

SPOUSES JULIAN SY AND ROSA Q. TAN, PETITIONERS, VS. HON. JAIME D. DISCAYA, JARDINE-MANILA FINANCE, INC., AND THE PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.

G.R. No. 86301. January 23, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Assailed in this petition are the orders of the Regional Trial Court of Lucena City, Branch LIV, in Civil Case No. 88-109, entitled "Sps. Julian Sy and Rosa Q. Tan vs. Jardine-Manila Finance, Inc. and the Provincial Sheriff of Rizal," dated October 13, 1988 and December 5, 1988 and respectively dismissing the complaint for cancellation of entry on Transfer Certificate of Title No. T-28299 for lack of jurisdiction and denying the motion for reconsideration thereof.[1]

The factual background of this case is simple and undisputed. It appears that Branch XIII of the Regional Trial Court, National Capital Judicial Region, Pasig, Metro Manila, promulgated a decision in Civil Case No. 39816 thereof against herein petitioner Julian Sy Bang and his co-defendants therein, Enrique Sy and Lester Sy, ordering them to pay the amount of P360,877.18, with interest at the rate of 14% per annum on the principal balance from July 30, 1982 until fully paid, plus attorney's fees and costs of suit.

Upon proper motion, the decision was ordered executed pending appeal. Consequent thereto, respondent sheriff, through his deputy, levied upon a parcel of land covered by Transfer Certificate of Title No. T-28294 of the Registry of Deeds for the City of Lucena, which notice of levy is annotated thereon as Entry No. 4651.

Thereafter, herein petitioners filed a complaint in the Regional Trial Court of Lucena, against respondents Jardine-Manila Finance, Inc. and the Provincial Sheriff of Rizal for the cancellation of the said notice of levy and to enjoin them from causing the auction sale of said property. They alleged that the land involved is the paraphernal property of petitioner Rosa Q. Tan and may not be attached or levied upon for the obligation of her husband. Furthermore, even assuming that the property is conjugal, it cannot also be attached or levied upon because the obligation sought to be enforced did not benefit the conjugal partnership.

Both respondents filed a motion to dismiss the complaint for lack of jurisdiction, which motion was granted by respondent judge in an order dated October 13, 1988 holding that Rosa Q. Tan has to institute the proper action in the Regional Trial Court, Branch 157 at Pasig, it being the court which issued the writ of execution. Reliance was placed by the court below on the case of *De Leon vs. Salvador, et al.*[2] wherein, under the facts thereof, it was held that a court which has control of the property levied upon exercises exclusive jurisdiction over the same and that no court, except one having supervisory control or superior jurisdiction in the premises, has a right to interfere therewith.

A motion for reconsideration of said order was denied by the trial court, hence this present petition raising the issue of whether or not respondent judge erred in dismissing petitioner's complaint for lack of jurisdiction.

We find the petition meritorious. The right of a third-party claimant to file an independent action to vindicate his claim of ownership over the properties seized is reserved by Section 17, Rule 39 of the Rules of Court, as follows:

"If property levied on be claimed by any other person than the judgment debtor or his agent, and such person makes 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 within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action."

x x x

As held in the case of *Ong vs. Tating, et al.*,^[3] construing the aforecited rule, a third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.

Independent of the above-stated recourse, a third-party claimant may also avail of the remedy known as "terceria," provided in Section 17, Rule 39, by serving on the officer making the levy an affidavit of his title 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, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the sheriff within one hundred twenty (120) days from the filing of the bond.

The aforesaid remedies are nevertheless without prejudice to "any proper action" that a third-party claimant may deem suitable to vindicate "his claim to the property." Such a "proper action" is, obviously, entirely distinct from that explicitly prescribed in Section 17 of Rule 39, which is an action for damages brought by a third-party claimant against the officer within one hundred twenty (120) days from the date of the filing of the bond for the taking or keeping of the property subject of the "terceria."

Quite obviously, too, this "proper action" would have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim; and it may be brought against the sheriff and such other parties as may be alleged to have colluded with him in the supposedly wrongful execution proceedings, such as the judgment creditor himself. Such "proper action," as above pointed out, is and should be an entirely separate and distinct action from that in which execution has issued, if instituted by a stranger to the latter suit.^[4]

The remedies above mentioned are cumulative and may be resorted to by a third-party claimant independent of or separately from and without need of availing of the others. If a third-party claimant opted to file a proper action to vindicate his claim of ownership, he must institute an action, distinct and separate from that in which the judgment is being enforced, with the court of competent jurisdiction even before or without need of filing a claim in the court which issued the writ, the latter not being a condition sine qua non for the former. In such proper action, the validity and sufficiency of the title of the third-party claimant will be resolved[5] and a writ of preliminary injunction against the sheriff may be issued.[6]

In the case at bar, the filing by herein petitioners of an independent action with the court other than the one which issued the writ of execution is proper. Petitioner Rosa Tan is a stranger to the action where the writ of execution was issued and, therefore, cannot be compelled to present her claim with the said court which issued the writ.

Civil Case No. 88-109 filed by herein petitioner has a bearing on the issue of ownership which must be resolved by a court of competent jurisdiction. Such an independent action cannot be regarded as an encroachment upon the jurisdiction of a co-equal and coordinate court. The levy by the sheriff on property by virtue of a writ of execution may be considered as made under authority of the court only when the property levied upon unquestionably belongs to the judgment debtor. If he should attach any property other than those of said debtor, he acts beyond the limits of his authority. Stated otherwise, 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.[7] A money judgment is enforceable only against property unquestionably belonging to the judgment debtor.[8] As once noted by this Court, one man's goods shall not be sold for another man's debts. Ergo, the sheriff acts properly only when he subjects to execution property undeniably belonging to the judgment debtor, but to the extent that he levies on assets of a third person in which the judgment debtor has no interest, to that extent he is amenable to control and correction by the court.[9]

It is, therefore, undeniable that respondent judge erred in dismissing the complaint for lack of jurisdiction. The action filed by petitioner in the trial court is well within the procedure contemplated by the Rules of Court, particularly Section 17 of Rule 39.

WHEREFORE, the petition is GRANTED and the questioned orders issued by respondent judge are hereby ANNULLED and SET ASIDE. This case is remanded to the court a quo for further proceedings.

SO ORDERED.

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

[1] Rollo, 30-36; 42

[2] 36 SCRA 567 (1970).

[3] 149 SCRA 265 (1987).

[4] Bayer Phil., Inc., et al. vs. Agana, et al., 63 SCRA 355 (1975); Lorenzana vs. Cayetano, et al., 78 SCRA 485 (1977); Roque, et al. vs. Court of Appeals, et al., 93 SCRA 540 (1979).

[5] Standard Oil Co. of New York vs. Babasa, et al. 34 Phil. 354 (1916).

[6] *Abiera, et al. vs. Court of Appeals, et al.*, 45 SCRA 314 (1972); *Bayer Phil., et al. vs. Agana, et al.*, supra; *Ong vs. Tating, et al.*, supra.

[7] *Manila Herald Publishing Co., Inc. vs. Ramos, et al.*, 88 Phil. 94 (1951)

[8] *Special Services Corporation vs. Centro La Paz, etc.*, 121 SCRA 748 (1983).

[9] *Ong vs. Tating, et al.*, ante.

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