

THIRD DIVISION

[G.R. NO. 132768, September 09, 2005]

**JAIME B. BIANA, PETITIONER, VS. GEORGE GIMENEZ,
RESPONDENT.**

D E C I S I O N

GARCIA, J.

Assailed and sought to be set aside in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals in *CA-G.R. SP No. 40208*, to wit:

1. **Decision dated 9 July 1977,**^[1] affirming *in toto* an earlier decision of the Regional Trial Court at Naga City in a special civil action for mandamus with damages, thereat commenced by the herein respondent against the Provincial Sheriff of Camarines Sur and petitioner's predecessor-in-interest, a certain Santos B. Mendones; and
2. **Resolution dated 30 January 1998,**^[2] denying, for lack of merit, petitioner's motion for reconsideration.

The facts:

In a labor case filed before the Naga City District Office of the Department of Labor and Employment, entitled *Santos B. Mendones vs. Gimenez Park Subdivision and George Gimenez*, thereat docketed as Term Case No. R05-D-008-78, the defendants therein, which included herein respondent George Gimenez, were ordered to pay Mendones the sum of P1,520.00 plus P8.00/day starting 1 August 1978 up to the time of Mendones' reinstatement, as well as P3,168.00 as sheriff's fees and expenses of execution. Deputy Sheriff Renato Madera computed the judgment obligation at P5,248.50 and demanded its immediate payment from said defendants.

For defendants' failure to pay the judgment obligation in that case, Sheriff Madera proceeded to levy and attach four (4) parcels of urban land situated in Naga City with an aggregate area of more than 74 hectares and registered, per Transfer Certificate of Title No. 10249, in the names of Jose F. Gimenez, Tessa F. Gimenez, Maricel G. Gimenez and herein respondent George Gimenez.

On 6 December 1978, a public auction was conducted by Sheriff Madera for the sale of the subject parcels of land. Mendones, as sole bidder, won in the execution sale with his bid of P8,908.50, representing the judgment obligation plus expenses of execution. Thus, a *Provisional Certificate of Sale* was issued and registered in the name of Mendones on 7 December 1978.

According to respondent Gimenez, he was not duly informed or notified of the execution sale conducted by Sheriff Madera. He added that the sale came to his knowledge only when a representative of the sheriff asked him to pay the publication fee of the execution sale in the amount of P3,510.00. Immediately, he paid the full publication fee by issuing checks. For this payment, he was issued O.R. No. 161 on 27 January 1979, or 10 months and 20 days before the expiration of the one-year redemption period.

For the purpose of paying the redemption price of the parcels of land sold at the execution sale, respondent Gimenez approached Provincial Sheriff Manuel Garchitorena since he failed to locate Sheriff Madera. As per computation, Provincial Sheriff Garchitorena informed respondent Gimenez that the balance of the redemption price including interest and sheriff's fee amounted to P6,615.89. To facilitate redemption, respondent Gimenez issued four (4) checks in the name of Provincial Sheriff Garchitorena, which checks bear the following particulars:

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>
272377	18 July 1979	P1,500.00
272384	03 August 1979	P1,500.00
272385	18 August 1979	P1,500.00
272386	01 September 1979	P1,115.89 ^[3]

For his part, Provincial Sheriff Garchitorena issued a receipt^[4] dated 19 July 1979, or 4 months and 18 days before the expiration of the 1-year redemption period, therein acknowledging that he "*received from the Gimenez Park Subdivision and George F. Gimenez the sum of FIVE THOUSAND SIX HUNDRED FIFTEEN & 89/100 in full payment and satisfaction of the judgment xxx*".

After some time, or more specifically on 3 December 1979, Sheriff Madera wrote a letter^[5] addressed to the counsel of respondent Gimenez informing counsel that the 1-year redemption period will soon expire on 7 December 1979 and that his client still has an unpaid balance of P4,367.81. Replying thereto, respondent's counsel asked for the details of said account. To this, Deputy Sheriff Madera submitted an itemization^[6] which includes the sum of P3,510.00 as publication fee due to *Bicol Star*. Respondent disagreed with this itemization contending that he had paid the full cost of publication to the publisher of *Bicol Star*. Nonetheless, Deputy Sheriff Madera executed in favor of Mendones a *Definite Deed of Sale*^[7] dated 8 December 1979.

Meanwhile, for allegedly having paid the full redemption price, respondent Gimenez requested Provincial Sheriff Manuel Garchitorena to execute a deed of redemption in his favor. His request having been refused, respondent then filed with the Regional Trial Court at Naga City a special civil action for mandamus with damages to compel Provincial Sheriff Garchitorena and/or Deputy Sheriff Madera to execute the desired deed of redemption. In his petition, docketed in said court as *Civil Case No. 860*, Gimenez included an alternative prayer that if a definite deed of sale was already issued in favor of Mendones, the same be declared null and void.^[8]

Later, Mendones asked for leave, and was permitted, to file an answer-in-intervention, thereunder contending that no valid redemption was effected within

the 1-year redemption period.

