

**JOSE MODEQUILLO, PETITIONER, VS. HON. AUGUSTO V. BREVA,
FRANCISCO SALINAS, FLORIPER ABELLAN-SALINAS, JUANITO
CULAN-CULAN AND DEPUTY SHERIFF FERNANDO PLATA,
RESPONDENTS.**

G.R. No. 86355. May 31, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue in this petition is whether or not a final judgment of the Court of Appeals in an action for damages may be satisfied by way of execution of a family home constituted under the Family Code.

The facts are undisputed.

On January 29, 1988, a judgment was rendered by the Court of Appeals in CA-G.R. CV No. 09218 entitled “Francisco Salinas, et al. vs. Jose Modequillo, et al.,” the dispositive part of which reads as follows:

“WHEREFORE, the decision under appeal should be, as it is hereby, reversed and set aside. Judgment is hereby rendered finding the defendants-appellees Jose Modequillo and Benito Malubay jointly and severally liable to plaintiffs-appellants as hereinbelow set forth. Accordingly, defendants-appellees are ordered to pay jointly and severally to:

1. Plaintiffs-appellants, the Salinas spouses:

- a. the amount of P30,000.00 by way of compensation for the death of their son Audie Salinas;
- b. P10,000.00 for the loss of earnings by reason of the death of said Audie Salinas;
- c. the sum of P5,000.00 as burial expenses of Audie Salinas; and
- d. the sum of P5,000.00 by way of moral damages.

2. Plaintiffs-appellants Culan-Culan:

- a. the sum of P5,000.00 for hospitalization expenses of Renato Culan-Culan; and
- b. P5,000.00 for moral damages.

3. Both plaintiffs-appellants Salinas and Culan-Culan, P7,000.00 for attorney’s fees and litigation expenses.

All counterclaims and other claims are hereby dismissed.”[1]

The said judgment having become final and executory, a writ of execution was issued by the Regional Trial Court of Davao City to satisfy the said judgment on the goods and chattels of the defendants Jose Modequillo and Benito Malubay at Malalag, Davao del Sur.

On July 7, 1988, the sheriff levied on a parcel of residential land located at Poblacion Malalag, Davao del Sur

containing an area of 600 square meters with a market value of P34,550.00 and assessed value of P7,570.00 per Tax Declaration No. 87-008-01359, registered in the name of Jose Modequillo in the office of the Provincial Assessor of Davao del Sur; and a parcel of agricultural land located at Dalagbong, Bulacan, Malalag, Davao del Sur containing an area of 3 hectares with a market value of P24,130.00 and assessed value of P9,650.00 per Tax Declaration No. 87-08-01848 registered in the name of Jose Modequillo in the office of the Provincial Assessor of Davao del Sur.[2]

A motion to quash and/or to set aside levy of execution was filed by defendant Jose Modequillo alleging therein that the residential land located at Poblacion Malalag is where the family home is built since 1969 prior to the commencement of this case and as such is exempt from execution, forced sale or attachment under Articles 152 and 153 of the Family Code except for liabilities mentioned in Article 155 thereof; and that the judgment debt sought to be enforced against the family home of defendant is not one of those enumerated under Article 155 of the Family Code. As to the agricultural land although it is declared in the name of defendant it is alleged to be still part of the public land and the transfer in his favor by the original possessor and applicant who was a member of a cultural minority was not approved by the proper government agency. An opposition thereto was filed by the plaintiffs.

In an order dated August 26, 1988, the trial court denied the motion. A motion for reconsideration thereof was filed by defendant and this was denied for lack of merit on September 2, 1988.

Hence, the herein petition for review on certiorari wherein it is alleged that the trial court erred and acted in excess of its jurisdiction in denying petitioner's motion to quash and/or to set aside levy on the properties and in denying petitioner's motion for reconsideration of the order dated August 26, 1988. Petitioner contends that only a question of law is involved in this petition. He asserts that the residential house and lot was first occupied as his family residence in 1969 and was duly constituted as a family home under the Family Code which took effect on August 4, 1988. Thus, petitioner argues that the said residential house and lot is exempt from payment of the obligation enumerated in Article 155 of the Family Code; and that the decision in this case pertaining to damages arising from a vehicular accident took place on March 16, 1976 and which became final in 1988 is not one of those instances enumerated under Article 155 of the Family Code when the family home may be levied upon and sold on execution. It is further alleged that the trial court erred in holding that the said house and lot became a family home only on August 4, 1988 when the Family Code became effective, and that the Family Code cannot be interpreted in such a way that all family residences are deemed to have been constituted as family homes at the time of their occupancy prior to the effectivity of the said Code and that they are exempt from execution for the payment of obligations incurred before the effectivity of said Code; and that it also erred when it declared that Article 162 of the Family Code does not state that the provisions of Chapter 2, Title V have a retroactive effect.

Articles 152 and 153 of the Family Code provide as follows:

“Art. 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.”

“Art. 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.”

Under the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. There is no need to constitute the same judicially or extrajudicially as required in the Civil Code. If the family actually resides in the premises, it is, therefore, a family home as contemplated by law. Thus,

the creditors should take the necessary precautions to protect their interest before extending credit to the spouses or head of the family who owns the home.

Article 155 of the Family Code also provides as follows:

“Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For nonpayment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.”

The exemption provided as aforesaid is effective from the time of the constitution of the family home as such, and lasts so long as any of its beneficiaries actually resides therein.

In the present case, the residential house and lot of petitioner was not constituted as a family home whether judicially or extrajudicially under the Civil Code. It became a family home by operation of law only under Article 153 of the Family Code. It is deemed constituted as a family home upon the effectivity of the Family Code on August 3, 1988 not August 4, one year after its publication in the Manila Chronicle on August 4, 1987 (1988 being a leap year).

The contention of petitioner that it should be considered a family home from the time it was occupied by petitioner and his family in 1969 is not well-taken. Under Article 162 of the Family Code, it is provided that “the provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable.” It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code. Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code, are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.

Is the family home of petitioner exempt from execution of the money judgment aforesaid? No. The debt or liability which was the basis of the judgment arose or was incurred at the time of the vehicular accident on March 16, 1976 and the money judgment arising therefrom was rendered by the appellate court on January 29, 1988. Both preceded the effectivity of the Family Code on August 3, 1988. This case does not fall under the exemptions from execution provided in the Family Code.

As to the agricultural land subject of the execution, the trial court correctly ruled that the levy to be made by the sheriff shall be on whatever rights the petitioner may have on the land.

WHEREFORE, the petition is DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Griño-Aquino, J., on leave.

[1] Madame Justice Lorna S. Lombos-de la Fuente was the ponente, concurred in by Justices Antonio M. Martinez and Cecilio L. Pe.

[2] Pages 18-21, Rollo.

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