

ALBERTO SIEVERT, PETITIONER, VS. COURT OF APPEALS, HON. JUDGE ARTEMON D. LUNA AND AURELIO CAMPOSANO, RESPONDENTS.

G.R. No. 84034. December 22, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 18 May 1988 petitioner Alberto Sievert a citizen and resident of the Philippines received by mail a Petition for Issuance of a Preliminary Attachment filed with the Regional Trial Court of Manila Branch 32 in Civil Case No 88-44346 Petitioner had not previously received any summons and any copy of a complaint against him in Civil Case No. 88-44346.

On the day set for hearing of the Petition for a Preliminary Writ of Attachment, petitioner's counsel went before the trial court and entered a special appearance for the limited purpose of objecting to the jurisdiction of the court. He simultaneously filed a written objection to the jurisdiction of the trial court to hear or act upon the Petition for Issuance of a Preliminary Writ of Attachment. In this written objection, petitioner prayed for denial of that Petition for lack of jurisdiction over the person of the petitioner (defendant therein) upon the ground that since no summons had been served upon him in the main case, no jurisdiction over the person of the petitioner had been acquired by the trial court.

The trial court denied the petitioner's objection and issued in open court an order which, in relevant part, read as follows:

"Under Section 1, Rule 57, Rules of Court, it is clear that a plaintiff or any proper party may 'x x x at the commencement of the action or at any time thereafter, have the property of the adverse party attached as the security for the satisfaction of any judgment x x x.' This rule would overrule the contention that this Court has no jurisdiction to act on the application, although if counsel for defendant so desire, she is given five (5) days from today within which to submit her further position why the writ should not be issued, upon the receipt of which or expiration of the period, the pending incident shall be considered submitted for resolution." (Underscoring in the original)[1]

Thereupon, on the same day, petitioner filed a Petition for Certiorari with the Court of Appeals. On 13 July 1988, the respondent appellate court rendered a decision, notable principally for its brevity, dismissing the Petition. The relevant portion of the Court of Appeals' decision is quoted below:

"The grounds raised in this petition state that the court a quo had not acquired jurisdiction over defendant (now petitioner) since no summons had been served on him, and that respondent Judge had committed a grave abuse of discretion in issuing the questioned order without jurisdiction.

In short, the issue presented to us is whether respondent Judge may issue a writ of preliminary attachment against petitioner before summons is served on the latter.

We rule for respondent Judge.

Under Sec. 1, Rule 57, it is clear that, at the commencement of the action, a party may have the property of the adverse party attached as security. The resolution of this issue depends, therefore, on what is meant by 'Commencement of the action.' Moran, citing American jurisprudence on this point, stated thus: 'Commencement of action -- Action is commenced by filing of the complaint, even though summons is not issued until a later date.' (Comment on the Rules of Court, Vol. I, p. 150, 1979). Thus, a writ of preliminary attachment may issue upon filing of the complaint even before issuance of the summons.

WHEREFORE, for lack of merit, the petition is hereby denied and, accordingly, dismissed." (Underscoring supplied)[2]

The petitioner is now before this Court on a Petition for Review on Certiorari, assailing the above-quoted decision of the Court of Appeals. The petitioner assigns two (2) errors:

"1.

The proceedings taken and the order issued on plaintiff's petition for attachment prior to the service of summons on the defendant were contrary to law and jurisprudence and violated the defendant's right to due process.

2.

The Court of Appeals committed a grave abuse of discretion amounting to lack of jurisdiction in ruling that 'a writ of preliminary attachment may issue upon filing of the complaint even prior to issuance of the summons.' "[3]

The two (2) assignments of error relate to the single issue which we perceive to be at stake here, that is, whether a court which has not acquired jurisdiction over the person of the defendant in the main case, may bind such defendant or his property by issuing a writ of preliminary attachment.

Both the trial court and the Court of Appeals held that the defendant may be bound by a writ of preliminary attachment even before summons together with a copy of the complaint in the main case has been validly served upon him.

We are unable to agree with the respondent courts.

There is no question that a writ of preliminary attachment may be applied for a plaintiff "at the commencement of the action or at any time thereafter" in the cases enumerated in Section 1 of Rule 57 of the Revised Rules of Court. The issue posed in this case, however, is not to be resolved by determining when an action may be regarded as having been commenced, a point in time which, in any case, is not necessarily fixed and identical regardless of the specific purpose for which the determination is to be made. The critical time which must be identified is, rather, when the trial court acquires authority under law to act coercively against the defendant or his property in a proceeding in attachment. We believe and so hold that that critical time is the time of the vesting of jurisdiction in the court over the person of the defendant in the main case.