During the pendency of the case, Mendones assigned his right over the 74-hectare land he acquired on auction to herein petitioner Jaime Biana in consideration of one million pesos (P1,000,000.00).^[9]

After due proceedings, the trial court, in a decision^[10] dated 20 January 1999, ruled in favor of respondent Gimenez. Dispositively, the decision reads.

WHEREFORE, by preponderant evidence, JUDGMENT is hereby rendered in favor of [Gimenez] as against [the Provincial Sheriff and herein petitioner as assignee of Mendones]. Accordingly, the Court hereby renders, judgment:

- a) Setting aside and declaring the Definite Deed of Sale dated December 8, 1979 null and void;
- b) Ordering the Provincial Sheriff of Camarines Sur to execute a Deed of Redemption reconveying the parcels of land covered by TCT No. 10249 to petitioner George G. Gimenez;
- c) Permanently enjoining the Register of Deeds of Naga City from registering the Definite Deed of Sale issued by the Provincial Sheriff of Camarines Sur over the above property subject of this case;
- d) Ordering intervenor Jaime B. Biana to pay [Gimenez] moral damages in the amount of One Hundred Fifty Thousand Pesos (P150,000.00);
- e) Ordering intervenor Jaime B. Biana to pay [Gimenez] attorney's fees and related expenses of litigation in the amount of Twenty Thousand (P20,000.00) Pesos;
- f) DISMISSING the counterclaim of respondent Provincial Sheriff and intervenor.

With costs against intervenor.

SO ORDERED.

Unable to accept the judgment, petitioner, joined by the Provincial Sheriff, went to the Court of Appeals *via* ordinary appeal, thereat docketed as *CA-G.R. SP No. 40208*.

As stated at the outset hereof, the Court of Appeals in a Decision dated 9 July 1997, affirmed *in toto* the appealed decision of the trial court. With his motion for reconsideration having been denied by the appellate court in its Resolution of 30 January 1998, petitioner is now with us *via* the present recourse on his submissions that the Court of Appeals erred -

XXX WHEN IT SUSTAINED THE ARBITRARY AND UNWARRANTED ACT OF THE TRIAL COURT OF CONVERTING THE SPECIAL CIVIL ACTION OF MANDAMUS INTO AN ORDINARY CIVIL ACTION WITH MULTIPLE RELIEFS.

II

XXX WHEN IT ACQUIRED TO THE OPEN DISREGARD BY THE TRIAL JUDGE OF THE JUDICIAL IMPARTIALITY AND UNBIASED STANCE REQUIRED OF HIM IN THE RENDITION OF HIS DECISION.

III

XXX WHEN IT ASSENTED TO THE ERRONEOUS CONCLUSION OF THE TRIAL JUDGE THAT THE RESPONDENT WAS ABLE TO MAKE A VALID REDEMPTION BY MEANS OF POSTDATED CHECKS OF VARYING DATES.

IV

XXX WHEN IT FAILED TO APPRECIATE THE FACT THAT MANDAMUS AS A SPECIAL CIVIL ACTION IS A REMEDY FOR OFFICIAL INACTION AND IS UNAVAILING AS A REMEDY FOR THE CORRECTION OF ACTS ALREADY PERFORMED.

V

XXX WHEN IT FAILED TO CONSIDER THAT THE TRIAL COURT WENT BEYOND ITS JURISDICTION AND ACTED ARBITRARILY WHEN IT IMPOSED MORAL DAMAGES AND ATTORNEY'S [sic] FEES UPON PETITIONER WHEN NO SUCH DEMAND WAS ASKED FOR IN THE COMPLAINT FOR MANDAMUS WHICH WAS DIRECTED ONLY AGAINST THE PROVINCIAL SHERIFF OF CAMARINES SUR.

VI

XXX WHEN IT OVERLOOKED THE FACT THAT THE ACT OF EXECUTING A DEED OF REDEMPTION IN FAVOR OF RESPONDENT INVOLVES THE EXERCISE OF DISCRETION BY THE PROVINCIAL SHERIFF OF CAMARINES SUR.

As we see it, petitioner's assigned errors crystallize to one pivotal question: Can the Provincial Sheriff of Camarines Sur be legally compelled to execute a deed of redemption in favor of respondent Gimenez?

Petitioner contends that there is yet no redemption in this case because what were tendered by the respondent by way of exercising of his right of redemption are postdated checks. To petitioner, the tender did not operate as payment of the redemption price, hence respondent is not entitled to a deed of redemption. To buttress his argument, petitioner invokes the ruling in *Philippine Airlines, Inc. vs. Hon. Court of Appeals, et al.*,^[11] where this Court ruled that payment in check issued in the name of an absconding sheriff did not operate as payment of the judgment obligation.