

FLORANTE F. MANACOP, PETITIONER, VS. COURT OF APPEALS AND E & L MERCANTILE, INC., RESPONDENTS.

G.R. No. 97898. August 11, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May a writ of execution of a final and executory judgment issued before the effectivity of the Family Code be executed on a house and lot constituted as a family home under the provision of said Code?

Statement of the Case

This is the principal question posed by petitioner in assailing the Decision of Respondent Court of Appeals[1] in CA-G.R. SP No. 18906 promulgated on February 21, 1990 and its Resolution promulgated on March 21, 1991, affirming the orders issued by the trial court commanding the issuance of various writs of execution to enforce the latter's decision in Civil Case No. 53271.

The Facts

Petitioner Florante F. Manacop[2] and his wife Eulaceli purchased on March 10, 1972 a 446-square-meter residential lot with a bungalow, in consideration of P75,000.00.[3] The property, located in Commonwealth Village, Commonwealth Avenue, Quezon City, is covered by Transfer Certificate of Title No. 174180.

On March 17, 1986, Private Respondent E & L Mercantile, Inc. filed a complaint against petitioner and F.F. Manacop Construction Co., Inc. before the Regional Trial Court of Pasig, Metro Manila to collect an indebtedness of P3,359,218.45. Instead of filing an answer, petitioner and his company entered into a compromise agreement with private respondent, the salient portion of which provides:

“c. That defendants will undertake to pay the amount of P2,000,000.00 as and when their means permit, but expeditiously as possible as their collectibles will be collected.” (sic)

On April 20, 1986, the trial court rendered judgment approving the aforementioned compromise agreement. It enjoined the parties to comply with the agreement in good faith. On July 15, 1986, private respondent filed a motion for execution which the lower court granted on September 23, 1986. However, execution of the judgment was delayed. Eventually, the sheriff levied on several vehicles and other personal properties of petitioner. In partial satisfaction of the judgment debt, these chattels were sold at public auction for which certificates of sale were correspondingly issued by the sheriff.

On August 1, 1989, petitioner and his company filed a motion to quash the alias writs of execution and to stop the sheriff from continuing to enforce them on the ground that the judgment was not yet executory. They alleged that the compromise agreement had not yet matured as there was no showing that they had the means to pay the indebtedness or that their receivables had in fact been collected. They buttressed their motion with supplements and other pleadings.

On August 11, 1989, private respondent opposed the motion on the following grounds: (a) it was too late to question the September 23, 1986 Order considering that more than two years had elapsed; (b) the second alias writ of execution had been partially implemented; and (c) petitioner and his company were in bad faith in refusing to pay their indebtedness notwithstanding that from February 1984 to January 5, 1989, they had collected the total amount of P41,664,895.56. On September 21, 1989, private respondent filed an opposition to petitioner and his company's addendum to the motion to quash the writ of execution. It alleged that the property covered by TCT No. 174180 could not be considered a family home on the grounds that petitioner was already living abroad and that the property, having been acquired in 1972, should have been judicially constituted as a family home to exempt it from execution.

On September 26, 1989, the lower court denied the motion to quash the writ of execution and the prayers in the subsequent pleadings filed by petitioner and his company. Finding that petitioner and his company had not paid their indebtedness even though they collected receivables amounting to P57,224,319.75, the lower court held that the case had become final and executory. It also ruled that petitioner's residence was not exempt from execution as it was not duly constituted as a family home, pursuant to the Civil Code.

Hence, petitioner and his company filed with the Court of Appeals a petition for certiorari assailing the lower court's Orders of September 23, 1986 and September 26, 1989. On February 21, 1990, Respondent Court of Appeals rendered its now questioned Decision dismissing the petition for certiorari. The appellate court quoted with approval the findings of the lower court that: (a) the judgment based on the compromise agreement had become final and executory, stressing that petitioner and his company had collected the total amount of P57,224,319.75 but still failed to pay their indebtedness and (b) there was no showing that petitioner's residence had been duly constituted as a family home to exempt it from execution. On the second finding, the Court of Appeals added that:

"x x x. We agree with the respondent judge that there is no showing in evidence that petitioner Mañacop's residence under TCT 174180 has been duly constituted as a family home in accordance with law. For one thing, it is the clear implication of Article 153 that the family home continues to be so deemed constituted so long as any of its beneficiaries enumerated in Article 154 actually resides therein. Conversely, it ceases to continue as such family home if none of its beneficiaries actually occupies it. There is no showing in evidence that any of its beneficiaries is actually residing therein. On the other hand, the unrefuted assertion of private respondent is that petitioner Florante Mañacop had already left the country and is now, together with all the members of his family, living in West Covina, Los Angeles, California, U.S.A."

Petitioner and his company filed a motion for reconsideration of this Decision on the ground that the property covered by TCT No. 174180 was exempt from execution. On March 21, 1991, the Court of Appeals rendered the challenged Resolution denying the motion. It anchored its ruling on *Modequillo v. Brevia*,^[4] which held 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."