Attachment is an ancillary remedy. It is not sought for its own sake but rather to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action.[4] A court which has not acquired jurisdiction over the person of defendant, cannot bind that defendant whether in the main case or in any ancillary proceeding such as attachment proceedings. The service of a petition for preliminary attachment without the prior or simultaneous service of summons and a copy of the complaint in the main case — and that is what happened in this case — does not of course confer jurisdiction upon the issuing court over the person of the

defendant.

Ordinarily, the prayer in a petition for a writ of preliminary attachment is embodied or incorporated in the main complaint itself as one of the forms of relief sought in such complaint. Thus, valid service of summons and a copy of the complaint will in such case vest jurisdiction in the court over the defendant both for purposes of the main case and for purposes of the ancillary remedy of attachment. In such case, notice of the main case is at the same time notice of the auxiliary proceeding in attachment. Where, however, the petition for a writ of preliminary attachment is embodied in a discrete pleading, such petition must be served either simultaneously with service of summons and a copy of the main complaint, or after jurisdiction over the defendant has already been acquired by such service of summons. Notice of the separate attachment petition is not notice of the main action. Put a little differently, jurisdiction whether *ratione personae* or *ratione materiae* in an attachment proceeding is ancillary to jurisdiction *ratione personae* or *ratione materiae* in the main action against the defendant. If a court has no jurisdiction over the subject matter or over the person of the defendant in the principal action, it simply has no jurisdiction to issue a writ of preliminary attachment against the defendant or his property.

It is basic that the requirements of the Rules of Court for issuance of preliminary attachment must be strictly and faithfully complied with in view of the nature of this provisional remedy. In *Salas v. Adil*,^[5] this Court described preliminary attachment as —

"a rigorous remedy which exposes the debtor to humiliation and annoyance, such [that] it should not be abused as to cause unnecessary prejudice. It is, therefore, the duty of the court, before issuing the writ, to ensure that all the requisites of the law have been complied with; otherwise the judge acts in excess of his jurisdiction and the writ so issued shall be null and void." (Underscoring supplied)^[6]

The above words apply with greater force in respect of that most fundamental of requisites, the jurisdiction of the court issuing attachment over the person of the defendant.

In the case at bar, the want of jurisdiction of the trial court to proceed in the main case against the defendant is quite clear. It is not disputed that neither service of summons with a copy of the complaint nor voluntary appearance of petitioner Sievert was had in this case. Yet, the trial court proceeded to hear the petition for issuance of the writ. This is reversible error and must be corrected on certiorari.

WHEREFORE, the Petition for Review on Certiorari is GRANTED due course and the Order of the trial court dated 20 May 1988 and the Decision of the Court of Appeals dated 13 July 1988 are hereby SET ASIDE and ANNULLED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 4.

[2] Rollo, pp. 16-17.

[3] Rollo, p. 5.

[4] We should perhaps make explicit that we are here addressing the situation of known, resident defendants only. Where the defendant is a non-resident, attachment of property may be sought in order to bring a res within the jurisdiction of the court, in substitution, as it were, of the body of the defendant (Section 1 [f], Rule 57, Revised Rules of Court). Jurisdiction over the res and the person of the defendant is, in such case, acquired by service of

summons by publication (Sections 16, 17 and 18, Rule 14, id.) though that jurisdiction may be made effective only in respect of the res attached. In *Lincoln Tavern v. Snader, et al.*, 165 Ohio St. 61, 133 NE, 2d 606 [1956], the Supreme Court of Ohio said:

"x x x under our present law the only notice is that of the principal action and it is upon such notice, i.e., personal or constructive service of summons, that jurisdiction rests; and, even though, where the defendant is a nonresident, it is necessary that there be an attachment of property of the defendant in order to clothe the court with jurisdiction to render a judgment, the attachment is an ancillary proceeding and there must be a proper service of summons for the court to become invested with jurisdiction to make an order which will affect the attached res.

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Under the provisions of the Ohio statute, an attachment may issue at or after the commencement of an action for the recovery of money, where the defendant is a nonresident of the state. Section 11819, General Code, Section 2715.01, Revised Code. However, an attachment is a provisional remedy; an ancillary proceeding which must be appended to a principal action and whose very validity must necessarily depend upon the validity of the commencement of the principal action.

xxx xxx xxx

Thus it may be seen that, although in an action based upon constructive service an attachment may issue prior to the completion of service by publication, such attachment has only a tentative validity which ripens into a completely valid attachment when and if service is completed as provided by law. If, for any reason, such as defective service, the court is found wanting in jurisdiction in the principal action, then it follows that the attachment never attained more than a tentative validity and falls with the principal action.

xxx xxx xxx." (Underscoring supplied)

[5] 90 SCRA 121 (1979).

[6] 90 SCRA at 125.

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