under custodia legis were perishable especially those taken from No. 65 Speaker Perez, Quezon City.

Subsequently, on July 2, 1982, in the case a quo the court denied defendants' Uy and Cabang motion to quash or dissolve the status quo order.

Meanwhile, the first case on July 12, 1982, Cabang filed another partial sheriff's return this time stating among others that the judgment in that case had been partially satisfied, and that in the public auction sale held on July 6, 1982, certain personal properties had been sold to plaintiff Esteban Uy, Jr., the winning bidder for P15,000.00 while the other properties were sold in the amount of P200,000.00 in cash with Bernabe Ortiz of

No 97 Industrial Avenue, Northern Hill, Malabon Manila, as the highest bidder.

Back to the case a quo, on August 23, 1982, plaintiffs Ting and Yu Hon filed a motion for preliminary attachment alleging this ground: "In the case at bar, which, is one 'to recover possession of personal properties unjustly detained, x x the property x x has been x x removed x x (and) disposed of to prevent its being found or taken by the applicant or an officer' and/or said defendants are guilty of fraud in disposing of the property for the taking, (or) detention x x of which the action is brought' (Sec. 1(c) and (d), Rule 57, Rules of Court)

Acting on such motion the court a quo, on August 24, 1982, issued the disputed order granting the writ of preliminary attachment prayed for by the plaintiffs (Wilson Ting and Yu Hon), stating that:

"Let a writ of preliminary attachment issue upon the plaintiffs putting up a bond in the amount of P1,430,070.00, which shall be furnished to each of the defendants with copies of the verified application therewith, and the sheriff assigned to this court, Danilo Del Mundo, shall forthwith attach such properties of the defendants not exempt from execution, sufficient to satisfy the applicants' demand." (Rollo, p. 247)

On August 31, 1982, in the same case a quo, defendant Uy filed an urgent motion to quash and/ or dissolve preliminary attachment which motion was opposed by plaintiffs Ting and Yu Hon.

About half a year later, on February 21, 1982, in the case a quo, defendant Uy filed a motion for preliminary hearing on affirmative defenses as motion to dismiss. Following an exchange of subsequent papers between the parties, the court a quo issued the other disputed order which denied defendant Uy's motion to dismiss on October 10, 1983. The motion to quash was also denied by the court a quo on December 9, 1983. Defendant Uy filed a motion for reconsideration on both Orders. Finally, on February 15, 1985, respondent Judge issued two Orders 'denying both motions for reconsideration. (CA decision, Rollo, p. 109-122)

Thereafter, petitioners Esteban Uy, Jr. and Nilo Cabang filed with the Court of Appeals a petition for Certiorari and Prohibition with prayer for a Writ of Preliminary Injunction or a Retraining Order to annul and set aside the two orders issued by the then CFI of Rizal Branch 52.

In its decision, the Court of Appeals dismissed the petition, the dispositive portion of which reads:

"WHEREFORE, finding respondent Judge not to have committed a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the order dated August 24, 1982, denying petitioners' motion to quash the writ of preliminary attachment, and the order dated October 10, 1983, denying petitioners' motion to dismiss the complaint a quo, we hereby deny the instant petition, and therefore dismiss the same. No pronouncement as to cost." (Rollo, pp. 132-133)

Hence, the instant petition.

In the resolution of October 16, 1989, the Court gave due course to the petition and required both parties to submit simultaneous memoranda within thirty days from notice (Rollo, p.190). Private respondents filed their memorandum on December 6, 1989 (Ibid., p. 192) while petitioners filed their memorandum on January 5, 1990 (Ibid., p. 208)

The main issue in this case is whether or not properties levied and seized by virtue of a writ of attachment and later by a writ of execution, were under custodia legis and therefore not subject to the jurisdiction of another co-equal court where a third party claimant claimed ownership of the same properties.

The issue has long been laid to rest in the case of Manila Herald Publishing Co. Inc. v. Ramos (88 Phil. 94 [1951] where the Court ruled that while it is true that property in custody of the law may not be interfered with, without the permission of the proper court, this rule is confined to cases where the property belongs to the defendant or one in which the defendant has proprietary interests. But when the Sheriff, acting beyond the bounds of his office

seizes a stranger's property, the rule does not apply and interference with his custody is not interference with another court's order of attachment.

