

THIRD DIVISION

[G.R. No. 165895, June 05, 2009]

TERLYNGRACE RIVERA, PETITIONER, VS. FLORENCIO L. VARGAS, RESPONDENT.

DECISION

NACHURA, J.:

What is the effect of a writ of replevin that has been improperly served?

This is the sole issue to be resolved in this petition for review on *certiorari* seeking to set aside the Decision^[1] of the Court of Appeals (CA) dated November 18, 2003 in CA-G.R. SP No. 78529, as well as its October 20, 2004 Resolution,^[2] denying the petition for *certiorari* filed by petitioner Terlyngrace Rivera (Rivera).

The facts follow.

On February 24, 2003, respondent Florencio Vargas (Vargas) filed a complaint^[3] against petitioner and several John Does before Branch 02 of the Regional Trial Court (RTC) in Tuguegarao City, Cagayan, for the recovery of a 150 T/H rock crushing plant located in Sariaya, Quezon. In his complaint and affidavit,^[4] Vargas claims ownership of the said equipment, having purchased and imported the same directly from Hyun Dae Trading Co., in Seoul, South Korea, in December 1993.^[5] The equipment was allegedly entrusted to petitioner's husband, Jan T. Rivera, who died sometime in late 2002, as caretaker of respondent's construction aggregates business in Batangas. According to Vargas, petitioner failed to return the said equipment after her husband's death despite his repeated demands, thus forcing him to resort to court action.^[6] The complaint was accompanied by a prayer for the issuance of a writ of replevin and the necessary bond amounting to P2,400,000.00.

Summons^[7] dated February 24, 2003 was served upon petitioner through her personal secretary on April 28, 2003 at her residence in Parañaque City. Interestingly, however, the writ of replevin^[8] was served upon and signed by a certain Joseph Rejumo, the security guard on duty in petitioner's crushing plant in Sariaya, Quezon on April 29, 2003,^[9] contrary to the sheriff's return^[10] stating that the writ was served upon Rivera.

On May 8, 2003, Rivera filed her answer, manifestation, and motion for the acceptance of petitioner's redelivery bond.^[11] In her answer, petitioner countered that the rock-crushing plant was ceded in favor of her husband as his share following the dissolution of the partnership formed between Jan Rivera and respondent's wife, Iluminada Vargas (Iluminada), on May 28, 1998, while the partnership's second rock-crushing plant in Cagayan was ceded in favor of

Iluminada.^[12] She further averred that from the time that the partnership was dissolved sometime in 2000 until Jan Rivera's death in late 2002, it was petitioner's husband who exercised ownership over the said equipment without any disturbance from respondent.^[13]

On May 12, 2003, the RTC issued an Order^[14] disapproving petitioner's redelivery bond application for failure to comply with the requirements under Sections 5 and 6 of Rule 60 of the Rules of Court.^[15] Without directly saying so, the RTC faulted petitioner for her failure to file the application for redelivery bond within five (5) days from the date of seizure as provided in the Rules of Court. Petitioner moved for reconsideration,^[16] but the same was also denied.^[17]

Aggrieved, petitioner elevated the matter to the CA through a petition for *certiorari* under Rule 65. This, too, was denied for lack of merit.^[18] Petitioner moved for reconsideration,^[19] but it was also denied.^[20]

Undaunted, petitioner now comes to us *via* this Rule 45 petition.

Petitioner argues that the RTC committed grave abuse of discretion in denying her counterbond on the ground that it was filed out of time. She contends that the mandatory five-day period did not even begin to run in this case due to the improper service of the writ of replevin, contrary to Section 4 of Rule 60.^[21]

We find the petition meritorious.

Replevin is one of the most ancient actions known to law, taking its name from the object of its process.^[22] It originated in common law as a remedy against the wrongful exercise of the right of distress for rent^[23] and, according to some authorities, could only be maintained in such a case.^[24] But by the weight of authority, the remedy is not and never was restricted to cases of wrongful distress in the absence of any statutes relating to the subject, but is a proper remedy for any unlawful taking.^[25] "Replevied," used in its technical sense, means delivered to the owner,^[26] while the words "to replevy" means to recover possession by an action of replevin.^[27]

Broadly understood in this jurisdiction, replevin is both a form of principal remedy and of provisional relief. It may refer either to the action itself, *i.e.*, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and to hold it *pendente lite*.^[28] The action is primarily possessory in nature and generally determines nothing more than the right of possession.^[29]

The law presumes that every possessor is a possessor in good faith.^[30] He is entitled to be respected and protected in his possession^[31] as if he were the true owner thereof until a competent court rules otherwise.^[32] Before a final judgment, property cannot be seized unless by virtue of some provision of law.^[33] The Rules of Court, under Rule 60, authorizes such seizure in cases of replevin. However, a

person seeking a remedy in an action for replevin must follow the course laid down in the statute, since the remedy is penal in nature.^[34] When no attempt is made to comply with the provisions of the law relating to seizure in this kind of action, the writ or order allowing the seizure is erroneous and may be set aside on motion^[35] by the adverse party. Be it noted, however, that a motion to quash the writ of replevin goes to the technical regularity of procedure, and not to the merits of the case^[36] in the principal action.

The process regarding the execution of the writ of replevin in Section 4 of Rule 60 is unambiguous: the sheriff, upon receipt of the writ of replevin and prior to the taking of the property, must serve a copy thereof to the adverse party (petitioner, in this case) together with the application, the affidavit of merit, and the replevin bond.^[37] The reasons are simple, *i.e.*, to provide proper notice to the adverse party that his property is being seized in accordance with the court's order upon application by the other party, and ultimately to allow the adverse party to take the proper remedy consequent thereto.

Service of the writ upon the adverse party is mandatory in line with the constitutional guaranty on procedural due process and as safeguard against unreasonable searches and seizures.^[38] If the writ was not served upon the adverse party but was instead merely handed to a person who is neither an agent of the adverse party nor a person authorized to receive court processes on his behalf, the service thereof is erroneous and is, therefore, invalid, running afoul of the statutory and constitutional requirements. The service is likewise invalid if the writ of replevin was served without the required documents. Under these circumstances, no right to seize and to detain the property shall pass, the act of the sheriff being both unlawful and unconstitutional.

In the case at bar, petitioner avers that the writ of replevin was served upon the security guard where the rock-crushing plant to be seized was located.^[39] The signature of the receiving party indicates that the writ was received on April 29, 2003 by a certain Joseph Rejumo, the guard on duty in a plant in Sariaya, Quezon, where the property to be seized was located, and witnessed by Claudio Palatino, respondent's caretaker.^[40] The sheriff's return,^[41] however, peremptorily states that both the writ of replevin and the summons were served upon Rivera. On May 8, 2003, or nine (9) days after the writ was served on the security guard, petitioner filed an answer to the complaint accompanied by a prayer for the approval of her redelivery bond. The RTC, however, denied the redelivery bond for having been filed beyond the five-day mandatory period prescribed in Sections 5 and 6 of Rule 60.^[42] But since the writ was invalidly served, petitioner is correct in contending that there is no reckoning point from which the mandatory five-day period shall commence to run.

The trial court is reminded that not only should the writ or order of replevin comply with all the requirements as to matters of form or contents prescribed by the Rules of Court.^[43] The writ must also satisfy proper service in order to be valid and effective: *i.e.* it should be directed to the officer who is authorized to serve it; and it should be served upon the person who not only has the possession or custody of the property involved but who is also a party or agent of a party to the action. Consequently, a trial court is deemed to have acted without or in excess of its