

**ALFONSO ESCOVILLA, JR., CECILIO M. MERIS AND CUISON
ENGINEERING AND MACHINERY CO., INC., PETITIONERS, VS. THE
HON. COURT OF APPEALS, SIBAGAT TIMBER CORPORATION AND
CONCHITA DEL ...**

G.R. No. 84497. November 06, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Court of Appeals affirming with modifications the decision of the lower court in Special Civil Case No. 454 entitled "Sibagat Timber Corporation and Conchita C. del Rosario v. Alfonso Escovilla, Jr., Cecilio M. Meris and Cuison Engineering and Machinery Co., Inc."

In Civil Case No. 13699, entitled "Cuison Engineering and Machinery Co., Inc. v, del Rosario and Sons Logging Enterprises, Inc." a decision dated March 24, 1981 was rendered by the then Court of First Instance, Branch II (now Regional Trial Court, Branch IX), Davao City awarding to Cuison Engineering and Machinery Co., Inc. a certain sum of money and damages. The Court of Appeals eventually affirmed the decision which became final and executory on June 29, 1984. Thereafter, Cuison Engineering and Machinery Co. sought the execution of the subject decision and a corresponding writ of execution was issued on December 27, 1984 by the RTC, Branch IX, Davao City.

On January 26, 1985, petitioner Deputy Sheriff Alfonso Escovilla, Jr. levied and seized one (1) unit electric welding machine. A third-party claim over said item was filed by Mariano Rana, office manager of Sibagat Timber Corporation, one of the private respondents.

Because of such levy, Special Civil Case No. 454 which was an action for prohibition with preliminary injunction and damages was filed on February 5, 1985 before the RTC, Branch IV of Butuan City entitled, "Sibagat Timber Corp., Petitioner v. Alfonso Escovilla, Jr. and Cuison Engineering and Machinery Corp., Inc., Respondents."

On February 7, 1985, petitioner Deputy Sheriff Cecilio M. Meris seized and levied one (1) unit motor launch named "Pixie Boy No. 5" by virtue of the writ of execution issued in Civil Case No. 13699.

On February 8, 1985, private respondent Conchita del Rosario, claiming ownership over the motor launch filed a third-party claim over the subject property.

Consequently, a sheriffs indemnity bond filed for the third-party claim of Conchita del Rosario was approved by the Davao Court.

On the same date, February 8, 1985, petitioner Cecilio M. Meris prepared the notice of sale setting the auction sale of the motor launch on February 14, 1985.

On February 11, 1985, Special Civil Case No. 454 was amended to include as additional petitioner, Conchita del Rosario and as additional respondent, Cecilio M. Meris. As prayed for in the petition, a temporary restraining

order was issued directing the respondents to refrain from proceeding with the public auction sale scheduled on February 14, 1985.

However, on March 6, 1985, after the temporary restraining order had lapsed and upon motion of Cuison Engineering & Machinery Co., the RTC of Davao City issued an order in Civil Case No. 13699 directing Deputy Sheriff Escovilla to proceed with the auction sale of the subject motor launch "Pixie Boy No. 5" with authority to lawfully retrieve the same wherever it may be stored or berthed.

Pursuant to such order, Escovilla took custody of the motor launch and set the auction sale on March 27, 1985.

Despite the orders of the court in Special Civil Case No. 454 directing the Sheriffs to return the motor launch and to desist from proceeding with the auction sale, the auction sale was conducted upon motion of Cuison Engineering and Machinery Co, Inc. and upon order of Judge Saludaes in Civil Case No. 13699.

On March 27, 1985. the subject motor launch was sold at public auction by Deputy Sheriff Joseymour R. Robiza in lieu of Escovilla who was then in Gen. Santos City, South Cotabato.