Under the circumstances, this Court categorically stated:

“It has been seen that a separate action by the third party who claims to be the owner of the property attached is appropriate. If this is so, it must be admitted that the judge trying such action may render judgment ordering the sheriff or whoever has in possession of the attached property to deliver it to the plaintiff claimant or desist from seizing it. It follows further that the court may make an interlocutory order, upon the filing of such bond as may be necessary, to release the property pending final adjudication of the title. Jurisdiction over an action includes jurisdiction on interlocutory matter incidental to the cause and deemed necessary to preserve the subject matter of the suit or protect the parties interests. This is self-evident. (Manila Herald Publishing Co. Inc. v. Ramos *supra*).

The foregoing ruling was reiterated in the later case of *Traders Royal Bank v. IAC* (133 SCRA 141 [1984]) and even more recently in the case of *Escovilla v. C.A.*, G.R. No. 84497, November 6, 1989, where this Court stressed:

"The power of the court in the execution of judgments extends only over properties unquestionably belonging to the judgment debtor. The levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under the authority of the court only when the property levied upon belongs to the defendant. If he attaches properties other than those of the defendant, he acts beyond the limits of his authority. The court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor. Should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action."

Neither can petitioner complain that they were denied their day in court when the Regional Trial Court issued a writ of preliminary attachment without hearing as it is well settled that its issuance may be made by the court *ex parte*. As clearly explained by this Court, no grave abuse of discretion can be ascribed to respondent Judge in the issuance of a writ of attachment without notice to petitioners as there is nothing in the Rules of Court which makes notice and hearing indispensable and mandatory requisites in its issuance. (*Filinvest Credit Corp. v. Relova*, 117 SCRA 420 [1982]; *Belisle Investment & Finance Co. Inc. v. State Investment House, Inc.* 151 SCRA 631 [1987]; *Toledo v. Burgos*, 168 SCRA 513 [1988].

In addition, petitioner's motion to quash or discharge the questioned attachment in the court *a quo* is in effect a motion for reconsideration which cured any defect of absence of notice. (*Dormitorio v. Fernandez*, 72 SCRA 388 [1976]).

Estoppel is likewise unavailing in the case at bar by the mere fact that private respondent Ting (complainant in the court *a quo*) pointed the items and merchandise taken from the Mansion House and nearby Bodega which were levied and hauled by Special Sheriff Cabang, where in the report of said Sheriff made earlier on April 6, 1982, he stated that on the same occasion referred to in his Partial Return, private respondents denied Sy Yuk Tat's ownership over the goods in question. (Rollo, pp. 203-204).

In like manner, the sale of the disputed properties at the public auction, in satisfaction of a judgment of a co-equal court does not render the case moot and academic. The undeviating ruling of this Court in such cases is that attachment and sale of properties belonging to a third person is void because such properties cannot be attached and sold at public auction for the purpose of enforcing a judgment against the judgment debtor. (*Orosco v. Nepumoceno* [57 Phil. 1007 [1932-33]).

The other issues in this case deserve scant consideration.

On the issue of the expiration of the restraining order, there is no argument that the life span of the status quo order automatically expires on the 20th day and no judicial declaration to that affect is necessary (*Paras v. Roura*, 163 SCRA 1 [1988]). But such fact is of no consequence in so far as the propriety of the questioned attachment is concerned. As found by the Court of Appeals, the grounds invoked by respondents for said attachment did not depend at all upon the continuing efficacy of the restraining order.

As to petitioner's contention that the complaint filed by private respondent in the lower court is merely seeking an ancillary remedy of injunction which is not a cause of action itself, the Court of Appeals correctly observed that the object of private respondents' complaint is injunction although the ancillary remedy of preliminary injunction was also prayed for during the pendency of the proceeding.

Finally, the non-joinder of the husband of private respondent, Yu Hon as well as her failure to verify the complaint does not warrant dismissal of the complaint for they are mere formal requirements which could be immediately cured without prejudice to the rights of the petitioners. This Court frowns on the resort to technicalities to defeat substantial justice. Thus, the Court states that the rules of procedure are intended to promote not to defeat substantial justice, and therefore, they should not be applied in a very rigid and technical sense. (*Angel v. Inopiquez*, G.R. 66712, January 13, 1989). Again on another occasion where an appeal should have been dismissed for non-compliance with the Rules, the Court relaxed the rigid interpretation of the Rules holding that a straight jacket application will do more injustice. (*Pan-Am Airways v. Espiritu*, 69 SCRA 45 [1976]).

PREMISES CONSIDERED, the petition is hereby DENIED and the assailed decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Justice Jesus M. Elbinias and concurred in by Justices Luis A. Javellana and Emeterio C. Cui.

** Judge Concepcion Buencamino, Presiding

*** Judge Oscar Leviste, presiding

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