Applying the foregoing pronouncements to this case, the Court of Appeals explained:

"The record of the present case shows that petitioners incurred the debt of P3,468,000.00 from private respondent corporation on February 18, 1982 (Annex 'A', Petition). The judgment based upon the compromise agreement was rendered by the court on April 18, 1986 (Annex 'C', *Ibid*). Paraphrasing the *aforecited* *Modequillo* case, both the debt and the judgment preceded the effectivity of the Family Code on August 3, 1988. Verily, the case at bar does not fall under the exemptions from execution provided under Article 155 of the Family Code."

Undeterred, petitioner filed the instant petition for review on certiorari arguing that the Court of Appeals

misapplied Modequillo. He contends that there was no need for him to constitute his house and lot as a family home for it to be treated as such since he was and still is a resident of the same property from the time “it was levied upon and up to this moment.”

The Issue

As stated in the opening sentence of this Decision, the issue in this case boils down to whether a final and executory decision promulgated and a writ of execution issued before the effectivity of the Family Code can be executed on a family home constituted under the provisions of the said Code.

The Court’s Ruling

We answer the question in the affirmative. The Court of Appeals committed no reversible error. On the contrary, its Decision and Resolution are supported by law and applicable jurisprudence.

No Novel Issue

At the outset, the Court notes that the issue submitted for resolution in the instant case is not entirely new. In *Manacop v. Court of Appeals*,^[5] petitioner himself as a party therein raised a similar question of whether this very same property was exempt from preliminary attachment for the same excuse that it was his family home. In said case, F.F. Cruz & Co., Inc. filed a complaint for a sum of money. As an incident in the proceedings before it, the trial court issued a writ of attachment on the said house and lot. In upholding the trial court (and the Court of Appeals) in that case, we ruled that petitioner incurred the indebtedness in 1987 or prior to the effectivity of the Family Code on August 3, 1988. Hence, petitioner’s family home was not exempt from attachment “by sheer force of exclusion embodied in paragraph 2, Article 155 of the Family Code cited in *Modequillo*,” where the Court categorically ruled:

“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 1960 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 aforecited? 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.”[6]6 (Underscoring supplied.)

Article 153 of the Family Code Has No Retroactive Effect

Petitioner contends that the trial court erred in holding that his residence was not exempt from execution in view of his failure to show that the property involved “has been duly constituted as a family home in accordance with law.” He asserts that the Family Code and Modequillo require simply the occupancy of the property by the petitioner, without need for its judicial or extrajudicial constitution as a family home.[7]

Petitioner is only partly correct. True, under the Family Code which took effect on August 3, 1988,[8] the subject property became his family home under the simplified process embodied in Article 153 of said Code. However, Modequillo explicitly ruled that said provision of the Family Code does not have retroactive effect. In other words, prior to August 3, 1988, the procedure mandated by the Civil Code[9] had to be followed for a family home to be constituted as such. There being absolutely no proof that the subject property was judicially or extrajudicially constituted as a family home, it follows that the law’s protective mantle cannot be availed of by petitioner. Since the debt involved herein was incurred and the assailed orders of the trial court issued prior to August 3, 1988, the petitioner cannot be shielded by the benevolent provisions of the Family Code.

List of Beneficiary-Occupants Restricted to Those Enumerated in the Code

In view of the foregoing discussion, there is no reason to address the other arguments of petitioner other than to correct his misconception of the law. Petitioner contends that he should be deemed residing in the family home because his stay in the United States is merely temporary. He asserts that the person staying in the house is his overseer and that whenever his wife visited this country, she stayed in the family home. This contention lacks merit.

The law explicitly provides that occupancy of the family home either by the owner thereof or by “any of its beneficiaries” must be actual. That which is “actual” is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive.[10] Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the “beneficiaries” enumerated by Article 154 of the Family Code.

“Art. 154. The beneficiaries of a family home are:

- (1) The husband and wife, or an unmarried person who is the head of the family; and
- (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or

illegitimate, who are living in the family home and who depend upon the head of the family for lead support.”

This enumeration may include the in-laws where the family home is constituted jointly by the husband and wife.[11] But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code. Consequently, occupancy of a family home by an overseer like Carmencita V. Abat in this case [12] is insufficient compliance with the law.

WHEREFORE, the petition is hereby DENIED for utter lack of merit. This Decision is immediately executory. Double costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Special Eleventh Division, composed of J. Alfredo Marigomen, ponente, and Acting Chairman, and JJ. Asaali S. Isnani and Filemon H. Mendoza, concurring.

[2] The Court of Appeals referred to petitioner as “Florante F. Mañacop.”

[3] Rollo, p. 40.

[4] 185 SCRA 766,772, May 31, 1990, per Gancayco, J.

[5] 215 SCRA 773, November 13, 1992, per Melo, J.

[6] Supra, pp. 770-772.

[7] Petition, pp. 5-7.

[8] Modequillo vs. Brevia, supra.

[9] Articles 225, 229-231 and 233 of the Civil Code.

[10] Moreno, Philippine Law Dictionary, 3rd ed., p. 26 citing Salaysay v. Ruiz Castro, 98 Phil. 385 (1956).

[11] Sempio-Diy, Handbook On The Family Code Of The Philippines, 1988 ed., p. 219.

[12] In her affidavit of March 14, 1990, Carmencita V. Abat alleged that she was the “maid and caretaker” of petitioner’s house and that petitioner provided “for the necessary expenses of maintenance thereof” (Rollo, p. 47).

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