Meanwhile, trial on the merits was held in Special Civil Case No. 454, and on June 5, 1986, the court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

"1. Commanding respondent Sheriff Alfonso Escovilla, Jr. to return the motor launch Pixie Boy No. 5 at his own expense to its rightful owner Conchita C. del Rosario in Butuan City in the same condition when it was taken in 1985; or, in the event of loss or inability to recover said motor launch, to pay its value of P500,000.00;

"2. Ordering the forfeiture of the indemnity bond put up by First Integrated Bonding & Insurance Co., Inc. of Davao City under Sheriffs Indemnity Bond No. PIRCI/RIRO/00011-85 dated February 12, 1985 in the total amount of P120,000.00 in favor of Conchita C. del Rosario;

"3. Declaring the sale at public auction of the motor launch Pixie Boy No. 5 conducted by Deputy Sheriff Joseymour Ecobiza to be illegal and void from the beginning, and nullifying the corresponding certificate of sale issued and signed by him;

"4. Ordering respondent sheriff Alfonso Escovilla, Jr. to return to Sibagat Timber Corporation at Butuan City, at his own expense, the electric welding machine he improvidenti and illegally seized.

"5. Finding sheriff Alfonso Escovilla, Jr. guilty beyond reasonable doubt of having committed contempt against this Court and ordering him to pay a fine of Five Hundred (P500.00) Pesos;

"6. Directing respondents Alfonso Escovilla, Jr. and Cuison Engineering & Machinery Co., Inc. to pay Conchita C. del Rosario, jointly and severally the following sums: P-1 20,000.00 representing unearned income of the motor launch Pixie Boy No. 5 for 60 days at ,000.00 as moral damages as well as P5,000.00 as litigation expense;

"They are also ordered to pay Sibagat Timber Corporation in the sum of P22,500.00 as actual and compensatory damages for the deprivation of the use of the electric welding machine;

"Both respondents are also ordered to pay, jointly and severally, P15,000.00 as and for attorney's fees, plus the costs of this suit.'1 (At page 59)

From said decision, the petitioners appealed to the Court of Appeals which affirmed the decision of the RTC, Butuan City with some modifications, to wit:

"PREMISES CONSIDERED, the decision appealed from is hereby AFFIRMED but modified to read as

follows:

"1. Ordering respondent Sheriff Alfonso Escovilla, Jr., to return the motor launch 'Pixie Boy No. 5' to its rightful owner Conchita C. del Rosario in Butuan City in the same condition when it was taken in 1985, at the expense of Cuison Engineering & Machinery Co., Inc.; or in the event of loss or inability to recover said motor launch, for the latter to pay its value of P120,000.00;

"2. Declaring the sale at public auction of the motor launch 'Pixie Boy No. 5' conducted by Deputy Sheriff Joseymour Ecobiza to be illegal and void and nullifying the corresponding Certificate of Sale issued and signed by him;

"3. Ordering respondent Deputy Sheriff Alfonso Escovilla, Jr., to return to Sibagat Timber Corporation at Butuan City the electric welding machine, at the expense of Cuison Engineering & Machinery Co., Inc.;

"4. Directing respondent Cuison Engineering & Machinery Co., Inc. to pay Conchita del Rosario, the sum of P120,000.00 representing unearned income of the motor launch 'Pixie Boy No. 5,' and to pay Sibagat Timber Corporation the sum of P2,500.00 as actual and compensatory damages for the deprivation of the use of the electric welding machine.

"However, the above amount due to Conchita del Rosario is without prejudice to charging the same to the indemnity bond put up by the First Integrated Bonding & Insurance Co., Inc. of Davao City under Sheriffs Indemnity Bond No. FIBCI/MIRO/00011-85 dated February 12, 1985 in the total amount of P120,000.00 in favor of Conchita del Rosario, and subject to the corresponding order of the court in the proper case." (Rollo, p. 69)

The petitioners raise the following question of law:

WHETHER OR NOT AN ACTION FOR PROHIBITION WILL STILL PROSPER AS A REMEDY FOR ACTS ALREADY ACCOMPLISHED.

The petitioners claim that when the public auction sale was conducted on March 27, 1985 and the corresponding sheriffs certification of sale was issued in favor of the winning bidder, the petition for prohibition was already rendered moot and academic because the acts sought to be enjoined in the prohibition proceedings have already been performed.

The petitioners' contention is untenable.

There is no dispute that the private respondents are indeed the actual owners of the subject properties by virtue of a sale in their favor by Del Rosario and Sons Logging Enterprises,

Inc. Such finding is based on evidence on record which this Court does not find any reason to disturb. Moreover, there is nothing in the petition nor in the petitioners' memorandum to suggest that the properties sold in execution of the judgment in Civil Case No. 13699 belonged to the judgment debtor in that case. This petition merely attacks the procedure adopted by the respondents.

In such a case, the point to be borne in mind is that the power of the court in the execution of judgments extends only over properties unquestionably belonging to the judgment debtor. As the Court stated in *Bayer Philippines, Inc. v. Agana*, (63 SCRA355 [1975]):

"x x x (n Herald Publishing, supra, We intimated that the levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under authority of the court only when the property levied upon unquestionably belongs to the defendant. If he attaches properties other than those of the defendant, he acts beyond the limits of his authority. Otherwise stated, the court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor, and 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." (at p. 366)

This is precisely the very nature of the proceedings in the action for prohibition with preliminary injunction filed by the private respondents with the Regional Trial Court of Butuan City which is sanctioned by Section 17, Rule 39 of the Rules of Court. As held in *Rivera v. FJorendo* (144 SCRA 643 [1986]):

"Another fundamental rule which appears to have been violated in the case at bar is that no advantage may be given to one to the prejudice of the other, a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto. (*Rudolfo v. Alonso*, 76 Phil. 225, February 28, 1946). Similarly, the primary purpose of an injunction is to preserve the status quo, that is the last actual peaceable uncontested status which preceded the controversy." (at pp. 659-660)

In the instant case, the private respondents properly instituted Special Civil Case No. 454 which is a separate and independent action to vindicate their claims over the subject properties. If at all the petitioners had any doubts as to the veracity of the third-party claims, then the separate action instituted was the proper forum to ventilate such protestations. The action for prohibition was filed on February 5, 1985. On February 18, 1985, the respondent Sheriffs admitted having seized the disputed properties but assured the court that they will not remove them from its jurisdiction nor sell or dispose of the same.

From the start, the petitioners were cognizant of the third-party claims filed with the sheriff and the separate action instituted against them so they were fully aware of their liabilities to these third-party claimants who were not even parties to the case sought to be executed.

The rule is clear. If a third-party claim is filed, the sheriff is not bound to proceed with the levy of the property unless he is given by the judgment creditor an indemnity bond against the claim. The judgment creditor, by giving an indemnity bond, assumes the direction and control of the sheriffs action; so far as it might constitute a trespass and thus he becomes, to that extent, the principal and the sheriff, his agent. This makes him responsible for the continuance of the wrongful possession and for the sale and conversion of the goods and for all real damages which the owner might sustain (see *Moran*, Rules of Court, Vol. II [1979], p. 303).

Thus, in this case, even if the auction sale has been conducted and the sheriffs certificate of sale was issued in favor of the winning bidder, the liability of the judgment creditor and consequently, the purchaser to the real owners of the properties levied and executed is not extinguished. We also take note of the trial court's finding that Sheriffs Escovilla and Meris misled the Davao court as to the ownership of the properties they had seized knowing quite well that the petitioners in Special Civil Case No..454, the prohibition case, were the actual owners of the property. This brings us to the other point raised in this petition.

Corollary to the main issue raised is the argument that the Regional Trial Court of Butuan City cannot restrain or interfere with the orders issued by the Regional Trial Court of Davao City which is its coordinate and co-equal authority on matters properly brought before it. This issue has been clearly settled in the case of *Traders Royal Bank v. Intermediate Appellate Court*, (133 SCRA 141 [1984]) where the Court held:

"Generally, the rule that no court has the power to interfere by injunction with the judgments or decrees of a concurrent or coordinate jurisdiction having equal power to grant the injunctive relief sought by injunction, is applied in cases where no third-party claimant is involved, in order to prevent one court from nullifying the judgment or process of another court of the same rank or category, a power which devolves upon the proper appellate court (*Arabay, Inc. v. Salvador*, 82 SCRA 138). The purpose of the rule is to avoid conflict of power between different courts of coordinate jurisdiction and to bring about a harmonious and smooth functioning of their proceedings." (at p. 148)

WHEREFORE, the instant petition is hereby DISMISSED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

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

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